

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO				CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A	
TO: CITY COUNCIL		FROM (ORIGINATING DEPARTMENT): Real Estate Assets		DATE: 4/3/2015	
SUBJECT: Proposed Concession Agreement Between the City of San Diego and Delaware North Sportservice, Inc. and San Diego Sportservice, Inc. for the Provision of Food and Beverage Services at Qualcomm Stadium					
PRIMARY CONTACT (NAME, PHONE): Kristina Peralta, 619-641-3107 MS34			SECONDARY CONTACT (NAME, PHONE): Mike McSweeney, 619-641-3126 MS34		
COMPLETE FOR ACCOUNTING PURPOSES					
FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
COST SUMMARY (IF APPLICABLE):					
ROUTING AND APPROVALS					
CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	
Environmental Analysis		ORIG DEPT.	Thompson, Cybele	04/03/2015	
Liaison Office		CFO			
Equal Opportunity Contracting		DEPUTY CHIEF			
Financial Management		COO			
Comptroller		CITY ATTORNEY	Bevier, Debra		
		COUNCIL PRESIDENTS OFFICE			
PREPARATION OF:		<input checked="" type="checkbox"/> RESOLUTIONS	<input type="checkbox"/> ORDINANCE(S)	<input type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)
Approve the Requested Action to authorize the Mayor or his representative to execute the Proposed Concession Agreement between the City of San Diego and Delaware North Sportservice, Inc. and San Diego Sportservice, Inc. for the Provision of Food and Beverage Services at Qualcomm Stadium for a period of five years.					
STAFF RECOMMENDATIONS: Approve the Proposed Concession Agreement.					

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	7, All
COMMUNITY AREA(S):	
ENVIRONMENTAL IMPACT:	This activity is not subject to CEQA per CEQA Guidelines Section 15060(c), as this activity is not a project as defined by CEQA Guidelines Section 15378(b)(5).
CITY CLERK INSTRUCTIONS:	City Clerk, Please send finalized Resolution to the attention of Kristina Peralta, Mail Stop 34.

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 4/3/2015

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Proposed Concession Agreement Between the City of San Diego and Delaware North Sportservice, Inc. and San Diego Sportservice, Inc. for the Provision of Food and Beverage Services at Qualcomm Stadium

COUNCIL DISTRICT(S): 7, All

CONTACT/PHONE NUMBER: Kristina Peralta/619-641-3107 MS34

DESCRIPTIVE SUMMARY OF ITEM:

Proposed Concession Agreement for the Provision of Food and Beverage Services at Qualcomm Stadium for a period of five (5) years.

STAFF RECOMMENDATION:

Approve the Proposed Concession Agreement.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

BACKGROUND:

At the request of the Real Estate Assets Department, Purchasing and Contracting released a Request for Proposals (RFP) in January 2015. Four prospective firms issued proposals which were evaluated by a panel consisting of City staff, the City's food and beverage consultant and a representative from the Qualcomm Stadium Advisory Board. Of these four firms, Delaware North Sportservice (Sportservice) was rated the highest, representing the most qualified firm and best value for the City.

The recommended concession agreement with Sportservice presents new opportunities for the City to revitalize Qualcomm Stadium and enter into a partnership that will enhance the guest experience at the Stadium.

Summary of the Concession Agreement

The concession agreement with Sportservice provides the City with a competitive commission rate for all concession, catering and merchandise sales at sporting and entertainment events held at Qualcomm Stadium and is recommended to be awarded for a five year term. Commission Rates are detailed in the attached Staff Report.

In addition to the competitive commission rates, the proposed concession agreement stipulates a vendor financed Capital Investment of \$6M for leasehold improvements at Qualcomm Stadium.

FISCAL CONSIDERATIONS:

If the proposed concession agreement is approved, an investment of \$6,000,000 will be spent by Sportservice to improve the food and beverage services at Qualcomm Stadium. The \$6,000,000

is depreciated/amortized over the life of the contract (5 years). If the contract is terminated prior to the 5 years or the Chargers leave, City must pay back unamortized portion of \$6M as City is benefiting from Capital Investment.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This report will be presented at the Budget Efficiency Committee.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This action is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and will be subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

A member of the Qualcomm Stadium Advisory Board was included in the RFP evaluation process.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders for this action are the City, its Stadium tenants and annual visitors to Qualcomm.

Thompson, Cybele
Originating Department

Deputy Chief/Chief Operating Officer

DOCKET SUPPORTING INFORMATION CITY OF SAN DIEGO EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION	DATE: April 8, 2015
SUBJECT: Proposed Contract Between the City of San Diego and Delaware North Sportservice for Food and Beverage Service at Qualcomm Stadium	

GENERAL CONTRACT INFORMATION

Recommended Contractor: Delaware North Sportservice (Not Certified, M – Cauc.)

Amount of this Action: TBD (See commission rates in the Report No. 15-040 to City Council)

Funding Agency: N/A

Goal: 20% Voluntary

SUBCONTRACTOR PARTICIPATION

There is no subcontractor participation associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Delaware North Sportservice submitted a Work Force Report for their San Diego County employees dated, February 18, 2015, indicating 754 employees in their Administrative Work Force.

The Administrative Work Force indicates under representation in the following categories:

Asian and Filipino in Sales
Black in Administrative Support
Asian, Filipino, and Female in Services

This agreement is subject to the City’s Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

Proposed Contract for Food and Beverage Service at Qualcomm Stadium is for a five (5) year term between the City and Delaware North Sportservice. (10054790-15-C)

KM



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: April 5, 2015 REPORT NO: 15-040

ATTENTION: Honorable Council President Lightner and City Councilmembers

SUBJECT: Proposed Concession Agreement between the City of San Diego and Delaware North Sportservice and San Diego Sportservice for the Provision of Food and Beverage Services at Qualcomm Stadium

REFERENCE: Request for Proposal No. 10054790-15-C

REQUESTED ACTION:

Approve the requested action to authorize the Mayor or his representative to execute the Proposed Concession Agreement between the City of San Diego and Delaware North Sportservice and San Diego Sportservice for the Provision of Food and Beverage Services at Qualcomm Stadium for a period of five years.

STAFF RECOMMENDATION:

Approve the proposed concession agreement

BACKGROUND:

Qualcomm Stadium holds approximately 70,585 guests and is host to sporting events which include National Football League games and collegiate football games and events. During this past football season, over 730,000 guests enjoyed games and events at the stadium.

At the request of the Real Estate Assets Department, Purchasing and Contracting released a Request for Proposal (RFP) in January 2015. Vendors were notified electronically and 33 vendors downloaded and reviewed the RFP documents. Of those interested vendors, four prospective firms issued proposals which were evaluated by a panel consisting of City staff, the City's food and beverage consultant and a representative from the Qualcomm Stadium Advisory Board. Of these four firms, Delaware North Sportservice (Sportservice) was rated the highest, representing the most qualified (responsible) firm and best value for the City.

Evaluation criteria consisted of: creativity in operational plans, menu and quality control; the financial soundness of the corporation as a whole; past experiences and overall qualifications and the firm's commission to the City. Oral presentations and interviews were also a component in this process.

The recommended concession agreement with Sportservice presents new opportunities for the City to revitalize Qualcomm Stadium and enter into a partnership that will enhance the guest experience at the Stadium.

Summary of the Concession Agreement

The concession agreement with Sportservice provides the City with a competitive commission rate for all concessions, catering and merchandise sales at sporting and entertainment events held at Qualcomm Stadium for a five year term. The City and Sportservice have agreed to conditions within the proposed concession agreement based on the San Diego Chargers playing home games at Qualcomm Stadium throughout the term of the concession agreement. Although the primary incentive for any concessionaire is the NFL season, should the Chargers leave San Diego, the City would renegotiate the agreement to maintain services for Aztec games and other tenants.

Concession Agreement Benefits

- Competitive commission rates that exceed the rates of the prior concession agreement;
- Expanded food services, including expanded services for San Diego State University Aztec games;
- A significant Capital Investment, which will be used to refresh, or redesign food and beverage service areas throughout the Stadium, all at the direction of the City.

Commission Rates

Commission Category	Proposed Sportservice Commission Rate	Existing Concessionaire Commission Rate
Gross Receipts up to \$5,000,000	38%	35%
Gross Receipts between \$5M to \$10M	40%	35%
Gross Receipts in excess of \$10 M	45%	38%*
Gross Receipts from Catering Sales	15%	8.5%
Gross Receipts from Club Sales	30%	30%
Gross Receipts from In-Seat Services	25%	30%
Gross Receipts from Restaurant Sales	30%	20%
Gross Receipts from Suite Sales	21%	21.75%
Subcontractor Sales	50%	35%
Net Profits from Consigned Merchandise	50%	

*Past concessionaire step scale indicated a rate of 38% only after gross receipts exceeded \$12M

Categorically, the rates proposed by Sportservice are higher than the rates that have been in place with the former concessionaire. The inclusion of a new category (consigned merchandise) presents a new opportunity to increase revenue – it should be noted that this category was not offered in the former concession agreement.

Reports to the City

The Concession Agreement specifies that reports will be issued to the City with regular frequency, examples of reports include: (1) revenue "flash" report after each game, (2) summary by game/event within 48 hours of last game/event and (3) an accounting period summary showing gross receipts by category with the expected commission to be paid to the City.

Living Wage and Workforce Retention

The Concession Agreement is subject to the City's Living Wage Ordinance per §22.4201 of the San Diego Municipal Code. The Concession Agreement stipulates that Sportservice is to retain current employees for 90 days. The concession agreement states that the Sportservice workforce should be representative of San Diego's population.

Capital Investment

The Concession Agreement provides for a Capital Investment of \$6M to be used to purchase new food and beverage, equipment and to make leasehold improvements at the Stadium. Leasehold improvements can include the Sports Clubs and Dining Restaurants and freestanding concession stands and portables. The Capital Investment of \$6M includes up to \$2M to be used to improve, revitalize or replace the existing Point of Sale system.

The Capital Investment is required to be spent during the first year of the Contract to receive full advantage of the improvements over the term of the concession agreement.

IMPACTS OF PROPOSED RECOMMENDATION TO DEPARTMENTS:

None.

FISCAL CONSIDERATIONS:

If the proposed concession agreement is approved, an investment of \$6,000,000 will be spent by Sportservice to improve the food and beverage services at Qualcomm Stadium.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This report will be presented at Budget Efficiency Committee on April 15, 2015.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This action is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and will be subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

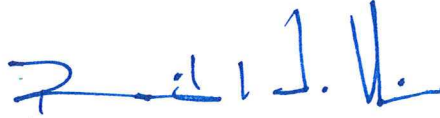
A member of the Stadium Advisory Board was included on the evaluation panel during the RFP process.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders for this action are the City, its Stadium tenants and annual visitors to Qualcomm.



Cybele Thompson
Director, Real Estate Assets



Ronald H. Villa
Deputy Chief Operating Officer, Internal Operations

Attachments:

Attachment A: Proposed Concession Agreement between the City of San Diego and Delaware North Sportservice and San Diego Sportservice

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (the “Agreement”) is made and effective as of the ____ day of _____, 2015 (the “Effective Date”), by and between the City of San Diego, through its Purchasing and Contracting Department with an office at 1200 Third Avenue, Suite 200, San Diego, California 92101-4195 (the “City”), and San Diego Sportservice, Inc., a Delaware corporation (“Sportservice”), and Delaware North Companies Sportservice, Inc., a New York corporation (“Guarantor”), both with offices at 40 Fountain Plaza, Buffalo, New York 14202.

WITNESSETH:

WHEREAS, the City operates Qualcomm Stadium (the “Stadium”);

WHEREAS, the City issued Request for Proposal (RFP) No. 10054790-15-C seeking concessionaire services for Qualcomm Stadium. Sportservice was the successful proposer under said RFP;

WHEREAS, the City desires to engage Sportservice to operate aspects of the sale of food and beverages at the Stadium;

WHEREAS, Sportservice desires to provide the food and beverage services for the City; and

WHEREAS, Sportservice is a wholly-owned subsidiary of the Guarantor and the Guarantor will guarantee the performance of all obligations of Sportservice under this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged by the City, Sportservice and Guarantor, the parties agree as follows:

Section 1. Definitions. The capitalized terms used in this Agreement shall have the following meanings:

“Accounting Period” means Sportservice’s four or five week fiscal periods of which there must be twelve (12) within each Agreement Year (except in Agreement Year One).

“Additional Insureds” shall have the meaning set forth in section 7.2.

“Affiliate” means an entity owned or controlled, directly or indirectly, by a party to this Agreement, or under common ownership with such party.

“Agreement” means this Concession Agreement.

“Agreement Year” means the period (i) from the Effective Date through February 29, 2016, (as Agreement Year One) and then each of the periods (ii) from March 1 through the last day of February of each subsequent year during the Term of this Agreement.

“Alcoholic Beverages” means all alcoholic drinks, beers and wines, regardless of where they are provided, in what packaging or format, or to whom they are provided.

“All-Inclusive Area(s)” means areas of the Stadium where food and beverages will be provided as part of the admission ticket for the game or event.

“Branded Products Charges” means royalty, franchise, license and advertising fees and other similar charges, all payments for vendor-supplied or vendor-required equipment paid by Sportservice to a supplier, vendor, franchisor, or licensor for products sold at the Stadium and required by City, Team, and/or Tenant as provided in Section 5.10.

“Capital Investment” shall have the meaning set forth in Section 4.1.

“Catering Sales” means any pre-arranged food and beverage function of multiple customers where payment for the entire function rests with one individual or company.

“City” shall have the meaning set forth on the first page of this Agreement.

“Club Sales” means the sale of food and beverage menu items from clubs, permanent concession stands, Mobile Stands and food stations to individual customers on the Club level of the Stadium that are sold within the Club level of the Stadium, but shall not include Concession Sales, Catering Sales, receipts from In-Seat Services, Restaurant Sales, Suite Sales or receipts from providing food and beverage services in any All-Inclusive Area.

“Commissions” shall have the meaning set forth in Section 4.2.

“Common Areas” means all loading docks and facilities, elevators, common passage areas and other common areas of the Stadium, and access areas thereto, to the extent necessary for Sportservice’s use of the Food and Beverage Facilities for the purposes set forth in this Agreement.

“Concession Sales” means all sales of food and beverages items sold from permanent concession stands and Mobile Stands or by roving vendors to individual customers in the Stadium. Concession Sales includes all bars, lounges and specialty foods sold throughout the Stadium, but shall not include any Catering Sales, Club Sales, receipts from In-Seat Services, Restaurant Sales, Suite Sales or receipts from providing food and beverage services in any All-Inclusive Area.

“Consigned Merchandise” means all Merchandise sold at the Stadium by Sportservice on a non-exclusive basis, for which Sportservice does not purchase the product, but rather pays only for what product is sold.

“Contract Administrator” means the City of San Diego’s program manager for the Stadium or the City’s designee under this Agreement. The Contract Administrator will provide daily oversight of this Agreement to ensure compliance with its requirements.

“Direct Operating Costs” means actual out-of-pocket costs of the Food and Beverage Services operation incurred at the Stadium and paid for by Sportservice. These costs include the actual expenses of the product including corporate rebates, on-site payroll, payroll taxes, fringe benefits, possessory interest tax and other operating expenses, such as repairs and maintenance, credit card expenses, cleaning, office supplies, amortization, depreciation, and Late Fees.

“Effective Date” means the date set forth on the first page of this Agreement.

“Food and Beverage Services” means all activities involved in the sale of food and beverage products within the exclusive areas of the Stadium and/or at City’s request within the non-exclusive areas of the Stadium (as set forth in Section 2.2), including, but not limited to, all sales of Alcoholic Beverages, sales from Concession Sales, Catering Sales, Club Sales, In-Seat Services, Restaurant Sales, Suite Sales and the providing of food and beverage products for any all-inclusive areas.

“Food and Beverage Equipment” means all Food and Beverage Services equipment, furniture and machinery to be used exclusively by Sportservice under this Agreement including, but not limited to, all equipment used for storing food and beverage products, preparing, cooking, serving, receiving, holding, selling and vending the same; Mobile Stands; Smallwares; warewashing equipment; all inventory control and POS Equipment; security and surveillance equipment; PC’s and registers; telephones and telecommunications equipment; time clocks; lifts; loaders, transports and motor vehicles; all bar and beverage decorations; office furniture and equipment; safes and cash room equipment; and all other fixed assets located in the Food and Beverage Facilities from time to time during the Term of this Agreement.

“Food and Beverage Facilities” means all those areas of the Stadium to be occupied and used exclusively by Sportservice under this Agreement, including, but not limited to, all commissary and food and beverage wash areas, vending pantry areas, kitchens, food preparation and food and beverage cleaning areas, change rooms for food and beverage personnel, concession stands, booths, bars, public and service bars and grills, offices for Sportservice, money counting and recordkeeping rooms dedicated for Sportservice’s operations in the Stadium, together with all Leasehold Improvements related thereto.

“Force Majeure” means any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform. A Force Majeure event shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage. Therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any such prevention, delay or stoppage in such party’s performance caused by a Force Majeure event.

“Gross Receipts” means the total amount of money whether received or not by Sportservice or any agent, any employee, or any subcontractor of Sportservice for the performance of Food and Beverage Services hereunder for all sales, cash or credit (whether collected or not) made as a result of the rights granted to Sportservice in this Agreement, but not including the following: (i) Sales Taxes; (ii) customer returns or refunds; (iii) any amount retained by any Subcontractor; (iv) receipts for returns from purveyors; (v) rebates and awards from manufacturers and distributors; (vi) the amount of cash and quantity discounts received from vendors, suppliers and manufacturers; (vii) Gratuities; (viii) food and beverages provided to on-duty personnel of Sportservice without charge (or at a reduced price); (ix) food and beverages provided to the City or the Team pursuant to Section 4.3; (x) receipts from providing food and beverage services in any All-Inclusive Area; and (xi) receipts from the sale of flowers, and from the rental of furniture, equipment, linens, china, cutlery and decorations, to the extent such receipts are reimbursements for Sportservice’s out-of-pocket costs for such items. Bad debts will be deducted from Gross Receipts if credit was extended by Sportservice at the request of the City.

“Gratuities” means discretionary amounts, paid by a customer to the server.

“Guarantor” shall have the meaning set forth on the first page of this Agreement.

“In-Seat Services” means the food and beverage services offered to the Stadium customers in their seats on the Club Level, with the locations for such services to be as mutually agreed by Sportservice and the City.

“Late Fees” means the charge assessed to any payments due the City from Sportservice after the specified date for payment as set forth in this Agreement. Late Fees shall be pro-rated daily based on an annual rate of eighteen percent (18%), or the maximum allowed by Law, whichever is greater.

“Law(s)” means all applicable federal, state and local laws, statutes, rules, regulations, ordinances and codes.

“Leasehold Improvements” means all equipment, fixtures, furnishings, finishes and construction affixed to the Stadium by more than an electrical or gas connection, including, as applicable, all demising walls, doors and doorways, flooring, floor coverings, walls and wall coverings, dropped ceiling grids and tiles, general lighting, all exterior and interior finishes and all adequate and necessary Utility Systems for the Food and Beverage Facilities.

“Management Staff” shall have the meaning set forth in Section 5.5.

“Merchandise” means all souvenirs, novelties and team publications sold at the Stadium or sold remotely as a result of events held at the Stadium. San Diego Chargers and San Diego State University merchandise are specifically excluded from this Agreement.

“Mobile Stands” means all portable stands, carts and kiosks used by Sportservice.

“Net Profits From the Sale of Consigned Merchandise” means the Gross Receipts from the sale of Consigned Merchandise less (a) any applicable Sales Taxes on such Gross Receipts, (b) any direct labor costs incurred by Sportservice in connection with the sale of Consigned Merchandise, (c) sales commissions paid by Sportservice to third party vendors in connection with the sale of Consigned Merchandise, (d) the amount paid to the party who supplied the Consigned Merchandise, (e) amounts paid as commission to individuals who sell Consigned Merchandise and (f) other mutually agreed deductions.

“NFL” means the National Football League and its successors or assigns.

“PCI” means the Payment Card Industry data security standards.

“POS Equipment” means all point of sale equipment and systems, registers, cash drawers and related computer hardware, peripherals, software, network services and network connections used for providing the Food and Beverage Services.

“POS System” shall have the meaning set forth in Section 5.13.

“Pre-Opening Expense(s)” means the City-approved costs, if any, incurred by Sportservice between the City’s notice of intent to award the Agreement to Sportservice and the final approval of said award to Sportservice.

“Right of First Refusal” means if Food and Beverage Services are no longer needed at the Stadium due to the fact that the Stadium is to be closed due to the opening of a new facility meant to take the place of the Stadium, then if (a) Sportservice is not then, and has not for the previous eight (8) months, been in default of this Agreement, and (b) the remaining Term of this Agreement exceeds eighteen (18) months as of the proposed date of closure of the Stadium, and (c) it is commercially practicable and feasible to transfer the rights and obligations with respect to Food and Beverage Services to such new facility, and (d) the City retains sole rights and ownership of the new facility, the City will negotiate in good faith with Sportservice to amend this Agreement so as to transfer said rights and obligations to the new facility for a term that is co-terminus with the original Term of this Agreement. If the parties cannot reach a good faith amendment to this Agreement within six (6) months of the commencement of said negotiations, this Right of First Refusal shall terminate, unless extended in writing by mutual agreement of the parties, and all rights and obligations under this Agreement shall terminate as of the closure of the Stadium, except those rights and obligations which by their nature are meant to survive termination or expiration of this Agreement

“Restaurant” means the Stadium Club in the West Tower of the Stadium.

“Restaurant Sales” means the sale of food and beverage products from the Restaurant.

“Sales Taxes” means all taxes assessed on sales at the Stadium by a taxing authority.

“Service Charges” means amounts added to all invoices for Catering Sales and Suite Sales. The Service Charge rate is currently nineteen percent (19%). Any change to that rate must be approved by the City.

“Smallwares” means serviceware, utensils, crockery, glassware, dishware, linens and cutlery required to provide the Food and Beverage Services. At a minimum, the Smallwares shall include place settings for 600 customers.

“Sportservice” shall have the meaning set forth on the first page of this Agreement.

“Stadium” shall have the meaning set forth in the recitals to this Agreement and includes all parking lots and other areas surrounding the Stadium which are owned, leased or otherwise controlled by the City.

“Subcontractor(s)” shall have the meaning set forth in Section 2.6, but shall not include the not-for-profit organizations referenced in Section 5.7.

“Suite(s)” means the private viewing boxes located throughout the Stadium, including on the Press and Loge levels.

“Suite Sales” means all food and beverage sales originating from the Suites.

“Team” means the San Diego Chargers.

“Tenant” means any person or entity that may, from time to time, enter into any agreement for use of the Stadium for a particular purpose.

“Term” shall have the meaning set forth in Section 3.1.

“Utility Services” means the full and unimpeded use of the Utility Systems for their intended purposes.

“Utility Systems” means all necessary water, sewage, natural gas, plumbing, lighting, sprinkler (including runs, drops and heads), fire safety, telephone and telecommunications equipment and services, security and surveillance equipment and services, piping (including drains and grease traps for sewage), conduit, fiber optic lines, wiring and electrical components, outlets and connections and mechanicals; data lines and services for the POS Equipment; heating, ventilating and air conditioning equipment, ductwork and elevators and escalators. As used herein, water shall mean water fit for human consumption.

“Vending Machine Sales” means all food and beverage sales derived from coin operated automatic merchandisers, which City reserves the right to provide in all employee, press and locker room areas of the Stadium

Section 2. Rights for Sportservice.

2.1 Exclusive Rights. Sportservice will be the exclusive provider of Food and Beverage Services at the Stadium, subject to the exceptions set forth in Section 2.2.

2.2 Exclusive Use of Food and Beverage Facilities and the Food and Beverage Equipment; Non-Exclusive Use of Common Areas; Exceptions; Distribution of Samples. The rights granted to Sportservice hereunder include an exclusive leasehold interest in the Food and Beverage Facilities and the Food and Beverage Equipment. Sportservice is also granted a non-exclusive license and right to use the Common Areas as required to provide the Food and Beverage Services in accordance with this Agreement. Sportservice will be the exclusive provider of Food and Beverage Services for the Stadium with the following exceptions (at the option of the City); (i) locker rooms; (ii) offices; (iii) unique catering requirements of Tenants, such as Kosher, Indian and other ethnic foods not regularly prepared by Sportservice; (iv) Vending Machine Sales; (v) any parking lot; and (vi) the use of third party catering services for backstage areas. In addition, the City may authorize third parties to distribute free samples of food and beverage items at the Stadium; said free samples shall not exceed 4 oz for any liquid item or 2 oz for any solid item. Details regarding the plan for distribution at the Stadium shall be subject to the approval of Sportservice, and such approval will not be unreasonably withheld.

2.3 Consigned Merchandise. Sportservice will have the non-exclusive rights for all sales of Consigned Merchandise at the Stadium for non-San Diego Chargers and non-San Diego State University events, when permitted in the City's sole discretion. Sportservice may be required by the City to perform all duties associated with the sale of Consigned Merchandise on an event-by-event basis.

2.4 All-Inclusive Areas. The All-Inclusive Areas for the Stadium will be established by mutual agreement of Sportservice and the Team or Tenant. For the All-Inclusive Areas, Sportservice and the Team or Tenant shall mutually agree on the menu, product selection and the price per person to be paid to Sportservice by the Team or Tenant. The amounts paid to Sportservice by the Team and/or Tenant will not be included in Gross Receipts and will not be subject to the payment of Commissions.

2.5 Right of First Refusal. If the Stadium is to be closed prior to June 30, 2020, Sportservice will be granted the Right of First Refusal by the City.

2.6 Subcontractors. Subject to the prior written approval of City and at City's sole discretion, Sportservice may contract with third parties to provide certain of the Food and Beverage Services ("Subcontractor(s)).

Section 3. Term

3.1 Term.

- a. The term of the Agreement will begin on the Effective Date and terminate, unless earlier terminated in accordance with Section 9 hereof, on the last day of February, 2020 (“Term”).
- b. If, during Agreement Years One (1) through Four (4), the Team plays less than ten (10) home games at the Stadium (including, pre-season, regular season and play-off games), and if Sportservice is not then, and has not for the previous eight months been, in default of this Agreement, then City will negotiate in good faith to reach an agreed upon credit for possible lost profit due to said “shortened” (meaning less than ten (10) home games were played) Agreement Year. Said credit will be applicable solely for and applied solely to Commissions due in the following Agreement Year.

3.2 Holdover. Any holding over by Sportservice after the expiration or earlier termination of this Agreement shall not be considered a renewal or extension of this Agreement. Instead, upon mutual agreement, the provision of Food and Beverage Services and the occupancy of the Food and Beverage Facilities at the Stadium after the expiration or earlier termination of this Agreement shall constitute a month-to-month continuation of this Agreement at will, and all other terms and conditions of this Agreement shall continue in full force and effect.

Section 4. Financial Agreements

4.1 Capital Investment by Sportservice. Within twelve (12) months after the Effective Date, Sportservice will spend six (6) million dollars (\$6,000,000) for the purchase of new Food and Beverage Equipment, Leasehold Improvements for the Food and Beverage Facilities, Smallwares, uniforms, office computers and office furniture (the “Capital Investment”) for use exclusively at the Stadium. If the full amount of the Capital Investment is not spent by Sportservice by June 30, 2016, or deferred to a later date by mutual agreement of Sportservice and the City, the remaining balance will be paid in a lump sum to the City on July 1, 2016; and deposited into the Qualcomm Stadium Operating Fund. The Capital Investment will be used for purchases and projects as may be required to ensure that the Food and Beverage Equipment and the Food and Beverage Facilities are in operable condition for the 2015 NFL season and for such other purchases and projects as mutually agreed by Sportservice and the City. Sportservice will consult with the City with respect to the purchases and projects to be funded with the Capital Investment and such purchases and projects shall be subject to the prior written approval of the City. Pre-Opening Expenses and any portion of the Capital Investment related to the purchase of Smallwares and uniforms will be amortized over thirty-six (36) months from the Effective Date. The remainder of the Capital Investment will be amortized on a straight line basis from when the expense occurs through February 28 2020 and shall have an amortized contract value of zero (\$0) as of February 28, 2020. If this Agreement is terminated for any reason other than a default by Sportservice, the City will pay to Sportservice the unamortized portion of the Capital Investment and Pre-Opening Expenses, if any, which remains on the date of termination within

60 days. In the event of a termination as a result of a default by Sportservice under Section 9.1, the City will be required to pay Sportservice the unamortized portion of the Capital Investment and Pre-Opening Expenses on the date of termination, but the City will have the right to deduct from the payments to Sportservice any losses incurred by the City as the result of the default by Sportservice (including attorneys' fees and any other costs incurred in enforcing the rights of the City under this Agreement). The City will own all rights, title and interest in items purchased with the Capital Investment and Pre-Opening Expenses.

4.2 Payment of Commissions; Reports; Record Keeping; Audit Rights.

(a) Sportservice will pay to the City the following percentage commission rates on all Gross Receipts in the designated categories for each Accounting Period of each Agreement Year (the "Commissions"), with payment to be made within twenty (20) days after the end of the Accounting Period: (i) thirty-eight percent (38%) of Gross Receipts from Concession Sales from \$0 to \$5,000,000; (ii) forty percent (40%) of Gross Receipts from Concession Sales from \$5,000,001 to \$10,000,000; (iii) forty-five percent (45%) of Gross Receipts from Concession Sales in excess of \$10,000,000; (iv) fifteen percent (15%) of Gross Receipts from Catering Sales; (v) thirty percent (30%) of Gross Receipts from Club Sales from \$0 to \$1,600,000; (vi) thirty-eight percent (38%) of Gross Receipts from Club Sales in excess of \$1,600,000; (vii) twenty-five percent (25%) of Gross Receipts from In-Seat Services; (viii) thirty percent (30%) of Gross Receipts from Restaurant Sales; (ix) twenty-one percent (21%) of Gross Receipts from Suite Sales; (x) fifty percent (50%) of amounts received by Sportservice from Subcontractors; (xi) fifty percent (50%) of Net Profits From the Sale of Consigned Merchandise; and (xii) zero percent (0%) of Gross Receipts from sales in the All-inclusive Areas. For all Concession Sales during Team post season play, Sportservice will pay the City fifty percent (50%) of Gross Receipts, provided that such Sales will not accrue in the step scale calculations for other Concession Sales in that Agreement Year.

(b) Total Commissions due the City will be reduced by the total amount of the Branded Products Charges during each Accounting Period.

(c) Sportservice will provide the following information to the City: (i) a "flash report" setting forth the revenue for each game or event by revenue source with per person ("per cap") revenue shown in a mutually agreeable format by 12:00 pm on the day after each game or event; (ii) a summary of each game or event with daily sales report within forty-eight (48) hours following completion of the game or event; and (iii) an Accounting Period summary showing Gross Receipts (by category and game or event) and the Commissions payable, on or before the twentieth (20th) day after the end of the applicable Accounting Period.

(d) Within ninety (90) days after the end of each Agreement Year, Sportservice will provide the City with a statement of Gross Receipts for the Agreement Year. The statement of Gross Receipts shall be certified by an independent certified public accountant.

(e) Sportservice will maintain its books and records on an Agreement Year basis, and the books and records will be open for inspection and audit by the City at any time up to three (3) years after the end of the applicable Agreement Year. If any audit by the City reveals

a deficiency in payment to the City, Sportservice will promptly pay the amount of the deficiency, plus Late Fees. If the audit reveals a deficiency of one percent (1%) or more of the amount previously paid for the Agreement Year, Sportservice will also reimburse the City for the cost of the audit. All audits will be conducted in a manner so that the audit is not disruptive to normal business operations.

(f) Sportservice will submit, for City planning purposes, in a format approved by the City, an annual sales projection for their operation by February 28 of each Agreement Year, for every year during the Term of this Agreement.

4.3 Sale of Food and Beverages to the City and the Team.

a) Sportservice will offer discounts to the City and the Team as follows (for all of these discounted sales, the Service Charges will be calculated based on the standard retail price): (i) Sportservice will provide food and beverages to the City at a fifty percent (50%) discount from the standard retail price for Catering Sales to be billed to the City; (ii) Sportservice will provide food and beverages to the Team at a fifty percent (50%) discount from the standard retail price for the Spanos Suite and the Team's marketing Suite; and (iii) Sportservice will provide Concession food and beverages, (excluding Alcoholic Beverages) to City, Team or Tenant at a mutually agreeable discount, which shall be no less than a fifty percent (50%) discount, from the standard retail price for a list of promotional activities to be mutually agreed upon between Sportservice and the City and Sportservice and the Team.

b) Sportservice will purchase a Suite from Team at the current annual lease rate. In lieu of payment to Team, Sportservice will credit Team for all Catering Sales purchased annually, valued at the standard retail price for such items, up to the amount of the Suite rental fee.

4.4 Costs Paid by City. Unless specifically set forth in this Agreement, all costs and expenses associated with Food and Beverage Services and sales of Consigned Merchandise as set forth in this Agreement (operating, utility, personnel, etc.) shall be borne by Sportservice. Notwithstanding the foregoing, if, prior to the actual expenditure of any monies, City and Sportservice mutually agree that any particular cost and/or expense could not have been expected, is extraordinary or results from a true changed circumstance, City and Sportservice shall discuss, in good faith, the need for the expenditure and if the City shall have any responsibility therefor.

Section 5. Operating Requirements.

5.1 Cleaning and Maintenance. Sportservice will clean and maintain the Food and Beverage Facilities and the Food and Beverage Equipment. Sportservice, in accordance with all applicable Laws shall maintain all assigned areas of the Stadium used in the provision of the Food and Beverage Services, including the space within a twenty-five (25) foot radius of the external perimeter of each area (provided such space within the radius is used for Food and Beverage Services and is not the responsibility of the City or a third party (i.e. concourse, bathrooms, etc.)) including, but not limited to kitchens, concession stands, bars, buffets, pantries,

vending areas, condiment stations storage (including Sportservice's warehouse, located inside the Stadium facility) and prep areas, in a clean, sanitary and orderly fashion. Sportservice is also responsible for maintaining all grease traps, exhaust hoods, exhaust ductwork and roof fans, and for the regularly scheduled cleaning of all; provided, however that all such facilities, equipment and areas are in good working order and condition, suitable for their intended purpose, and meet applicable code as of the Effective Date. Sportservice will also clean the section of the receiving dock where product for Sportservice is delivered and elevators used for the Food and Beverage Services. Sportservice will be responsible for the return of all pallets, storage containers, linens, and other equipment used in the conduct of operations that belongs to suppliers for Sportservice.

Sportservice shall maintain all Food and Beverage Equipment, Leasehold Improvements, Food and Beverage Facilities, uniforms, and Smallwares used in performance of its duties, including rolling stock, in a good state of repair, including maintenance and repair necessitated by ordinary wear and tear, and shall maintain complete place settings for a 600 seat dinner.

Sportservice will deposit, in designated dumpster(s) and recycling areas, all waste, garbage and refuse which accumulates in its assigned areas and will keep the stands, commissaries, kitchens, dining rooms, store rooms, employee locker rooms and other space allotted to it in good, clean and sanitary condition. Garbage removal from the dumpster(s) and recycling areas assigned to Sportservice will be the responsibility of the City. Grease removal will be arranged and provided by Sportservice to avoid collection and spillage. Sportservice shall provide to the Stadium Manager on a no-less-than quarterly basis, documentation verifying the proper and legal of removal of grease from the Stadium, and maintenance records for the grease traps, exhaust hoods, exhaust ductwork and roof fans. Sportservice will provide adequate (monthly, if adequate) pest control services for the Food and Beverage Facilities and the Food and Beverage Equipment.

Sportservice shall pay for all preventive maintenance plans for all Food and Beverage Equipment. In addition, Sportservice must employ a full time service technician, exclusive to Stadium operations, who has Tradesman level skills and formal training on the types of Food and Beverage Equipment used at the Stadium.

City may require the use of its in-house maintenance staff for repairs and maintenance, if it is in the City's best interest, and invoice Sportservice at competitive rates.

Sportservice will comply with all Laws as to sanitation or recycling relating to its operations at the Stadium. In addition, Sportservice will comply with all reasonable requirements of recycling programs implemented by the City.

5.2 Utility Services. The City will pay for Sportservice's natural gas and water services. Sportservice shall utilize prudent energy management. Sportservice will pay for the cost of its telephone service and electricity directly to the applicable utility company.

City shall not be liable or responsible for any failure to furnish services, such as electricity, gas, water, or drainage service, which failure is caused or brought about in any manner by strike, act of God or other work stoppage, federal, state, or local government action,

the breakdown or failure of apparatus, equipment, or machinery employed in its supply of said services, any temporary stoppage for the repair, improvement, or enlargement thereof, or any act or condition beyond its reasonable control. Further, City shall not be liable or responsible for any consequential economic or property loss or damage caused or brought about by any such occurrence. Nor shall City be responsible for any goods, merchandise, or Food and Beverage Equipment stored at the Stadium, or for any damage resulting from a power failure, flood, fire, explosion and/or other causes.

5.3 Utility Lines. Sewer lines within the Food and Beverage Facilities will be maintained by Sportservice. Sportservice will take all reasonable precautionary measures necessary to assure that grease is not discharged into the sewers. The cost to repair or replace any utility service or line due to Sportservice's negligence shall be the responsibility of Sportservice; provided, however that all such services and lines are in good working order and condition, suitable for their intended purpose, and meet applicable code as of the Effective Date.

5.4 Personnel. Sportservice will employ, train and supervise personnel with appropriate qualifications and experience in sufficient numbers to provide the Food and Beverage Services.

Except for volunteers of the non-profit organizations with which Sportservice contracts, all workers providing the Food and Beverage Services will be employees, agents or servants of Sportservice and not the City. Sportservice shall at all times be an independent contractor, and this Agreement shall not in any way create or form a partnership or joint venture with the City. No agent, servant, or employee of Sportservice or volunteers of the non-profit organizations with which Sportservice contracts shall under any circumstances be deemed an agent, servant, or employee of the City.

Accurate records must be kept of the names, addresses and other legal identification of those Sportservice employees to whom Stadium access badges are issued to assure proper identification and legal working status of Sportservice's employees; said information may be required and/or inspected at any time, as required by the City or any other regulatory agency to the extent allowed by Law. Sportservice will collect and maintain the first name, last name and organization affiliation of each volunteer of non-profit organizations with which Sportservice contracts to provide food and beverage services hereunder. Upon the reasonable request by City, Sportservice shall immediately remove from the Stadium any employee or volunteers of the non-profit organizations with which Sportservice contracts deemed unsuitable by City. Any employee so dismissed shall never again be employed or volunteer at the Stadium without the prior written consent of City. Nothing herein shall be construed to require Concessionaire to act in contravention of any applicable law.

Sportservice will conduct regularly scheduled training sessions, throughout the Agreement Year, for all employees and volunteers of non-profit organizations with which Sportservice contracts to provide services under this Agreement. At a minimum, the training will consist of customer service, quality control programs, systems and management, alcohol awareness and skills training for each position as applicable for their respective duties.

Sportservice's employees and volunteers of non-profit organizations with which Sportservice contracts will be clean, courteous, efficient and properly trained. Employees shall be at all times neatly and cleanly uniformed in City - approved uniforms and must meet grooming guidelines and appearance standards prescribed by Sportservice. Sportservice's employee workforce should be representative of San Diego's population, and Sportservice must comply with the City of San Diego's Living Wage Ordinance, as applicable, for all employees.

Sportservice's employees and volunteers of non-profit organizations with which Sportservice contracts will be admitted to Stadium without payment of an admission fee at an entrance to be designated by the City.

The City will provide free parking spaces for Sportservice's employees and volunteers of non-profit organizations with which Sportservice contracts working at the Stadium pursuant to Section 5.7 of this Agreement. At City's sole discretion said free parking may not be within or contiguous to the Stadium, but in any event will be in reasonable proximity for walking to Stadium or served by cost free shuttle transportation as provided by City, Team and/or a Tenant.

5.5 Management Staff. Sportservice's minimum full time management staff will include a General Manager, Assistant General Manager, Catering Sales Manager, Catering Manager, Restaurant Manager, Suite Manager, Executive Chef, Restaurant Chef, Concessions Manager, Controller/Office Manager, Human Resources/Training Manager and Warehouse Manager or such other or different positions as mutually agreed upon in writing by Sportservice and the City (collectively referred to as the "Management Staff").

Supervision of Sportservice's operations will be the responsibility of Sportservice's General Manager. The City shall have approval rights with respect to hiring of the General Manager and any permanent replacement General Manager. If, at any time, the City reasonably determines that Sportservice's General Manager is unacceptable to the City for such causes and reasons as are duly reported in writing by the City to Sportservice, Sportservice shall, within thirty (30) days, unless specifically extended, or in the case of an emergency specifically lessened, in writing by the City, either (i) cure such causes or reasons which were the basis for the City's reasonable determination of unsatisfactory performance by the General Manager, or (ii) replace him/her with a temporary General Manager. Sportservice will provide a permanent replacement General Manager, subject to the City's approval, as soon as practical, but in any event within ninety (90) days after the selection of the temporary replacement. Sportservice's General Manager will not be removed by Sportservice without approval of the City, which shall not be unreasonably withheld, conditioned or delayed. Sportservice will consult with the City with respect to personnel decisions relating to the hiring of the Management Staff.

Sportservice's Management Staff shall have no responsibilities at other venues, but Sportservice may temporarily assign such personnel, except the General Manager, to other accounts so long as such assignments do not interfere with their duties at the Stadium.

5.6 Consultation with the City. The General Manager for Sportservice and representatives of the City will consult regularly with reference to Sportservice's operations under this Agreement. The City will have final approval of the Food and Beverage Facilities to

be opened or closed for each game or event. The City agrees to exercise such approval rights in a commercially reasonable manner. Advance ticket sales, historical data and experience for similar games or events will be considered.

5.7 Community Organizations. Sportservice may enter into subcontract arrangements with local community service clubs and other not-for-profit organizations which will be allowed to operate certain stands for games and events at the Stadium. Sportservice will ensure that all volunteers for such clubs and organizations will receive no less training than a Sportservice employee and will be suitably uniformed and supervised in accordance with the requirements otherwise imposed hereunder on Sportservice with regard to its employees.

5.8 Products. Sportservice will order, stock, prepare, pay for and sell appropriate City-approved items for sale in the Food and Beverage Facilities. Consumables will be first quality, wholesome and pure, and shall conform to all Laws. No imitation, adulterated, or misbranded article shall be sold or kept for sale and all products on hand will be stored and handled with due regard for sanitation. Leftover perishable product shall not be sold at any time. All products kept for sale shall be subject to inspection and approval by City. Rejected product shall be immediately removed from the Stadium and shall not be returned for sale.

Sportservice will utilize disposable plates, cutlery and cups for all Food and Beverage Services. Notwithstanding the foregoing, Sportservice shall utilize permanent Smallwares, dishes, glassware and place settings for all Food and Beverage Services, including Alcoholic Beverages, in the Spanos (Owner's) Suite and in the Stadium Club.

Sportservice is also required to: (1) provide a sustainability plan; (2) identify local products and vendors to utilize throughout the Stadium, whenever appropriate; and (3) to comply with all recycling Laws. Sportservice is encouraged to work with local not-for-profit organizations, such as local food banks, to reduce product waste.

During all games or events at Stadium, Sportservice will post signs and provide menus advertising the prices of items offered for sale. All signs and menus are subject to the prior written approval by City.

City has the right to approve pricing, portions, brands, and sources of supply (in compliance with all laws) for all products sold, all of which shall be consistent with similar NFL Stadiums. As used in this Agreement, the term "source(s) of supply" shall relate to individual products.

By June 15, 2015, for Agreement Year One (1), and by April 1 of each of Agreement Year thereafter (Years two through five), Sportservice will present its business plan to the City for the next NFL season; said plans shall outline Sportservice's objectives and proposed initiatives on pricing, culinary programs, and customer service for every food and beverage department, consistent with Sportservice's stated innovation, style and creativity as demonstrated within Sportservice's (or its affiliates') similarly managed major stadiums. Pricing must be competitive with the market place. Pricing at comparable venues must be provided.

Alcoholic Beverages are to be offered for sale by Sportservice to the extent permitted by applicable Laws, and subject to regulations established by the City. Final decision as to whether or not Alcoholic Beverages may be sold at an event (other than NFL games) or in any designated area of the Stadium shall be the sole responsibility of the City. The decision to serve or refuse service of Alcoholic Beverages to any individual shall be the sole responsibility of Sportservice. All Alcoholic Beverage services within the Stadium shall be performed under license(s) granted/issued to Sportservice.

The City acknowledges that Sportservice expects the current alcohol policy for NFL games will continue during the Term. If the sale of Alcoholic Beverages is substantially reduced during the Term for reasons other than Sportservice's negligence or policy at the sole determination of Sportservice, Sportservice and the City agree that they will negotiate in good faith with respect to adjustments to the Commissions to fairly and equitably account for the negative financial impact, if any, on Sportservice.

Thirty (30) days prior to the first regularly scheduled Team NFL game in the 2015 season at the Stadium, Sportservice and the City will reasonably agree on measureable customer service key performance indicators ("KPIs") that Sportservice will be required to meet. Sportservice will conduct two tests per year by a third party of customers and secret shopper programs during all types of events to measure performance against such KPIs. Any survey questions will be approved by City and Team (for Team games only) prior to conducting the survey and all results will be shared with City and Team (for Team events). Sportservice shall conduct all of their operations in a first-class, professional, businesslike, and efficient manner. In the event that Sportservice fails to meet the standards set forth above, the City agrees that a City remedy will be to cause Sportservice to develop a plan, reasonably approved by the City, that would enable Sportservice to reasonably achieve such thresholds over a reasonable timetable, taking into account the condition of the Stadium, Team and City operations at the Stadium, and without requiring additional material financial commitments by Sportservice.

City shall receive 25 meal tickets (each meal ticket shall be good for a minimum of one (1) hot dog, one (1) pretzel, and one (1) soda) per game/event at no charge to City.

5.9 Licenses, Permits and Taxes. Sportservice will obtain all licenses and permits necessary to provide the Food and Beverage Services, including those required for the on-premise sale of Alcoholic Beverages.

All licenses and permits will be held in the name of Sportservice. During the Term, Sportservice will keep the licenses and permits in full force and effect and neither party shall take any action that would impair Sportservice's ability to hold the licenses and permits. Sportservice will prepare, file, and process all applications for renewals of the licenses and permits.

Separate licenses/permits will be required to sell Alcohol Beverages in the Stadium's parking lot, which is a non-exclusive area under this Agreement. Sportservice will be required to purchase as many such licenses/permits as necessary, as allowed by law, to provide the services

requested by City. Should the number of such licenses/permits be limited, City will determine which events will utilize the licenses/permits.

At the termination of this Agreement, Sportservice shall surrender all Alcoholic Beverage licenses/permits for the Stadium.

5.10 Advertising and Sponsorships. All advertising rights at the Stadium belong to City, Team and/or Tenants. Sportservice will not use any brand names for products to be sold at the Stadium without the approval of City. Sportservice will not use the name or logo of City or the Stadium on any materials, social media or website without the approval of City. No advertising of any kind is allowed on any third party's equipment unless approved by City. Sportservice will not advertise in any manner or form, in or about the Stadium, or elsewhere, or in any newspaper, websites or otherwise except by means of such signs or forms of advertising as have been approved by City.

City, Team or Tenant may sell advertising and sponsorship packages for the Stadium, which may include product availability rights at the Stadium, where allowed by Law. In connection with the sale of product availability rights, City reserves the right of approval of Sportservice's sources of supply for products. Sportservice will honor all rights granted to such advertisers and sponsors, subject to negotiations with the City, Team and/or Tenant.

5.11 Operating Hours and Other Requirements. Sportservice will keep the operations open during the hours as may be reasonably required to adequately meet customer demand. Sportservice will comply with all Laws, and will also comply with all commercially reasonable rules, regulations, and directives prescribed by the City with respect to its operations in the Stadium.

5.12 Inspection and Approvals. The City shall have the right to enter the Food and Beverage Facilities and storage spaces at all times for the purpose of examining the condition of the Food and Beverage Facilities and the Food and Beverage Equipment and for the purpose of determining whether the terms and conditions of this Agreement are being satisfied, without interruption of normal business operations.

The City shall have the right to approve or reject prior to implementation, the following (provided that such approval or rejection shall be exercised in a commercially reasonable manner which is consistent with past practices for the Stadium and the terms and conditions of this Agreement):

- (a) Areas in which food and beverage products may be sold;
- (b) Areas in which Alcoholic Beverages may be sold;
- (c) Dates and times sales areas will be open for business;
- (d) Number of sales areas that must be open for each game or event;

- (e) Items which may be offered for sale;
- (f) The price of all items offered for sale;
- (g) Maintenance and clean-up procedures;
- (h) Size, type and placement of any Mobile Stands; and
- (i) Number and distribution of hawkers in public seating areas.

5.13 POS System. Upon final determination and approval of City, a portion of the Capital Investment will be used to purchase or update a new computerized point of sale and inventory management system for all Food and Beverage Facilities (the “POS System”). The POS System will have credit/debit card capability plus full front and back of the house accounting and reporting capability and it will satisfy all PCI requirements. The POS System will also include hand-held terminals to support In-Seat Services. Sportservice shall use an approved POS system at all sales locations, except those sales locations that are approved as cash only, at the Stadium; this includes portable and permanent sales stands, lounges, and for all Suite Sales, Catering Sales and Restaurant Sales.

5.14 Customer Information. As used herein, “Customer Information” shall mean any information regulated by the PCI standard on credit transactions regarding or that identifies (or that could be used to identify) any individual customer name, postal address, e-mail address, age, credit, debit or other payment card information, social security numbers and any other information or combination of information that would make the identity of the individual easily traceable or that would allow for contact with that individual. Sportservice and the City agree that each party will be responsible for the security and protection of Customer Information that it electronically or physically receives, processes, transports, possesses, maintains, stores or accesses in the performance of this Agreement. Sportservice and the City agree to perform such actions with respect to the Customer Information in conformance with commercially reasonable policies and procedures. Sportservice and the City agree to protect the privacy of such Customer Information and maintain all necessary and appropriate PCI data security standards. To that end, at least once during each Agreement Year, the City and Sportservice shall each have its system, policies and procedures certified for compliance with such standards by a Qualified Security Assessor, all in accordance with the then applicable requirements of the PCI Security Standards Council. Each party will provide a copy of such certification to the other party.

5.15 Security. City and/or Team will provide security services for the Stadium as needed for the general protection of patrons and employees. Sportservice will be responsible for all security services which are specific to the special needs of Sportservice and/or for any additional security services that Sportservice requires for their specific operations, including the movement of its money within the Stadium and to and from the Stadium; Sportservice shall be responsible for said security personnel’s compliance with all Laws.

5.16 Catering Sales; Event Requirements; Miscellaneous.

- a. City may issue reasonable rules and regulations for the operation of the Food and Beverage Services, and Sportservice shall operate the Food and Beverage Services in accordance with such rules and regulations. Unless specifically stated otherwise in this Agreement, City shall reasonably decide any and all questions which may arise as to the acceptability of services rendered.
- b. No off-site or subcontracted sales are permitted from the Stadium unless prior written approval from the City is granted therefor.
- c. Sportservice shall develop clear, concise and professional quality written proposals for Catering Sales functions.
- d. Sportservice shall provide printed or digital Catering Sales and Suite Sales menus approved by the City, utilizing the Stadium's and/or City's logos, used exclusively for the Stadium, in sufficient quantities or in digital form for use by City and Sportservice's marketing staff. Sportservice must provide all content and interface to Tenants' websites for menu ordering if requested by City or Tenants.
- e. Sportservice will set rooms with rental tables and chairs, linen, skirting and/or other equipment as required by the City or Tenant for the successful completion for each Catered Sales event, as well as removing same immediately following each Catered Sales event.
- f. At the termination of this Agreement, Sportservice shall assign all Catering Sales contracts and Catering Sales deposits for events that are scheduled to occur after said termination to City or any succeeding concessionaire.
- g. Sportservice shall set up Food and Beverage Equipment and Smallwares for all events. Sportservice shall be responsible for setting up and tearing down all portable equipment, including any work tables, if any, supplied by City.
- h. The use of table coverings other than cloth must be approved in advance by City.
- i. The location of all Food and Beverage Service areas, whether temporary, portable, or permanent, shall be designated by City, or as directed by the City Fire Marshal. Sportservice shall acquire no right to any location once assigned and the City reserves the right to require that Sportservice move such operations and equipment to facilitate the needs of events.
- j. Subject to consultation and coordination with Sportservice and subject to payment by City or Tenant of any related costs incurred by Sportservice, Sportservice will be required to provide or modify operations upon the request of any Tenant, when it has been approved by City, as in the best interest of City or is necessary to comply with terms of the contract between City and said Tenant.
- k. In the event that City shall seek to bring a major event, or other similar national or international events, Sportservice will make such reasonable modifications to its services that are required for City to obtain any such event.
- l. Tenants may sell sponsorship packages for the Stadium. Therefore, City reserves the final right of approval of Sportservice's sources of product supply. This includes, but is not limited to, items such as food and beverage products, printing companies, exterminators, florists, cleaners, laundries,

insurance vendors, business machines and office supply vendors. Sportservice, however, will not be required to purchase from suppliers whose level of quality, service, and/or prices is not competitive with the marketplace. Sportservice retains no advertising rights in this Agreement. As of the Effective Date of this Agreement, the current corporate partners include:

- a) Oggie's Pizza
 - b) Dreyer's Ice Cream
 - c) Pepsi Cola, including Aquafina Water
 - d) Sweet Baby Rays BBQ
 - e) US Foods
- m. City wants Sportservice to include local brands in its offerings, either as product suppliers, licensees or subcontractors to improve the quality, public perception and popularity of the menu offerings.
 - n. Sportservice must procure and keep in force during the Term of this Agreement all permits and licenses required by all Laws.
 - o. Sportservice shall promptly collect and disburse all taxes required by federal, state, and local authorities, and shall pay all applicable taxes relating to Food and Beverage Service sales, operations, equipment, or inventory.
 - p. Vending machines may only be used at times and locations prescribed by City with prior written approval.
 - q. Nothing contained in this Agreement shall be held to limit or qualify the right of City to a free and unobstructed use, occupation, and control of the Stadium, as well as ingress and egress thereto for itself, its Tenants, and the public in accordance with Law.
 - r. Nothing contained in this Agreement shall be held to cause the transfer or assignment of any intellectual property between the parties, and the parties agree that this Agreement does not include any "Deliverable Materials" (as defined in the City's General Terms and Conditions). Each party will own all rights in and to such party's intellectual property, whether or not developed in connection with the performance of this Agreement.
 - s. Taxes. Sportservice shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon Sportservice as a result of this Agreement or its use and occupancy of the Food and Beverage Facilities or Stadium. Sportservice acknowledges that this Agreement may create a possessory interest subject to property taxation and that Sportservice may be subject to the payment of taxes levied on that possessory interest. Sportservice shall pay all such possessory interest taxes. Sportservice's payment of taxes, fees and assessments shall not reduce any monies/commissions due to City. City shall not assume any responsibility for any taxes whatsoever levied upon Sportservice in connection with its possession, use, or occupancy of the Food and Beverage Facilities or Stadium.

Section 6. Liability and Indemnification.

6.1 Sportservice's Indemnification of the City

To the fullest extent permitted by law, Sportservice shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City, Qualcomm Stadium Advisory Board, Public Facilities Financing Authority, and all their elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Sportservice or its Subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any default by Sportservice of this Agreement or Sportservice's occupancy, use, development, maintenance or restoration of the Stadium or any portion thereof, (including that done by any Subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control in the provision of any goods or performance of services under this Agreement). Sportservice's duty to defend, indemnify, protect and hold harmless shall not include any established liabilities to the extent arising from the sole negligence, gross negligence or intentional misconduct of the Indemnified Parties, or to the extent arising from the acts of other third party contractors at the Stadium or the Team.

6.2 The City's Indemnification of Sportservice.

(a) The City hereby acknowledges and agrees that Sportservice shall not be responsible for, and the City shall indemnify and hold Sportservice harmless from and against, any and all claims, losses, damages, liabilities, costs and expenses arising from or attributable to any failure of any part of the Stadium (including, but not limited to, the Food and Beverage Facilities and the Food and Beverage Equipment) to comply with any applicable Laws, including but not limited to all requirements of the Americans with Disabilities Act. Notwithstanding the foregoing, City shall not indemnify or hold Sportservice harmless from and against, any claims, losses, damages, liabilities, costs or expenses arising from or attributable to and Leasehold Improvements or Food and Beverage Equipment constructed, affixed, or otherwise put into place or service by Sportservice during the Term of this Agreement.

(b) The City agrees to indemnify, defend and hold harmless Sportservice, Guarantor and their respective Affiliates, agents, employees and representatives from and against all losses, costs, liabilities, claims, actions, damages and expenses (including reasonable attorneys' fees, disbursements and court costs) to the extent incurred as a result of or caused by: (i) any default by the City in the performance of any of the terms or conditions of this Agreement; or (ii) intentional wrongful acts, gross negligence or sole negligence by City or its employees in connection with performance of this Agreement.

Section 7. Insurance and Performance Bond.

7.1 Insurance Coverage. From and after the Effective Date and at all times during the Term hereof, Sportservice shall obtain and maintain in full force and effect the following insurance coverages:

- (a) Commercial General Liability Insurance (including contractual and products) and Automobile Liability coverage (owned, non-owned and hired coverages with minimum limits of \$2,000,000 per occurrence, and \$10,000,000 in the aggregate. The insurance must protect Sportservice and City from claims for personal injury (including bodily injury and death) and property damage that might arise from or in connection with the performance of Sportservice's services hereunder or from or out of any negligent act or omission of Sportservice, its officers, directors, agents or employees. Limit requirements may be met by combining primary and excess/umbrella policies if necessary.
- (b) Liquor Liability insurance in an amount not less than \$50,000,000. The required liquor liability insurance may be provided in combination with liquor liability coverage under Commercial General Liability, along with any Umbrella and Excess Coverage.
- (c) Blanket Employee Dishonesty with minimum limits of \$100,000 per occurrence. This coverage shall be extended to provide coverage to funds and/or property held by Sportservice on behalf of the City.
- (d) Workers' Compensation. For all of Sportservice's employees who are subject to this Agreement and to the extent required by applicable state or federal law, Sportservice shall keep in full force and effect, a Worker's Compensation policy. That policy shall provide a minimum of \$1,000,000 of employer's liability coverage, and Sportservice shall provide an endorsement that the insurer waives the right of subrogation against City and its respective elected officials, officers, employees, agents and representatives.
- (e) Personal Property Insurance providing All Risk Coverage on a replacement basis for the appropriate limit to cover all of Sportservice's personal property at the stadium to include furniture, fixtures, equipment, inventory and any other personal property of Sportservice.
- (f) Umbrella or Excess Liability for an additional \$10,000,000. Coverage is to apply in excess of Comprehensive General, Employer's Liability, Liquor Liability and Automobile Liability policies.

7.2 Insurance Carrier and Policy Requirements.

(a) All insurance policies must be issued by an insurance carrier licensed to do business in the State of California. The City and its employees (the "Additional Insureds") shall be named as additional insureds under the Commercial General Liability, Commercial Automobile Liability, and Umbrella Liability Policies described above. Coverage for the Additional Insureds shall apply on a primary basis irrespective of any other insurance carried by the Additional Insureds. The General Liability policy shall include no third-party-over action exclusions or similar endorsements or limitations. All policies shall be endorsed to provide a waiver of subrogation in favor of the Additional Insureds. The City shall receive at least thirty (30) days written notice of cancellation of any of the insurance coverage required under this Agreement. Within ten (10) days after the Effective Date and annually at least ten (10) days prior to the expiration of each required insurance policy, Sportservice will furnish the City with certificates of insurance evidencing compliance with all insurance provisions set forth above.

(b) The insurance required by Section 7.1 shall be primary insurance and the insurer shall be liable for the full amount of any loss up to the total limit of liability required without the right of contribution of any other insurance coverage held by the City.

7.3 Limitations. This Section 7 is subject to all limitations identified in Section 6 and Section 8 regarding indemnification and subrogation, respectively.

7.4 Performance Bond. During the Term of this Agreement, Sportservice shall maintain a performance bond in the amount of two hundred fifty thousand dollars (\$250,000) payable to the City, in the event of default by Sportservice.

Section 8. Waiver of Subrogation.

It is expressly agreed that neither the City nor Sportservice shall be liable to the other, and each party hereto hereby releases and waives all claims, rights of recovery, and causes of action that either such party or any party claiming by, through or under such party, by subrogation or otherwise, may now or hereafter have against the other party or any of the other party's directors, officers, employees, or agents for any loss or damage that may occur to the Stadium or improvements and personality therein, or for any interruption in the business of either of them, if sustained by reason of fire, (even if such fire is the result of negligence or gross negligence of either of the parties hereto or any one or more of their directors, officers, employees or agents), or if sustained by reason of storm damage or the elements, or by other casualty to the extent that such loss or damage is of a type that is by its nature recoverable by property insurance (including any deductible), regardless of whether any policy is actually in effect. Both the City and Sportservice shall cause their respective insurance carriers to include provisions in all applicable policies authorizing the waiver of any rights by way of subrogation each might have against the other.

Section 9. Events of Default; Rights of Termination.

9.1 Default by Sportservice. Subject to the terms of Sections 9.3 and 9.4, in addition to any other rights or remedies it may have, the City may terminate this Agreement by written

notice to Sportservice if: (a) Sportservice fails to remit, for a period of fifteen (15) days after receipt of written notice of demand therefor, any sums due and owing to the City under this Agreement; (b) Sportservice fails, in a material and substantial manner, to perform any of its other obligations under this Agreement where the effect thereof is to deprive the City, in a material and substantial manner, of the benefits of this Agreement and such failure continues unremedied for a period of more than fifteen (15) days after receipt of written notice of the particular failure to perform; or (c) Sportservice fails to correct any potentially hazardous condition for a period of twenty-four (24) hours after the receipt of such written notice by the City; or (d) Sportservice is placed into bankruptcy either voluntarily or involuntarily (and such involuntary proceeding is not dismissed within sixty (60) days), becomes financially insolvent, takes the benefit of any present or future insolvency statute, makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.

9.2 Default by the City. Subject to the terms of Sections 9.3 and 9.4, in addition to any other rights or remedies it may have, Sportservice may terminate this Agreement by written notice to the City if: (a) the City fails, in a material and substantial manner, to perform any of its obligations under this Agreement where the effect thereof is to deprive Sportservice, in a material and substantial manner, of the benefits of this Agreement and such failure continues substantially unremedied for a period of more than fifteen 15 days after receipt of written notice of the particular failure to perform; (b) the City is placed into bankruptcy either voluntarily or involuntarily (and such involuntary proceeding is not dismissed within sixty (60) days), becomes financially insolvent, takes the benefit of any present or future insolvency statute, makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.

9.3 General Cure Period. Except in the case of a payment default by Sportservice under Section 9.1 (a), if the particular failure to perform under Section 9.1 or 9.2 cannot be cured within the applicable curative periods provided above, the party in default shall have a reasonable time thereafter in which to cure provided that it is diligently and continuously making all reasonable efforts required to cure the default.

9.4 Team Leaves the Stadium. If the Team determines that it will no longer play its home games at the Stadium, City will pay Sportservice an amount equal to the unamortized portion of the Capital Investment and Pre-Opening Expenses within ninety (90) days and, at the mutual agreement of the parties, either (x) Sportservice will continue to provide Food and Beverage Services at the Stadium pursuant to an agreed upon fee compensation structure or (y) this Agreement will terminate ninety (90) days after the last game played by the Team at the Stadium.

9.5 Termination or Expiration. Upon termination or expiration of this Agreement, (a) Sportservice will surrender possession of the Food and Beverage Facilities and the Food and Beverage Equipment to the City, (b) Sportservice will assign to the City or its designee all right, title and interest of Sportservice in and to all customer deposits and agreements relating to catering events; and (c) (i) if the Agreement has been earlier terminated for any reason other than by default of Sportservice, the City or its designee will purchase from Sportservice all food and

beverage inventory, Alcoholic Beverages, paper products and other supplies purchased by Sportservice in connection with the Food and Beverage Services specific to use at the Stadium, (ii) but if the Agreement has expired, the City or its designee will purchase from Sportservice all food and beverage inventory, Alcoholic Beverages, paper products and other supplies purchased by Sportservice in connection with the Food and Beverage Services specific to use at the Stadium that would reasonably be required for regularly scheduled operations for no more than sixty (60) days; (d) the City will pay the unamortized portion (if any) of the Capital Investment and the Pre-Opening Expenses to Sportservice, as provided in Section 4.1; and (e) all matters, rights and liabilities existing on the date of termination or expiration between the parties hereto shall be determined as of such date, and discharged as promptly as possible thereafter. Notwithstanding any termination or expiration of this Agreement, all liabilities and obligations of the parties will survive until they are fully satisfied.

9.6 Termination in Case of Lengthy Force Majeure Event. Should any Force Majeure event be reasonably expected to last for a period of time that exceeds the remaining Term or for a period of one and a half (1 ½) years, either Sportservice or City may, upon thirty (30) days written notice to the other, terminate this Agreement.

Section 10. Notice.

Any notice regarding the subject matter of this Agreement shall be sent using a nationally recognized courier service to the following addresses (any of which may be changed by like notice to the other parties to this Agreement):

For the City:

City of San Diego
Stadium Manager
Qualcomm Stadium
9449 Friars Road
San Diego, California 92108

For Sportservice or Guarantor:

Delaware North Companies Sportservice, Inc.
40 Fountain Plaza
Buffalo, New York 14202
Attention: President

with a copy to:
Delaware North Companies, Incorporated
40 Fountain Plaza
Buffalo, New York 14202
Attention: Vice President and General Counsel

Section 11. Successors and Assigns.

The provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective successors and assigns. In the event of a transfer of operating rights or sale of the Stadium facility to a third party, the City will require the purchaser of the Stadium to assume all of the City's obligations hereunder and Sportservice shall continue to provide the Food and Beverage Services under this Agreement.

Section 12. Authority to Administer and/or Make Amendments to Agreement

The Mayor, or his/her designee, in his/her discretion, shall be authorized to take all actions necessary to administer this Agreement and shall be authorized to make all such modifications, alterations, or amendments to this Agreement necessary for the proper administration of the Agreement, so long as such modifications, alterations, or amendments are permitted by law and do not significantly alter the Agreement as approved by the City Council or cause the expenditure of funds not within the Mayor's discretion; provided that any such modification, alteration, or amendment of this Agreement shall be contingent upon the agreement of both parties, and shall be in writing and be signed by each party's authorized representative(s).

Section 13. Applicable Law.

This Agreement is entered into and performable in the State of California and shall be governed, interpreted and enforced in accordance with the laws of the State of California.

Section 14. Compliance with Laws.

Each party to this Agreement will perform its obligations hereunder in accordance with all applicable Laws.

Section 15. Guaranties of Payment and Performance.

15.1 Guaranty Obligations. As a condition and specific inducement to City entering into this Agreement and in consideration of the benefits to be derived by Guarantor upon the execution and performance of this Agreement by Sportservice through the close affiliation of Guarantor with Sportservice, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

(a) Subject to the terms of this Section 15.1 Guarantor hereby guarantees to City the timely payment of all amounts payable to City pursuant to this Agreement, and the full and timely performance of all of Sportservice's other obligations under this Agreement throughout the entire Term of this Agreement (collectively, the "Guaranteed Obligations"). The guaranty obligations pursuant to this Section 15.1 are and shall for all purposes be deemed to be a guaranty of payment and performance, and not merely a guaranty of collection.

(b) If any default is made by Sportservice in the payment of any of the Guaranteed Obligations, or if Sportservice defaults in the performance of any of the Guaranteed Obligations and such default continues following notice to Sportservice and Guarantor and expiration of applicable periods for cure by either Sportservice or Guarantor (such notice and periods as described in Section 9.1 hereof), Guarantor shall, pay, perform and/or observe the same, provided that Guarantor shall enjoy (jointly with Sportservice): (i) any and all defenses of Sportservice with respect to any default of City arising out of this Agreement (but specifically excluding, without limitation, any and all defenses arising out of the financial incapacity of Sportservice under Bankruptcy Law or otherwise); and (ii) all rights hereunder of Sportservice to enforce the obligations of City described in this Agreement and Sportservice's rights under this Agreement.

(c) Any act of City consisting of a waiver of any of the terms or conditions of this Agreement, or the giving of any consent to any matter or thing relating to this Agreement, or the granting of any waivers or extensions of time to Sportservice, may be done without notice to Guarantor and without releasing the obligations of Guarantor hereunder.

(d) Guarantor waives diligence of City or its assignees in pursuing any remedy against Sportservice. Furthermore, City shall not be required to pursue or exhaust any other remedies before invoking the benefits of the guaranty provided in this Section 15.1 and any pursuit of any such remedies shall in no manner impair or diminish the rights of City under this Section 15.1; however, Guarantor shall have the right to all defenses otherwise available to Sportservice and to enforce, in its own name, all obligations of City to Sportservice contained in this Agreement and, for purposes of this guaranty, City acknowledges that it shall not have the right to allege lack of privity or that Guarantor does not hold the rights granted to Sportservice herein in any action in which Guarantor asserts such defenses which are so available to Sportservice. Nothing in this Section 15.1 shall relieve or be deemed to relieve Sportservice in any way of its obligations under this Agreement.

15.2 Representations of the Guarantor. Guarantor hereby represents and warrants to City as follows:

- (a) Sportservice is a corporation validly existing under the laws of the State of Delaware and Sportservice is qualified to do business in the State of California. Guarantor is a corporation validly existing under the laws of the State of New York.
- (b) The execution, delivery and performance by Guarantor of this Agreement are within Guarantor's powers, have been duly authorized by all necessary action.
- (c) The obligations of Guarantor pursuant to this Section 15 are the legal, valid and binding obligations of Guarantor enforceable against Guarantor in accordance with the terms hereof.

Section 16. General Terms and Conditions

As identified in RFP No. 10054790-15-C The City of San Diego's General Contract Terms and Provisions are included as part of this Agreement and are attached hereto as Exhibit A. For matters or terms and conditions addressed in the main body of this Agreement (pages 1-26), the terms and conditions set forth in the main body of this Agreement shall control and the City's General Terms and Provisions will not apply in any way. Should any conflicts or ambiguities result from alleged errors or discrepancies between main body of this Agreement (pages 1-26) and its exhibits, City and Sportservice will use the order as set forth herein to establish precedence; 1st The main body of this Agreement, 2nd The City's General Terms and Provisions. As an example, for the avoidance of doubt, termination of this Agreement will be pursuant to Section 9 of the main body of this Agreement, with no reference to the City's General Terms and Conditions.

Section 17. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall be deemed one in the same Agreement. This Agreement may be executed by facsimile signatures, which shall be binding

Section 18. Entire Agreement.

This Agreement, including the exhibits hereto, supersedes and replaces any other prior agreement or understanding between the parties relating to the subject matter of this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

**THE CITY OF SAN DIEGO, a California
municipal corporation**

By: _____
Name: _____
Title: _____

**SAN DIEGO SPORTSERVICE, INC., a
Delaware corporation**

By: Stephen G. Nowaczyk
Name: Stephen G. Nowaczyk
Title: Vice President, Finance

The undersigned Delaware North Companies Sportservice, Inc. joins in the execution of this Contract solely for purposes of Section 15 above.

**DELAWARE NORTH COMPANIES
SPORTSERVICE, INC., a New York
corporation**

By: Stephen G. Nowaczyk
Name: Stephen G. Nowaczyk
Title: Vice President, Finance

Approved as to form this _____
day of _____, 2015.

JAN I. GOLDSMITH, City Attorney

By: _____
Name: _____
Title: _____

CONCESSION AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND
DELAWARE NORTH SPORTSERVICE AND SAN DIEGO SPORTSERVICE
FOR FOOD AND BEVERAGE SERVICES AT QUALCOMM STADIUM

EXHIBIT A



THE CITY OF SAN DIEGO
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

ARTICLE I SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32. The Purchasing Agent must sign all Contract amendments.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and conditions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and conditions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or

received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or

services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint

venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Material Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Material Safety Data Sheet for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or

other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6.3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a "works for hire" as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall not begin any performance under this Contract until it has (1) provided City insurance certificates and endorsements reflecting evidence of all insurance and endorsements required and described herein and in the Specifications; (2) obtained City approval of each insurance company or companies; and (3) confirmed that all policies contain the special

provisions required herein and the Specifications. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Contract, shall not be deemed limited in any way to the insurance coverage required herein or in the Specifications. Maintenance of specified insurance coverage is a material element of this Contract, and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract may be treated by City as a material breach of contract. City reserves the right to require Contractor to submit copies of any policy upon reasonable request by City.

All policies shall include, and the insurance certificates shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

Contractor shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Contract.

Contractor shall maintain insurance coverage at its own expense as follows:

7.2.1 Commercial General Liability. Commercial General Liability (CGL) insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

7.2.2 Commercial Automobile Liability. For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. The insurance certificate shall reflect coverage for any automobile (any auto).

7.2.3 Workers' Compensation. For all of Contractor's employees who are subject to this Contract and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and Contractor shall provide an endorsement that the insurer waives the right of subrogation against City and its respective elected officials, officers, employees, agents, and representatives.

7.2.4 Professional Liability. For consultant contracts, Contractor shall obtain Professional Liability coverage with limits of at least \$1 million per occurrence and \$2 million aggregate, covering the risk of errors and omissions, negligent acts and costs of claims/litigation, including investigation and court costs. If the coverage is written on a "claims-made" form, Contractor must ensure that the policy retroactive date is on or before the date of the contract is awarded and that coverage is maintained or the policy has a reporting period of at least three (3)

years following completion or termination of the performance of professional services under this Contract.

7.3 Deductibles. All deductibles on any policy shall be the sole responsibility of Contractor and shall be disclosed to City at the time the evidence of insurance is provided.

7.4 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Contract, shall only be carried by insurance companies with a current rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to City before any performance is initiated under this Contract.

7.5.1 Commercial General Liability Insurance Endorsements.

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an insured City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.5.2 Automobile Liability Insurance Endorsements

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Insured City and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Automobile Liability policy or policies is primary to any insurance or self-insurance of City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by City, its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.5.3 Worker's Compensation Insurance Endorsements.

Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against City, its elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for City.

7.6 Reservation of Rights. City reserves the right, from time to time, to review Contractor's insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to City. City will reimburse Contractor for the cost of the additional premium for any coverage requested by City in excess of that required by this Contract, without overhead, profit, or any other markup.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

ARTICLE VIII BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and conditions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy

100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

9.1.10 Business Tax Certificate. Any company doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom

Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.