

AMPHITHEATER USE AGREEMENT RENEWAL

**BY AND BETWEEN
CITY OF WAITE PARK, NEW WEST PRESENTATIONS, INC.
AND MAMMOTH, INC.**

THIS QUARRY AMPHITHEATER USE AGREEMENT RENEWAL (this “**Agreement**”) is made and entered into as of this ____ day of _____, 2026, by and between the **CITY OF WAITE PARK**, a municipal corporation under the laws of the State of Minnesota (hereinafter the “**City**” or “**Owner**”), **NEW WEST PRESENTATIONS, INC.**, a corporation organized under the laws of the State of Missouri (hereinafter the “**Operator**”), and **MAMMOTH, INC.**, a corporation organized under the laws of the State of Kansas (hereinafter the “**Scheduling Agent**”); (collectively the “**Parties**”).

RECITALS

A. The City owns real property as legally described on the attached **Exhibit A** (the “**Property**”), on which the City has developed a regional park and constructed an Amphitheater (as defined below) thereon.

B. The City owns additional real property in close proximity to the Property as legally described on the attached **Exhibit B** (the “**Adjacent Property**”), on which the structure known as the Gillitzer House is located, and which is conveniently located to provide operational support to Events (as defined below) at the Amphitheater (as defined below).

C. The City owns additional real property in close proximity to the Property, also legally described on the attached **Exhibit B** (the “**Parking Lot Property**”), on which the parking lot for the Amphitheater has been constructed.

D. Pursuant to 2018 Laws of Minnesota, Chapter 214, Art. 1, Section 21, Subdivision 30, the City was awarded a grant from the State of Minnesota in the amount of \$5 million for the purpose of redeveloping a former quarry site on the Property as a regional park and to predesign, design, construct, furnish, and equip a public open-air stage and related facilities, as set forth in the State Grant Agreement (as defined below).

E. Under the provisions of Minnesota Statutes, Sections 471.15 to 471.191, the City is authorized to redevelop the Property as a regional park and construct an Amphitheater (as defined below) thereon, and to thereafter expend funds for the operation and maintenance of the regional park and Amphitheater and the operation of the Governmental Program (as defined below) as a part of its program of public recreation, and to directly operate such program.

F. The City adopted Resolution 071618-01, dated July 16, 2018 (the “**Project Approval Resolution**”), pursuant to which the City committed to act as the legal sponsor for the Project (as defined below) and operate and administer the Governmental Program (as defined below), and authorized the City to enter into the State Grant Agreement (as defined below).

G. Pursuant to Minnesota Statutes, Section 412.221, subd. 2, and 2018 Laws of Minnesota, Chapter 214, Art. 1, Section 21, Subdivision 30, the City is authorized to enter into this Agreement for the operation, management staging and production of National Events at the Amphitheater in furtherance of the Governmental Program.

H. The Operator has substantial experience and expertise in operating and producing music and entertainment events by traveling artists at similarly sized outdoor entertainment venues, and the Scheduling Agent (as defined below) has substantial experience and expertise in booking national traveling artists to perform in similarly sized outdoor entertainment venues.

I. The City has determined that the Operator and Scheduling Agent each possess the personnel and resources to assist the City in carrying out the Governmental Program (as defined below) by managing, operating and producing music and entertainment events by traveling artists at the Amphitheater in accordance with the State Grant Agreement (as defined below).

J. The City entered into this Agreement on December 12, 2019, with the initial Term set to expire December 31, 2024, which agreement provided for up to three successive Renewal Terms of five years each.

K. The Operator and Scheduling Agent were unable to assist the City in carrying out the Governmental Program pursuant to this Agreement during the first year of the Initial Term as a result of the Covid-19 pandemic.

L. The Operator and Scheduling Agent duly applied to renew the Agreement, and the City found that the Operator and the Scheduling Agent have the means and resources to continue to operate and produce National Events at the Amphitheater in furtherance of the Governmental Program following the initial term.

M. The City desires that the Operator and the Scheduling Agent continue operating and producing National Events at the Amphitheater in furtherance of the Governmental Program as set forth in the Agreement, subject to certain amendments to its terms agreed upon by the Parties as set forth herein.

N. The City desires that the Operator and the Scheduling Agent now enter into an amended Amphitheater Use Agreement for a five-year Renewal Term to begin on the Effective Date in 2026.

O. The City will be required, as a condition of accepting the State Grant (as defined below), to carry out the Governmental Program (as defined below) by continuing to use the Property as a regional park and operate the Amphitheater thereon for the benefit of the public.

In consideration of the terms and conditions of this Agreement, the City, the Operator and the Scheduling Agent agree as follows:

ARTICLE ONE

Defined Terms

As used in this Agreement, the following terms shall have the specific meanings set forth below:

1.1 “Act” shall mean Minnesota Statutes, Section 16A.695, and 2018 Laws of Minnesota, Chapter 214, Art. 1, Section 21, Subdivision 30, as the same may be amended from time to time.

1.2 “Additional Operating Fee” shall have the meaning set forth in Section 7.2(b) hereof.

1.3 “Adjacent Property” shall mean the property legally described on the attached **Exhibit B**, on which the structure known as the Gillitzer House is located.

1.4 “Advertising” shall mean, collectively, all advertising, sponsorship, and promotional activity, signage, designations (including “pouring rights” or similar designations and rights of exclusivity and priority), messages and displays of every kind and nature, whether now existing or developed in the future, in connection with National Events, including permanent, non-permanent, and transitory signage, or advertising displayed on permanent or non-permanent advertising panels or on structures, fixtures, or equipment (such as canopy advertising); audio or video public address advertising and message board advertising; programs; electronic insertion, blocking and other forms of visual signage; sponsor-identified projected images; advertising on or in schedules, admission tickets, and yearbooks; all other print and display advertising; promotional events sponsored by advertisers; advertising display items worn or carried by Concessionaires or personnel engaged in the operation of any National Event; logo, slogan or other forms of advertising affixed to or included with cups, hats, T-shirts, and similar items; advertising of Concessions; and other Concessions, promotional or premium items.

1.5 “Advertising Rights” shall mean the right to display, control, conduct, lease, permit, sell and enter into agreements regarding the display of Advertising in any portions of the interior or exterior of the Amphitheater during National Events.

1.6 “Agreement” shall mean this Amphitheater Use Agreement by and between the City, the Operator, and the Scheduling Agent, as the same may be amended, modified or supplemented from time to time.

1.7 “Alterations” shall mean any alterations, additions, modifications or improvements to the Amphitheater or the Properties beyond Ordinary Maintenance that do not constitute Capital Improvements or Major Maintenance.

1.8 “Amphitheater” means the public open-air stage and related facilities, including but not limited to spectator seating and viewing areas, staging areas, restrooms, concessions facilities, plaza(s), and parking facilities, all to be constructed on the Property and to be known as “The Ledge”.

1.9 “Amphitheater Final Plans” means the final architectural design specifications for the Amphitheater to be put out for public bid to interested contractors, as attached hereto as **Exhibit C**.

1.10 “Annual Financial Report” shall have the meaning set forth in Section 8.5.2 below.

1.11 “Annual Maintenance Plan” shall have the meaning set forth in Section 4.2(m) below.

1.12 “Annual National Events Gross Revenues” shall mean all revenues of every kind and description (except as excluded below) arising from or relating to the operation, management and production of National Events at the Amphitheater, paid to or received by or on behalf of the Operator or any Person controlled by the Operator, including the Scheduling Agent, including but not limited to revenue from:

- (a) the sale of admission tickets, season tickets, group tickets, membership fees or premiums associated with a reserved ticket or club program, and any ticket fees or portions thereof imposed by a ticket broker that are remitted to the Operator;
- (b) Advertising and sponsorship, Amphitheater and other signage, radio/television, promotional, concessions, group catering, souvenirs and pour rights;
- (c) catering, Concessions and merchandise;
- (d) sale of alcohol and other beverages;
- (e) parking; and
- (f) the fair market value of all non-cash or in-kind contributions or exchanges of services or tangible items.

The following revenues shall be expressly excluded from Annual Gross National Events Revenues: (i) the sale of admission tickets, season tickets, and group tickets for any Local Events or any other Event for which such ticket proceeds are not received by the Operator; (ii) Operator Expenses paid or reimbursed to any person or entity controlled by or under common control with the Operator; (iii) Naming Rights sold by the City, with or without the assistance of Operator; or (iv) donations received by the City for the purpose of supporting the construction of the Amphitheater or ongoing operation of the Governmental Program, whether pursuant to the Donor Recognition Program or otherwise.

1.13 “Annual Net National Events Income” shall mean an amount equal to Annual Gross National Events Revenues less the total of the annual Operator Expenses and Booking Expenses, as set forth in the Annual Financial Report.

1.14 “Booking Expenses” shall mean all ordinary and necessary business expenses incurred by the Scheduling Agent in the conduct of the Scheduling Agent’s scheduling of National Events at the Amphitheater, particularly with respect to the performance of the Scheduling Agent’s duties hereunder to provide administrative, marketing, promotion, talent costs, advertising, legal fees, audit fees, operating supplies, including but not limited to the following:

(a) all compensation, salaries, benefits and payroll taxes of personnel hired or retained by or on behalf of the Scheduling Agent to carry out the Scheduling Agent’s responsibilities hereunder;

(b) all out of pocket expenditures and overhead and administrative costs incurred by the Scheduling Agent in connection with its responsibilities hereunder;

(c) all federal, state and local taxes on the Scheduling Agent’s operations, including any sales taxes and admission taxes payable with respect to National Events, or by the Scheduling Agent by Law or under this Agreement;

(d) sales and use taxes to the extent not already included in any of the categories above; and

(e) all costs and expenses to maintain the insurance that the Scheduling Agent is required to maintain under this Agreement.

1.15 “Capital Costs Payment” shall have the meaning set forth in Section 7.3 hereof.

1.16 “Capital Expenditure Reserve Fund” shall mean the Amphitheater Capital Expenditure Reserve Fund established by the Operator pursuant to the terms of Section 12.3 hereof, into which the Capital Costs Payments will be deposited for the purpose of funding Capital Improvements to the Amphitheater and Properties.

1.17 “Capital Improvement Plan” shall mean the capital improvement plan submitted to the City pursuant to Section 8.3 hereof, and shall include for each year remaining in the Term at a minimum (a) the Capital Improvements proposed to be completed, (b) cost estimates for each such proposed Capital Improvement, and (c) a timetable for completion of each such proposed Capital Improvement.

1.18 “Capital Improvements” shall mean any material alterations or substantial improvements made to the Amphitheater or the Properties, and any non-recurring improvements to extend the useful life of the Amphitheater or the Properties. Capital Improvements shall not include Ordinary Maintenance, Major Maintenance, Emergency Repairs or repairs completed to restore the Amphitheater or the Properties to their preexisting condition without extending the useful life of the Amphitheater or the Properties.

1.19 “City” shall mean the City of Waite Park, a municipal corporation of the State of Minnesota having as its address for notice purposes 19 13th Avenue North, P.O. Box 339, Waite Park, MN 56387; Attention: City Administrator.

1.20 “City Equipment” shall mean standard materials, supplies or equipment purchased or rented by the City for use at the Amphitheater or Property of the kind typically owned and maintained as part of an outdoor entertainment venue like the Amphitheater, including, but not limited to leaf blowers, pallet jacks, and dollies, and which are subject to the terms of Section 6.6.

1.21 “Commissioner” means the commissioner of the Minnesota Department of Management and Budget or his/her designee.

1.22 “Communication System” shall mean the internal broadcasting system at the Amphitheater, including televisions, matrix boards, loudspeaker systems, public address systems, timers, clocks, message centers (including electronic message boards), video screens, signs, marquees, and any other facilities within the Amphitheater designed to communicate with spectators at Events (and all control rooms and equipment rooms for the same).

1.23 “Concession Operations” shall mean the exercise and operation of Concession Rights at the Amphitheater.

1.24 “Concession Rights” shall mean, collectively, the right to sell, display, distribute and store Concessions and to conduct catering and banquet sales and services at the Amphitheater during National Events and such Local Events as requested by the City.

1.25 “Concessionaire” shall mean a third-party vendor selected by the Operator to conduct Concession Operations.

1.26 “Concessions” shall mean all food and beverages, including alcoholic beverages, novelties and merchandise, or other such products sold by the Operator or a designated Concessionaire at the Amphitheater.

1.27 “CPI Increases” shall mean increases, calculated from January 1 of the relevant calendar year to such date as may be relevant pursuant to the terms of this Agreement in the index known as the United States Department of Labor Bureau of Labor Statistics, Consumer Price Index, Average Price Data) (the “CPI”) or the successor index that most closely approximates the CPI as selected by the City.

1.28 “Donor Recognition Program” shall mean a program established by the City of recognizing private donations in support of the Project by naming a portion(s) or component(s) of the Amphitheater after the donor.

1.29 “Effective Date” shall mean the date on which this Agreement becomes fully executed.

1.30 “Emergency Repairs” shall mean any repairs, maintenance, modifications or improvements which, if not immediately made, would endanger the health and safety of the people working in or attending an Event at the Amphitheater, would cause imminent damage to any significant component of the Amphitheater, or would render the Amphitheater or any material portion of its mechanical, electrical or plumbing systems or other significant component thereof unusable for previously scheduled Events.

1.31 “Environmental Laws” means all applicable Laws, including any consent decrees, settlement agreements, judgments, or orders issued by or entered into with a Governmental Authority pertaining or relating to: with respect to the Property, now or hereafter in existence, relating to the environment, health and safety matters, Hazardous Materials, pollution, or protection of the environment.

1.32 “Events” shall mean National Events, Local Events, Private Events and any other events at the Amphitheater.

1.33 “Event Cleanup” shall mean disposing of refuse, garbage, and debris following any Event, cleaning all restrooms, concessions areas, plazas and common areas, changing of burned-out light bulbs, fuses and circuit-breakers, and generally restoring the Amphitheater and the Property to the same state of repair and cleanliness as existed prior to the Event.

1.34 “Event Season” shall mean May 1 through October 31 each year during the Term or any Renewal Term.

1.35 “Event Setup” shall mean making all preparations at the Amphitheater necessary to host any Event, including but not limited to positioning all Operator’s Property and other equipment or personal property in locations necessary for the Event, configuring the Event seating consistent with the ticketed configuration for the Event, and ensuring that Concessions are supplied and prepared for sale during the Event.

1.36 “Expiration Date” means December 31, 2031.

1.37 “Facility Manager” shall mean the position employed by the City responsible for managing the Amphitheater’s operations and coordinating Events at the Amphitheater pursuant to Section 4.1(b) hereof.

1.38 “Force Majeure” shall mean acts of God, accidents, fire or other casualty, earthquake, hurricane, tornadoes, named storms, flood, war, riot, intervention by civil or military authorities of government, insurrection or other civil commotion, governmental action, material shortages, Work Stoppages, or any other similar or like event or occurrence beyond the reasonable control of a Party hereto, that causes such Party to be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder. Unavailability of funds shall not constitute Force Majeure.

1.39 “Furnishings” means items such as chairs, furniture, patio sets, tents, tables, and anything used to furnish the Amphitheater and Properties originally supplied by the City and that

are not permanent fixtures attached to the Amphitheater and Properties, and which are subject to the terms of Section 6.5.

1.40 “GO Bonds” means that portion of the state general obligation bonds issued under the authority granted in Article XI, § 5(a) of the Minnesota Constitution, the proceeds of which are used to fund the construction of the Project on the Property and any bonds issued to refund or replace such bonds.

1.41 “Governmental Authority” shall mean any federal, state, county, city, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof.

1.42 “Governmental Program” means the operation, management, maintenance and use of the Property as a regional park, the operation of the Amphitheater thereon and the production and presentation of a broad range of civic, community, athletic, educational, cultural and commercial activities and events and related and ancillary uses of the Properties and the Amphitheater for the benefit of the public.

1.43 “Hazardous Materials” means any substance that is -- or is deemed under Environmental Laws to be, alone or in any combination -- hazardous, hazardous waste, toxic, radioactive, a pollutant, a deleterious substance, a contaminant, a dangerous good, or a source of pollution or contamination, or which, when released into the environment, is likely to cause, at some immediate or future time, material harm or degradation to the environment or material risk to human health, whether or not such substance is defined as "hazardous" under Environmental Laws.

1.44 “Law” or “Laws” shall mean any law, statute, code, ordinance, rule, regulation or constitutional provision, duly enacted or adopted by any Governmental Authority.

1.45 “Local Event” shall mean any event at the Amphitheater that is not a National Event, typically of a civic, community, educational or cultural nature, and sponsored by the City or other governmental, educational or non-profit institution, and which is scheduled in accordance with Section 3.4.1 hereof.

1.46 “Major Maintenance” means any item of item of Ordinary Maintenance which exceeds or is reasonably expected to exceed \$5,000.00 in cost.

1.47 “Naming Rights” shall mean the sale by the City, with or without the assistance of the Operator, of the right of a third-party purchaser to attach its name to the title of the Amphitheater for a specific period of time as agreed upon by the City and the third-party purchaser.

1.48 “National Event” shall mean any music or entertainment event by traveling artists, for which tickets are sold, and which is booked by the Scheduling Agent and operated and produced by the Operator at the Amphitheater during the Term.

1.49 “Operating Fee” shall have the meaning set forth in Section 7.2(a) hereof.

1.50 “Operator” means New West Presentations, Inc., a corporation organized under the laws of the State of Missouri, having as its address for notice purposes 633 N 130th St Bonner Springs, KS 66012.

1.51 “Operator Expenses” shall mean all ordinary and necessary business expenses incurred by the Operator, or incurred by the Owner and reimbursed by Operator as set forth herein, with respect to the operation, management and production of National Events at the Amphitheater, particularly with respect to the performance of the Operator’s duties hereunder to provide administrative, sales, marketing, promotion, and management staff, talent costs, stage hands, advertising, catering, security, ticket takers, ushers, parking lot attendants, traffic control personnel, liability insurance, cleaning expense, box office expense, equipment purchases or rental, furnishings, emergency management technicians and medical personnel, legal fees, audit fees, sales taxes, admission taxes, entertainment taxes, operating supplies, including but not limited to the following:

- (a) all compensation, salaries, benefits and payroll taxes of personnel hired or retained by or on behalf of the Operator to carry out the Operator’s responsibilities hereunder;
- (b) all out of pocket expenditures and overhead and administrative costs incurred by the Operator in connection with its responsibilities hereunder;
- (c) all federal, state and local taxes on the Operator’s operations, including any sales taxes and admission taxes payable with respect to Events, or by the Operator by Law or under this Agreement; Real or Personal Property Taxes, if any, required to be paid by the Operator as provided by Section 7.7 hereof;
- (d) all expenses for obtaining, maintaining and causing to be maintained all necessary Permits for the operation of the Amphitheater;
- (e) all expenses for obtaining and maintaining the Operator’s Property;
- (f) repairs to the Amphitheater or the Property necessitated by general wear and tear, including repairs and replacement of furnishings;
- (g) Ordinary Maintenance;
- (h) Utilities;
- (i) Reimbursable Costs;
- (j) all expenses for repairing or replacing Furnishings and City Equipment;

(k) materials, supplies, or labor purchased or supplied by the Operator or City (subject to reimbursement by the Operator) to repair specific damage to the Amphitheater or the Property (excluding normal wear and tear), unless such repair may be considered Major Maintenance;

(l) travel and training for the Facility Manager as it relates to operating the Events at the Amphitheater;

(m) sales and use taxes to the extent not already included in any of the categories above;

(n) amortization and depreciation of the Operator's Property and of any repairs, replacements, modifications, additions or upgrades to any of the systems, equipment, property and installations comprising the Operator's Property that are in the nature of Capital Improvements;

(o) all costs and expenses incurred to obtain and maintain the liquor licenses referred to in Section 4.8 hereof, unless the same shall be obtained and maintained by the Concessionaire;

(p) all costs and expenses to maintain the insurance that the Operator is required to maintain under this Agreement; and

(q) the fair market value of goods and services provided to the Operator for the operation of the Amphitheater or Events that were paid by non-cash exchanges included in the Annual Gross National Events Revenues under clause (f) thereof.

1.52 "Operator's Property" shall mean personal property, furniture, furnishings, removable trade fixtures, supplies and equipment paid for by or on behalf of the Operator or from other nonpublic sources contributed on behalf of the Operator and that are not funded by the City, including any repairs, replacements, modifications, additions or upgrade to any of such systems, equipment, property and installations, and all inventory, supplies, working capital, and personal property, including a point of sale ("POS") system provided by the Operator at its cost, but not including City Equipment or Furnishings as set forth in this Agreement.

1.53 "Ordinary Maintenance" shall mean the timely provision of all labor and materials that are required to (a) keep the Amphitheater in the high-quality condition of similarly situated performance venues, and good order and repair and (b) keep the Amphitheater free of snow, ice, excessive amounts of leaves, branches and other debris. Ordinary Maintenance shall not include Capital Improvements. Ordinary Maintenance shall include the following:

(a) regular, periodic maintenance procedures stipulated or recommended in operating manuals or warranties for Amphitheater components or which, if not so stipulated or recommended, are performed by prudent owners or operators of similar facilities;

(b) routine maintenance of plumbing systems, electrical and lighting systems, sound systems, or mechanical systems, including annual maintenance for mechanical systems;

(c) mowing, fertilizing, watering, pruning and otherwise maintaining all landscaping, if any;

(d) all snow and ice removal services on the pathways, sidewalks, the Parking Lot Property, and parking lots owned on the grounds of the Property;

(e) routine painting; and

(f) any items of work stipulated to by the Parties in the Annual Maintenance Plan.

1.54 “Owner’s Expenses” shall mean all ordinary and necessary expenses incurred by the City related to the operation and maintenance of the Amphitheater or the Property, excluding those costs agreed to be Reimbursable Costs in this Agreement, including without limitation, expenditures for the following:

(a) Emergency Repairs;

(b) property and casualty insurance;

(c) Major Maintenance, except as otherwise provided in Section 6.4;

(d) mowing and maintenance of all landscaping outside of the fenced-in area of the Amphitheater and the Properties, including maintenance of the actual quarries;

(e) personnel costs of the City staff attributable to City staff time devoted to operations and maintenance of the Amphitheater, the Property, or Events, except for the Facility Manager, as further described herein;

(f) that portion of the costs to the City to employ the Facility Manager in excess of the portion of the Facility Manager’s salary classified as a Reimbursable Cost under Section 1.61 herein;

(g) any other current expense specifically incurred by the City related to the operations and maintenance of the Amphitheater or the Property for which the City is not otherwise reimbursed or compensated.

Owner’s Expenses shall not include Capital Improvements.

1.55 “Parking Lot Property” shall mean the property legally described on the attached **Exhibit B**, on which the City has construction a parking lot for the Amphitheater.

1.56 “Party” or “Parties” shall mean any or all of the City, the Operator, and the Scheduling Agent.

1.57 “Private Event” shall mean an event held at the Amphitheater in which the sponsor of the event has exclusive use of the Amphitheater or a portion thereof for such event and no admissions tickets are charged and the event is not open to the public.

1.58 “Project” means the redevelopment of the Property as a regional park and construction of the Amphitheater thereon pursuant to the Amphitheater Final Plans.

1.59 “Property” means the real property legally described on the attached **Exhibit A**, on which the City intends to construct the Project.

1.60 “Properties” shall mean, collectively, the Property, the Adjacent Property, and the Parking Lot Property.

1.61 “Reimbursable Costs” shall mean all costs incurred by the City in assisting the Operator to meet their obligations under this Agreement or which have otherwise been agreed to by the Parties in this Agreement as costs to be reimbursed to the City, including, but not limited to:

(a) utility services contracted by the City (electricity, telephone, water, sewer service, storm sewer service);

(b) costs incurred by the City through the use of City contractors or City staff to perform Ordinary Maintenance on behalf of the Operator or otherwise incurred by the City in the performance of Ordinary Maintenance; and

(c) an amount equal to the full annual salary for the Facility Manager less \$25,000.00.

1.62 “Renewal Term” shall have the meaning set forth in Section 2.3 below.

1.63 “Scheduling Agent” means Mammoth, Inc., a corporation organized under the laws of the State of Kansas, having as its address for notice purposes 912 Tennessee Street, Lawrence, KS 66044.

1.64 “State Grant” means the \$5 million grant awarded to the City pursuant 2018 Laws of Minnesota, Chapter 214, Art. 1, Section 21, Subdivision 30 for the purpose redeveloping a former quarry site on the Property as a regional park and to predesign, design, construct, furnish, and equip a public open-air stage and related facilities, as set forth in the State Grant Agreement.

1.65 “State Grant Agreement” means that certain agreement by and between the City and the State of Minnesota Department of Employment and Economic Development entitled “Grant Agreement – Construction Grant for the Quarry Amphitheater, in the form consistent with **Exhibit D**.

1.66 “Substantial Completion Date” shall mean the date on which the work related to the construction of the Project is essentially and satisfactorily completed in accordance with the Amphitheater Final Plans, such that the Amphitheater is ready for use and is suitable for the performance of Events. A minor amount of work, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustment of controls or sound systems, or completion or connection of minor exterior work that cannot be completed due to weather conditions, will not delay determination of Substantial Completion. In no event shall Substantial Completion be deemed to have occurred unless such certificates required by all Laws for opening of the Amphitheater to the general public have been issued to the City.

1.67 “Term” shall have the meaning set forth in Section 2.2 below.

1.68 “Utilities” shall mean heat, water and sewer, gas, electricity, telephone, cable communications and other utilities.

1.69 “Work Stoppage” shall mean any strike, boycott, labor dispute or other work stoppage, including labor stoppages, whether attributable to strikes or lockouts.

ARTICLE TWO

Grant of Rights; Term

2.1 Grant.

(a) The City, for and in consideration of the payments and agreements of the Operator and Scheduling Agent contained herein, hereby grants to the Operator and its agents, including the Scheduling Agent the exclusive right to occupy and use the Amphitheater for the purpose of assisting the City in operating, managing, staging and producing National Events during the Event Season, including the Advertising Rights, Concession Rights, and the right to collect the Annual Gross National Events Revenue, together with the right to occupy and use the Amphitheater for the purpose of assisting the City in operating, managing, staging and producing such Local Events as specifically requested by the City, after the Substantial Completion Date and for the duration of the Term, subject to the terms, conditions and provisions of this Agreement.

(b) The Operator and Scheduling Agent shall have no rights to use the Amphitheater other than those rights specifically granted in this Agreement. The City does not relinquish the right of access to the Amphitheater; provided, however, that such access by the City shall not unreasonably interfere with the use of the Amphitheater by the Operator or Operator’s agents, including the Scheduling Agent, pursuant to this Agreement. A reservation by the City of some specific right in this Agreement shall not be construed as granting to the Operator or Scheduling Agent any rights not mentioned or not specifically reserved by the City in this Agreement.

(c) The Operator and Scheduling Agent acknowledge that they will each be one among many users of the Amphitheater. The Operator and Scheduling Agent will make reasonable accommodations for other users of the Amphitheater in order to maximize use of the Amphitheater and to realize the purposes of the Act and Governmental Program and consistent with the provisions of Section 3.4 below.

(d) The Operator and Scheduling Agent, having reviewed the Amphitheater Final Plans, hereby represent as of the date of this Agreement that nothing has come to their attention to cause them to believe that the Amphitheater will not be, as of the Commencement Date, in all material respects fit for their intended purposes and reasonably suitable for use hereunder assuming that the Amphitheater is properly constructed in substantial accordance with the Amphitheater Final Plans.

2.2 Term. The term of this Agreement shall commence on the Effective Date and end on the Expiration Date (the “Term”), unless either; (a) sooner terminated as provided in this Agreement, or (b) renewed as provided in Section 2.3. Except as otherwise provided in this Agreement, termination of this Agreement prior to the Expiration Date requires the agreement of the City, the Operator and the Scheduling Agent.

2.3 Renewal. This Agreement may be renewed for up to three successive five year term(s) (each a “Renewal Term”) and the Expiration Date shall be adjusted accordingly for the Renewal Term(s), upon the Operator making written application for such a renewal term to the City no later than 180 days in advance of the Expiration Date, and provided that the City determines, in its sole discretion pursuant to Article Eight herein, that (1) the Operator and Scheduling Agent have the means and resources to and will continue to operate and produce National Events at the Amphitheater in furtherance of the Governmental Program; and (2) the City wants the Operator and Scheduling Agent to continue to operate and produce National Events at the Amphitheater in furtherance of the Governmental Program. The City shall notify the Operator in writing of its approval or denial of an application for a renewal term no later than 90 days in advance of the Expiration Date. In the event that (a) the Operator fails to deliver to the City such renewal notice within such 180-day period; or (b) City does not respond to such timely renewal notice 90 days prior to the Expiration Date, then this Agreement shall be deemed terminated. Nothing herein shall require the City to renew this Agreement beyond the initial term; the City may, at its sole option and discretion, allow this Agreement to expire at the end of the Term or any Renewal Term as applicable, and thereafter directly operate and produce events that would be considered National Events if operated and produced at the Amphitheater by the Operator under this Agreement, or contract with some other entity or entities to do so, as a part of the Governmental Program. Unless agreed otherwise by the Parties, the Agreement shall terminate on the Expiration Date.

ARTICLE THREE **Amphitheater Ownership and Use**

3.1 Suitability for Use; Ownership.

(a) The Operator and Scheduling Agent hereby stipulate and agree that the Amphitheater will be, as of the Commencement Date, in all material respects fit for their intended purposes and reasonably suitable for use hereunder if the Property has been redeveloped and the Amphitheater constructed in accordance with Amphitheater Final Plans.

(b) The City shall own or control the Amphitheater and the Properties, subject to the rights of the Operator and Scheduling Agent under this Agreement.

3.2 Operator's Permitted Use. The Operator and Scheduling Agent shall have the right to schedule, operate, manage, stage and produce National Events, and Local Events as requested by the City, at the Amphitheater. In conducting such Events, the Operator shall use reasonable efforts consistent with industry standards to not allow any activity that is unlawful, creates any nuisance or fire hazard, or will damage or otherwise have a deleterious effect upon the Amphitheater or the reputation of the Amphitheater or the City. No part of the Amphitheater will be used in a manner which is a restricted use as set forth in **Exhibit E**. The Operator shall use the Amphitheater in compliance with all applicable Laws.

3.3 Operator Events. The Parties agree that during the times the Operator is using the Amphitheater for Events, the Operator shall not stage any activity (i) that is detrimental to the health, safety and welfare of people at the Amphitheater or (ii) that is detrimental to the Amphitheater physical plant.

3.4 Use and Scheduling.

3.4.1 General. The City shall have use of the Amphitheater at all times when the Amphitheater is not being used by the Operator for National Events. The City shall coordinate and cooperate with the Operator and Scheduling Agent in scheduling Local Events and Private Events, pursuant to the following principles:

(a) The Operator will, itself or through the Scheduling Agent, exclusively schedule National Events at the Amphitheater, making reasonable and necessary accommodations for other and additional users of the Amphitheater in order to maximize its use.

(b) On a quarterly basis each year during the Term of this Agreement, the Operator, itself or through the Scheduling Agent, shall provide to the City a schedule of National Events at the Amphitheater for the coming twelve (12) month period, which scheduled National Events shall take precedence over any Local Event or Private Event. Thereafter, the Operator and Scheduling Agent shall provide to the City more frequent updates to the schedule as requested.

(c) The Operator shall, at the request of the City, operate and produce Local Events at the Amphitheater. The Operator shall have no responsibility to operate or produce Private Events at the Amphitheater.

(d) The Operator and Scheduling Agent both acknowledge that the City's review of Events under this Section 3.4.1 is review with respect to scheduling only and does not waive the requirements of any City ordinance or regulation, including security, sound ordinances, licensing or any other regulatory approval.

(e) For any Local Event operated and produced by the Operator at the City's request, the Operator may only charge for the reasonable and necessary out-of-pocket operating expenses incurred by the Operator in connection with such Local Event, including, without limitation, personnel expenses incurred by the Operator in support of the Local Event that would not have been incurred but for its operation and production of the Local Event. Operator shall not charge any rental or similar charge, provided that the sponsor of any such Local Event shall receive the revenues (subject to any applicable taxes) from any ticket sales for such event.

3.5 City Reserved Rights.

3.5.1 City Access.

(a) City staff and its agents shall have reasonable access to all areas of the Amphitheater and the Properties during Operator's use thereof for Events as determined by the Director of the Public Works Department of the City. City personnel whose presence is reasonably necessary shall require no ticket for admission to Events but shall be subject to credentialing for Events. The Operator will facilitate any necessary credentialing for such City staff.

(b) At any time during Operator's use of the Properties for Events, the City may take any and all measures necessary or desirable for the operation, safety, protection or preservation of the Properties, including Emergency Repairs, alterations, decorations, additions or improvements, whether structural or otherwise, in and about the Properties or any part thereof; and (b) to enter to verify use of the Properties. The City may enter upon the Properties and may exercise any or all of the foregoing rights without being deemed guilty of disturbing of the Operator's or Scheduling Agent's use or possession and without being liable in any manner to the Operator or its agents, including the Scheduling Agent, and without affecting the Operator's or its agents', including the Scheduling Agent's, financial or other obligations hereunder.

(c) The Operator and the City shall ensure that no City personnel or elected officials are compensated with free tickets to Events operated and produced by the Operator for which admission is charged to the general public or are otherwise allowed unticketed access to the Amphitheater for such Events, with the exception of City personnel whose presence is reasonably necessary as determined by the Director of the Public Works Department of the City in accordance with paragraph (a) above. Nothing in this paragraph shall preclude City personnel or elected officials from volunteering for the City, the Operator or any third-party under the control thereof or otherwise participating in programs resulting in access

to the Amphitheater or admission to Events on the same terms and conditions as are available to the general public.

3.5.2 Naming Rights. The City shall have the right to market and enter into a contract for the sale of the Naming Rights to the Amphitheater, subject to the Commissioner's written approval thereof, and to receive the revenues generated therefrom, provided that the Operator and the Commissioner shall have the opportunity to review and comment on the terms of such contract prior to the City's formal approval thereof. No sale of the Naming Rights shall be valid and no Naming Rights contract/agreement shall be valid or entered into without the express written consent of the Commissioner. Thereafter, the Operator shall honor the terms of any such contract for the sale of the Naming Rights and shall observe the title sponsor's rights thereunder in all respects, including in all Advertising and ticketing materials.

3.5.3 Donations. The City shall have the right to solicit and accept private donations to support the Project and the City's operations on the Properties and establish and implement the Donor Recognition Program.

3.5.4 Distributed Antenna System. The City shall have the right to market and sell the right to construct, operate and maintain a distributed antenna system on the Properties and retain all revenues or other benefits generated thereby.

3.5.5 Capital Improvements. The City reserves for itself the right to make Capital Improvements to the Properties in its sole discretion. The City may allow the Operator to make Capital Improvements to the Properties at the Operator's Expense pursuant to the procedure set forth in Section 12.2.

ARTICLE FOUR

Operations and Management

4.1 City Responsibilities.

(a) General. The City shall be responsible for the Owner's Expenses, and for services supplied by City to the same extent and on the same terms as the City provides services to the general public, including police and fire protection, and traffic control services.

(b) Facility Manager. The City shall employ a Facility Manager to, in addition to other responsibilities that may be assigned to the position in the City's discretion, manage, coordinate, control, operate and supervise the conduct and operation of the ordinary and usual business and affairs pertaining to or necessary for the proper operation, maintenance and management of the Amphitheater and the coordination, management and production of all Events at the Amphitheater, including, in cooperation with the Operator and Scheduling Agent, National Events. The Facility Manager shall communicate frequently and work in close cooperation with the Operator and the

Scheduling Agent regarding National Events at the Amphitheater and in identifying and supervising needed Capital Improvements, Ordinary Maintenance, Emergency Repairs, equipment, supplies, attention or services to the Amphitheater or the Properties.

4.2 Operator's Responsibilities. The Operator shall take all actions reasonably necessary or desirable to assist the City in the operation and production of National Events, and such Local Events as specifically requested by the City, at the Amphitheater, in accordance with all Laws and the terms and conditions of this Agreement. The Operator shall use its reasonable good faith efforts considering market conditions and attendance patterns to secure, devise and promote National Events appropriate to the operation of the Amphitheater and in furtherance of the Governmental Program. The Operator shall provide, perform and take, or cause to be provided, performed or taken, in coordination with the Facility Manager, such services and actions, as may be reasonably necessary or advisable to successfully, operate, manage and produce National Events, and such Local Events as specifically requested by the City. Except as otherwise provided in this Agreement, the Operator shall be solely responsible for all costs associated with the operating, managing, staging and production of National Events at the Amphitheater consistent with the Governmental Program, including without limitation all Operator Expenses. The City shall not be obligated to pay for any expenses associated with the operating, staging and production of National Events at the Amphitheater unless specifically set forth in this Agreement. Without limiting the generality of the foregoing, the Operator's obligations and responsibilities shall include:

- (a) payment of all Operator Expenses;
- (b) collection of all Annual National Events Gross Revenues;
- (c) assist the City with the City's hiring of the Facility Manager position, as reasonably requested by the City, including advertising the position, and attracting, identifying, interviewing and selecting qualified candidates for the position, should hiring for this position become necessary at any time during any term of this Agreement;
- (d) payment for travel and training for the Facility Manager as it relates to operating the Events at the Amphitheater;
- (e) providing all working capital, inventory, equipment, supplies and personal property, including a point of sale ("POS") system needed for the successful operation of National Events at the Amphitheater, provided that if such POS system is used for Local or Private Events, a proportionate share of the costs attributable to the use of the POS system for such Local Event or Private Event may be charged to the City by the Operator pursuant to Section 3.4(e), and further provided that if any such equipment, supplies or personal property is available from the City, the Operator shall use such City Equipment pursuant to the City's policies governing the use of such equipment and not incur expenses to purchase or rent the same from a third-party unless the Operator determines, in its discretion, that the equipment, supplies or personal property available from the City is not suitable for use at any such National Event;

(f) developing, implementing and enforcing policies for secure admission and use of the Amphitheater for National Events;

(g) arranging for, coordinating and supervising any contractor, Concessionaire and vendor in connection with the management, operation and production of all National Events and such Local Events as specifically requested by the City, and Amphitheater operations and Concession Operations in connection therewith;

(h) arranging for personnel for security, crowd control, traffic control, temporary lighting towers in the parking lots, parking lot attendants, ticket sellers, ticket takers, ushers, public address system announcers, public restroom attendants (if the Operator elects to provide such attendants), emergency medical technicians and medical personnel and such other personnel necessary for the successful operation, management and production of National Events and such Local Events as specifically requested by the City;

(i) coordinate with performing artists in advance of and during National Events and such Local Events as specifically requested by the City and produce or supervise all aspects of the production of such Events;

(j) arranging for, selling, issuing, marketing and establishing the price of any rates, rentals, fees or other charges for goods, services, tickets, licenses or rights available at or with respect to National Events and such Local Events as specifically requested by the City at the Amphitheater, subject to the approval of the City through the Facility Manager;

(k) providing, through Ticketmaster or such other vendor as Operator may select, a system to provide ticket sales 24 hours a day, seven days a week;

(l) obtain, maintain or cause to be maintained all necessary Permits for the operation of the Amphitheater;

(m) developing and maintaining, in cooperation with the Facility Manager, an Annual Maintenance Plan consistent with the Parties' responsibilities under this Agreement, the implementation of which shall keep and maintain the Amphitheater in good condition and repair and in a safe, clean, attractive, and high-quality manner consistent with and meeting the standards and specifications established by similarly situated venues;

(n) performing Ordinary Maintenance;

(o) developing, maintaining, and implementing a marketing plan for the advertising and promotion of the Amphitheater and National Events, which may contain but not be limited to the following elements: (i) market research; (ii) market position; (iii) marketing objectives; (iv) marketing strategies; (v) booking priorities; (vi) targeted events local, regional, national and international; (vii) targeted meetings, conventions and trade shows; (viii) industry advertising campaign; (iv) internal and external support staff; (x)

advertising opportunities at the local, regional and national level; (xi) attendance at various trade shows, conventions and seminars; and (xii) develop and maintain a web site for the Amphitheater;

(p) developing, maintaining and implementing among itself and all subcontractors or vendors, a policy for the secure management of cash on the Property and accurate accounting thereof; and

(q) coordinating with the Facility Manager regarding public relations and other promotional programs for the Amphitheater.

4.3 Scheduling Agent's Responsibilities. The Scheduling Agent shall take all actions reasonably necessary or desirable for the booking and scheduling of National Events at the Amphitheater, in accordance with all Laws and the terms and conditions of this Agreement. The Scheduling Agent shall use its reasonable good faith efforts considering market conditions and attendance patterns to secure National Events appropriate to the operation of the Amphitheater and the Governmental Program. Without limiting the generality of the foregoing, the Scheduling Agent's obligations and responsibilities shall include:

- (a) payment of all Booking Expenses;
- (b) arranging for, scheduling and booking National Events at the Amphitheater;
- (c) coordinating with the Operator and Facility Manager the scheduling of National Events so as to accommodate other Events and maximize the use of the Amphitheater;
- (d) providing a finalized schedule of National Events for the upcoming Event Season to the Facility Manager and Operator on or before April 1 of each year; and
- (e) performing such additional services consistent with Scheduling Agent's rights and obligations related to booking and scheduling National Events at the Amphitheater under this Agreement as may reasonably be requested by the Operator or Facility Manager.

4.4 Staffing. The Operator and Scheduling Agent shall each employ sufficient persons of sufficient expertise, training and qualification and solicit or otherwise retain independent contractors as the Operator and Scheduling Agent determines in their sole discretion is necessary to fulfill their respective obligations under this Agreement to safely, effectively and efficiently carry out and book, schedule, manage, operate and produce all National Events and such Local Events as requested by the City at the Amphitheater in furtherance of the Governmental Program, which may include, without limitation, staff, ticket sellers, ticket takers, ushers, attendants, security crowd control personnel, trained medical emergency personnel, maintenance crews and technical staff. The Operator and Scheduling Agent shall have sole control over the operation, direction,

and supervision of their respective staff, subject to the terms of this Agreement. The Operator and Scheduling Agent shall each provide competent and adequate instruction, training and supervision of all activities carried out on the Properties, and shall be responsible for conducting or causing to be conducted background checks on all personnel to be present on the Properties, and for ensuring that such personnel have all required licenses, certifications or approvals as may be required by Laws. The Operator and Scheduling Agent shall list any vacant or new positions they may have at any time during the initial term of this Agreement or any Renewal Term with the State Workforce Centers as required by Minnesota Statutes, Section 116L.66.

4.5 Reimbursement to City.

(a) To the extent the Operator or Scheduling Agent fails to timely pay costs and expenses under this Article, and the City pays any such costs on behalf of the Operator or Scheduling Agent, the Party responsible for such payment shall reimburse the City for the same within thirty (30) days of the date the City bills the Operator or Scheduling Agent therefore.

(b) To the extent the City incurs any Reimbursable Costs, the Operator shall reimburse the City for the same within thirty (30) days of the date the City bills the Operator therefore.

4.6 Other Public Events. The Operator will work in cooperation with the Facility Manager to maximize access for Local Events in type and on terms mutually agreeable to the Parties; provided that the Operator shall be reimbursed for the reasonable and necessary out of pocket Operator Expenses related to such Events as provided in Section 7.4.

4.7 Environmental. The Operator shall not permit on the Properties and will take precautions against the presence of Hazardous Materials as the result of its use and occupancy of the Properties, except to the extent specifically authorized by Governmental Authorities, any Required Environmental Permit, or pursuant to Environmental Laws from and after the Commencement Date. The Operator and its agents shall comply with applicable Environmental Laws relating to their respective use or occupancy of the Amphitheater.

4.8 Liquor Licenses.

4.8.1 The Operator, with the cooperation of the City, shall cause the Concessionaire to obtain and maintain all intoxicating liquor licenses that are reasonably required for the Amphitheater, and the City shall support any reasonable legislative changes required in order for the Operator or Concessionaire to do so, if necessary. In the event applicable Laws do not allow the Operator or Concessionaire to obtain such licenses, the City shall obtain and maintain all intoxicating liquor licenses that are reasonably required for the Amphitheater and permit their use for the benefit of the Operator and/or Concessionaire. In all Events operated and produced by the Operator, the Operator and Concessionaire shall comply with the terms of all intoxicating liquor licenses that are reasonably required for the Amphitheater. Any costs incurred by the City related to such

liquor licenses and the City's obtaining or cooperating with the Operator with regard thereto shall be paid for, or reimbursed to the City, by the Operator.

4.8.2 The Operator specifically agrees that it will take all steps required by the State of Minnesota to ensure that all persons involved in the sale, use, consumption or distribution of alcoholic beverages on or about the Amphitheater during Events operated and produced by the Operator have received the required State of Minnesota training for serving and distributing alcohol. Such training shall include checking proper identification before selling alcohol, not serving to minors, recognizing the signs of excessive consumption, and how to refuse to serve someone. The Operator also agrees to adhere to all Laws relating to or governing the sale, use, consumption or distribution of alcoholic beverages. Any failure or negligence on the part of the Operator to comply with any rules, regulations or training relating to the sale, use, consumption or distribution of alcoholic beverages shall be the exclusive and sole liability of the Operator, and in no way shall any liability be transferred to the City.

4.8.3 The Operator shall require the Concessionaire to carry liquor liability (dram shop) coverage, if the Concessionaire obtains the licenses to sell, use, consume or distribute alcoholic beverages, or the City obtains such licenses. Operator shall require Concessionaire to carry such liquor liability coverage for the duration of this Agreement and shall have limits with minimum per occurrence limits of Two Million and No/100 Dollars (\$2,000,000.00) and minimum aggregate limits of Five Million and No/100 Dollars (\$5,000,000.00). These limits may be met with the purchase of an umbrella or excess policy. For example, the foregoing insurance requirements can be satisfied with liquor liability coverage with limits of Two Million and No/100 Dollars (\$2,000,000.00) and an excess liability coverage of Three Million and No/100 Dollars (\$3,000,000.00). The Operator shall be required to carry the necessary liquor liability (dram shop) coverage described in this Section in the event that the Operator obtains the licenses to sell, use, consume or distribute alcoholic beverages. The City shall review the liquor liability (dram shop) coverage for compliance with this Agreement when the City receives an application for the issuance or renewal of such licenses from the Operator or the Concessionaire.

4.9 Communication System. The Operator shall have control of and over the Communication System at the Amphitheater with respect to all Events operated and produced by the Operator, provided, however, that: (a) the Operator shall not display information that is reasonably likely to be offensive to the general public; and (b) the City shall have access to and control of the Communication System to the extent necessary to protect public safety. The Operator will furnish its own Communication System operator (or operators) for Events operated and produced by the Operator. A Communication System operator employed or contracted for by the City shall have access to the Communication System to the extent reasonable and necessary to use the Communication System as permitted by (b) above. The Operator shall pay all electricity and maintenance costs for such use of the Communication System at National Events.

4.10 Advertising. The provisions on Advertising and Advertising Rights in this Agreement shall become effective upon execution of this Agreement. The Operator will have the exclusive right to exercise, market and sell all Advertising Rights and, subject to the requirements

of Article Seven below, to receive all revenues therefrom. The City will work in good faith with the Operator, subject to compliance with all Laws, to maximize signage at the Amphitheater for display at National Events. The Operator shall pay all expenses and taxes associated with the exercise of such Advertising Rights and Advertising. The Operator will not seek or offer Advertising Rights or Advertising, except in accordance with this Agreement and the Advertising Standards attached hereto as **Exhibit F**, without the prior written consent of the City. Any Advertising reasonably requested to be placed by the City in support of Local Events, or for a civic purpose, provided that such Advertising is either produced by the City or the City agrees to reimburse the Operator for any costs of production unless otherwise agreed, shall be placed in the Amphitheater if the same does not conflict or obscure any other Advertising, without charge to the City, and shall not result in any reduction of fees or payments paid by the Operator to the City. Such Advertising space shall be in a size and at locations reasonably agreeable to both the City and the Operator.

4.11 Standard of Care. Services provided by the Operator and the Scheduling Agent under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the music venue management profession or industry in operating venues of similar size in similar locales. The Operator and Scheduling Agent shall each be liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by either Party's breach of this standard of care. The Operator and Scheduling Agent shall put forth reasonable efforts to complete their respective duties in a timely manner. Neither the Operator nor the Scheduling Agent shall be responsible for delays caused by factors beyond their control or that could not be reasonably foreseen at the time of execution of this Agreement. The Operator and the Scheduling Agent shall each be responsible for costs, delays or damages arising from unreasonable delays in their performance of their respective duties.

ARTICLE FIVE

Minimum Number of National Events

5.1 The Operator and Scheduling Agent agree that the minimum number of National Events in each year of this renewal term used by the City to measure the Operator's and Scheduling Agent's performance under this Agreement will be twelve (12), in addition to the other terms and conditions contained in this Agreement.

ARTICLE SIX

Repair and Maintenance

6.1 Event Operations and Cleanup. The Operator shall be responsible for conducting Event Setup and Event Cleanup prior to and following every National Event.

6.2 Responsibility for Damage. The Operator shall bear maintenance or repair costs for damage to the Properties caused by acts or omissions of the Operator, its agents, employees, contractors, guests or invitees.

6.3 Ordinary Maintenance.

(a) The Operator shall be responsible for conducting Ordinary Maintenance on the Amphitheater and the Properties or through the utilization of City-provided services or contractors. The City shall be responsible for conducting Emergency Repairs on the Amphitheater and the Properties.

(b) The Operator shall be responsible for all expenses which may be incurred by the City for Ordinary Maintenance conducted by the City on the Amphitheater and the Properties.

6.4 Major Maintenance. The City shall be responsible for conducting Major Maintenance on the Amphitheater and the Properties. The City shall be responsible for all expenses which may be incurred in conducting Major Maintenance, unless the City and the Operator otherwise agree to a share of the costs of such Major Maintenance in writing. In the event that the Parties agree to share the costs of an item of Major Maintenance, the Operator may request authorization from the City to utilize funds in the Capital Expenditure Reserve Fund to pay for its share of such expenses pursuant to Section 12.3.3.

6.5 Furnishings.

6.5.1 The Operator shall be responsible for the maintenance of all furnishings and any costs incurred thereby.

6.5.2 The Operator shall be responsible for the replacement of damaged Furnishings, either as identified in each year's Annual Status Report or, if any Furnishing is damaged to the extent that it cannot be safely used for its intended purpose, within 30 days of the date that either the Operator or the City becomes aware of the damaged condition of the Furnishing. The Operator shall replace damaged Furnishings within 30 days of receiving written notice from the City that such damaged Furnishing must be replaced.

6.5.3 The City must provide written approval of any Furnishing to be purchased by the Operator prior to the Operator's purchase of the replacement Furnishing. Replacement furnishings must be of equivalent make and quality to the damaged items being replaced. The City may provide the Operator with a list of approved replacement Furnishings in its written notice to the Operator that replacement is necessary.

6.5.4 Any Furnishing initially supplied by the Operator for the performance of their obligations under this Agreement, and not provided by the City at any time, shall not be deemed City-owned property pursuant to this Section. This section shall only apply to those Furnishings initially acquired by the City and brought to the Amphitheater and Properties by the City for use by the City and the Operator.

6.5.5 The Parties agree and acknowledge that any Furnishings initially purchased and supplied by the City for use by the Operator, and all replacement Furnishings purchased

by the Operator pursuant to this Section, shall remain at all times City-owned property unless otherwise agreed to in writing by the Parties.

6.6 City Equipment.

6.6.1 The Operator shall be responsible for the maintenance of all City Equipment at the Amphitheater and Properties and any costs incurred thereby.

6.6.2 The Operator shall be responsible for the replacement of damaged or non-functioning City Equipment, either as identified in each year's Annual Status Report or, if any City Equipment is damaged to the extent that it cannot be safely used for its intended purpose, within 30 days of the date that either the Operator or the City becomes aware of the damaged condition of the City Equipment. The Operator shall replace damaged City Equipment within 30 days of receiving written notice from the City that such damaged City Equipment must be replaced.

6.6.3 The City must provide written approval of any City Equipment to be purchased by the Operator prior to the Operator's purchase of the replacement City Equipment. Replacement City Equipment must be of equivalent make and quality to the items being replaced. The City may provide the Operator with a list of approved replacement City Equipment in its written notice to the Operator that replacement is necessary.

6.6.4 Any City Equipment initially supplied by the Operator for the performance of their obligations under this Agreement, and not provided by the City at any time, shall not be deemed City-owned property pursuant to this Section. This section shall only apply to that City Equipment initially acquired by the City and brought the Amphitheater and Properties by the City for use by the City and the Operator.

6.6.5 The Parties agree and acknowledge that any City Equipment initially purchased and supplied by the City for use by the Operator, and all replacement City Equipment purchased by the Operator pursuant to this Section, shall remain at all times City-owned property unless otherwise agreed to in writing by the Parties.

ARTICLE SEVEN
Financial Provisions

7.1 Payments by Operator. The Operator shall pay to the City (a) the Operating Fee, (b) the Additional Operating Fee, and (c) any other sums and charges expressly required to be paid to the City by the Operator pursuant to the terms of this Agreement, including Reimbursable Costs.

7.2 Operating Fee and Additional Operating Fee.

(a) During the Term and subject to Sections 7.2(c) and 7.2(d), the Operator shall pay an annual Operating Fee to the City for National Events in a sum equivalent to \$4,329.73 for each National Event. In no event shall the Operator Fees paid to the City be calculated by a number less than the minimum number of National Events established under Section 5.1 of this Agreement. The Operator agrees that if the Operator fails to hold a minimum of twelve (12) National Events in any year of this renewal term, as established under Section 5.1, the Operator shall pay Operating Fees to the City in addition to the Operating Fees for each National Event actually held for the number of National Events below the minimum established under Section 5.1 that the Operator failed to hold as required in this Agreement.

Example A: Operator holds fourteen (14) National Events and pays to the City an Operator Fee of \$4,329.73 for each National Event, for a total of \$59,356.22.

Example B: Operator Holds nine (9) National Events and pays to the City an Operator Fee of \$4,329.73 for each National Event held, for a total of \$38,157.57. In addition, the Operator pays to the City an Operator Fee for each of the three (3) National Events below the minimum established under Section 5.1 that the Operator failed to hold, for an additional total of \$12,719.19.

(b) During the Term and subject to Sections 7.2(c) and 7.2(d), the Operator shall pay to the City an Additional Operating Fee of \$2.16 per ticket for each ticket sold after the first 2,000 tickets for each National Event.

(c) The Operating Fee and Additional Operating Fee shall increase annually based on CPI Increases, or, in the alternative, the increase shall be two percent (2%) per year, whichever is less, as set forth in **Exhibit G**, Tables G.1 and G.2.

(d) The City shall use the Operating Fee and Additional Operating Fee solely for the purpose of paying the Owner's Expenses and reimbursing itself amounts that the City has advanced under this Agreement because of the Operator's or Scheduling Agent's failure to make any payments required for the operation and maintenance of the Amphitheater or the Properties. The City shall establish a separate account for all Operating Fees and Additional Operating Fees received during the Term or any Renewal Term of this Agreement to be used exclusively for the purposes described herein. In the event that the total Operating Fees and Additional Operating Fees received by the City during any Term or Renewal Term exceeds, at the end of the Term or all Renewal Terms, the total of (i) the Owner's Expenses, (ii) any unreimbursed Owner's Expenses from previous years, and (iii) the expected Owner's Expenses as set forth in any Annual Maintenance Plan, the amount of such excess shall not be paid to the City, or if paid, shall be refunded by the City to Operator at the latest time specified in Section 7.4 herein. In no event shall the Operating

Fee and Additional Operating Fee continue to be paid or applied past the expiration of the Term or any Renewal Term.

(e) The City is authorized under the provisions of Minnesota Statutes, Sections 471.15 to 471.191, to expend funds for the operation and maintenance of the regional park and Amphitheater and the operation of the Governmental Program as a part of its program of public recreation, and to directly operate such program. Pursuant to this authority, the City shall maintain all Operator Fees and Additional Operator Fees for the purposes of paying for or reimbursing itself for all maintenance costs qualifying as Owner's Expenses under this Agreement in accordance with the terms of Section 7.2(d).

7.3 Capital Costs Payment.

(a) For each year during the Term, the Operator shall pay into the Capital Expenditure Reserve Fund a sum equivalent to \$0.51 per ticket for each ticket sold to a National Event ("Capital Costs Payment"). The Operator shall pay the Capital Costs Payment to the Capital Expenditure Reserve Fund by the end of each year during the Term and may elect to pay such amount in monthly, quarterly, or annual installments, as the Operator may determine. The Capital Costs Payment shall increase annually based on CPI Increases, or, in the alternative, the increase shall be two percent (2%) per year, whichever is less, as set forth in Table G.3 under **Exhibit G**.

(b) The Operator shall, in its judgment and discretion, but only after reasonable consultation with the City, make the final determination as to how to spend the Capital Costs Payments in the Capital Expenditure Reserve Fund. Such funds are held for the benefit of the Amphitheater. Upon termination or expiration of this Agreement, any balance remaining in the Capital Expenditure Reserve Fund shall remain the property of the Operator, but shall be transferred to the City and applied to the operating costs of the Project or as otherwise permitted by the State Grant Agreement ("Allowable Payments"). To the extent any portion of such balance remaining in the Capital Expenditure Reserve Fund at termination cannot be applied by the City for Allowable Payments, it shall be transferred to the Operator and remain the property of the Operator.

7.4 Reimbursements to Operator. The Operator shall submit documentation of all expenses incurred by the Operator in connection with Operator's scheduling, staging, operation or production of Events other than National Events at the City's request within ten (10) business days after the conclusion of the Event. The City shall reimburse the Operator for all expenses incurred by the Operator in connection with such Events within thirty (30) business days of the City's receipt of the Operator's documentation of such expenses pursuant to this paragraph.

7.5 Payments to Scheduling Agent. The Operator shall compensate the Scheduling Agent for the Scheduling Agent's responsibilities under this Agreement pursuant to the terms and conditions set forth in a separate agreement between the Operator and Scheduling Agent. Unless

otherwise expressly stated herein, the City shall owe no compensation directly to the Scheduling Agent.

7.6 Timing of Payments. The Operator shall make or cause to be made all payments to the City pursuant to this Article in two annual installments, the first on or before July 15 of every year during the Term and the second on or before the date which is the later of (i) fifteen (15) business days after submitting the Annual Financial Report to the City pursuant to Section 8.5.2; or (ii) forty-five (45) days after the conclusion of the final Event at the Amphitheater each year.

7.7 Real or Personal Property Taxes. The Properties are currently exempt from Real or Personal Property Taxes. The City and the Operator currently believe that the Properties, including the use of the Amphitheater as currently contemplated in the Governmental Program, will continue to be exempt from Real or Personal Property Taxes at all times during the Term or any Renewal Term of this Agreement, and shall reasonably cooperate with each other to maintain such exemption.

7.8 Tax Compliance. The Operator shall be responsible for collecting, accounting for, and remitting any sales taxes, admissions and amusement taxes, operating fees or other taxes or fees assessed on ticket sales, merchandise sales, concession sales, advertising, or other operations and activities conducted by the Operator at the Amphitheater; provided that the Operator shall have no such responsibility or obligation with respect to any such taxes for Local Events, unless and only to the extent the Operator is selling tickets to such event and such ticket proceeds are subject to any such tax or is selling any merchandise or concessions at such event or otherwise as required by Law. The City and any other Governmental Authority shall have the right to audit and inspect Operator's records to the extent necessary to insure the Operator's compliance with any tax obligations caused by the Operator's use of the Amphitheater.

7.9 Renegotiation of Payments. Subject to the provisions of Section 8.11(g) and Section 19.19, after the initial year of the Term, either Party may initiate renegotiation of the financial provisions of this Article by providing 90 days' written notice to the other Parties. Thereafter, in the event that the Owner's Expenses exceed the total amount of the Operating Fee and Additional Operating Fee by ten percent (10%) or more in any year after the initial year of the Term, the City may initiate renegotiation of the financial provisions of this Article by providing 90 days' written notice to the other Parties. The City may invoke this provision one time every two years following the initial year of the Term. Each Party shall negotiate in good faith following receipt of any Party's notice under this Section 7.9, and any changes to the financial provisions shall be made by amendment subject to Section 19.19.

ARTICLE EIGHT

Governmental Program Management and Oversight

8.1 Initial Report. The Operator and the Scheduling Agent shall cooperate with each other and jointly provide the City an initial program evaluation report summarizing the Operator's and Scheduling Agent's planned use of and activities with respect to the Amphitheater and the Properties in furtherance of the Governmental Program, including all projected revenues and

Operator Expenses for each year of the Term and such other information as may reasonably be requested by the City, prior to the Substantial Completion Date.

8.2 Annual Budgets. The Operator and the Scheduling Agent shall cooperate with each other and jointly provide the City annual proposed budgets for their administration of National Events in furtherance of the Governmental Program on or before July 1st, preceding any year during the Term or any Renewal Term. The annual proposed budget shall list all projected revenues and Operator Expenses and Booking Expenses by category, with such detail as the City may reasonably require. The annual proposed budget shall reflect all revenues projected to be received with respect to the Properties, specifically including all revenues to be collected and retained by the Operator pursuant to this Agreement. If the City objects in writing to the proposed annual budget or any part thereof, the Operator shall respond promptly to each such objection and work with the City and, if applicable, the Scheduling Agent, to resolve any differences in a manner reasonably acceptable to all Parties. A final annual budget for National Events will be jointly submitted by the Operator and the Scheduling Agent to the City prior to December 1st each year for the approval of the City's governing body. The Operator shall assume responsibility for the management, operation and production of National Events and such Local Events as requested by the City at the Amphitheater as provided in this Agreement, and shall not incur expenses in excess of the approved annual budget, except as the approved annual budget may be revised.

8.3 Capital Improvement Plan. After the initial year of the Term, the Operator shall provide to the City annually, together with the Annual Budget required in Section 8.2, a Capital Improvement Plan that identifies for each year remaining in the Term at a minimum (a) the Capital Improvements proposed to be completed, (b) cost estimates for each such proposed Capital Improvement, and (c) a timetable for completion of each such proposed Capital Improvement. If the City objects in writing to the proposed Capital Improvement Plan or any part thereof, the Operator shall respond promptly to each such objection and work with the City to resolve any differences in a manner reasonably acceptable to all Parties. The Operator shall submit a final annual Capital Improvement Plan to the City prior to December 1st each year for the approval of the City's governing body. Thereafter, Capital Improvements shall be made in accordance with Article Twelve hereof.

8.4 Scheduling Agent Reports. Within ten (10) business days after the conclusion of any National Event, the Scheduling Agent shall submit a report to the Operator and the City detailing the Booking Expenses incurred by the Scheduling Agent and any revenues received by the Scheduling Agent in connection with such National Event.

8.5 Operator Financial Reports.

8.5.1 Event-Specific Reports. Within thirty (30) days after the conclusion of every Event operated and produced by the Operator, the Operator shall provide to the City financial statement(s) detailing the financial performance and impact of the Event that includes at least the following information:

- (a) detailed statement of the total amount of Operator Expenses incurred and paid by the Operator related to the Event;

(b) detailed statement of the total amount of Booking Expenses incurred and paid by the Scheduling Agent related to the Event;

(c) detailed statement of the gross revenues from the sources specified in Section 1.11 collected by Operator, or Operator's agents, including the Scheduling Agent, in connection with or attributable to the Event; and

(d) calculation of the net profit or loss generated by the Event.

8.5.2 Annual Financial Reports. Within thirty (30) days after the conclusion of the last Event in any year during the Term or any Renewal Term under this Agreement, the Operator shall provide to the City financial statements detailing the financial performance and impact of the National Events for that year that includes at least the following information:

(a) detailed statement of the total amount of Operator Expenses incurred and paid by the Operator under this Agreement for such year;

(b) Detailed statement of the total amount of Booking Expenses incurred and paid by the Scheduling Agent for such year;

(c) detailed statement of the Annual Gross National Events Revenues for such year; and

(d) detailed statement of the Annual Net National Events Income for such year.

8.6 City Financial Reports. Within 30 days after the conclusion of the last National Event in any year during the Term or any renewal Term under this Agreement, the City shall provide to the Operator financial statements detailing the Owner's Expenses incurred and paid by the City, and those submitted for reimbursement to the Operator by the City, for such year.

8.7 Annual Status Reports. The Operator shall cooperate with the Scheduling Agent and deliver to the City, within ninety (90) days after the end of each calendar year during the Term or any Renewal Term, a joint report detailing the Operator's and Scheduling Agent's use of and activities related to the Properties in furtherance of the Governmental Program during the preceding year, including all activities and events taking place on the Properties, together with true and correct financial statements of the Operator's and Scheduling Agent's financial condition and operations prepared according to generally accepted accounting principles for similar facilities for the preceding calendar year and supporting documentation reasonably requested by the City, including but not limited to:

(a) names and addresses of the Operator's and the Scheduling Agent's Board of Directors;

(b) documentation that the Operator continues to be organized as corporation, active and in good standing under the laws of Missouri, and registered with the Minnesota Secretary of State;

(c) documentation that the Scheduling Agent continues to be organized as corporation, active and in good standing under the laws of Kansas, and registered with the Minnesota Secretary of State;

(d) itemization of volunteer services provided to the Operator and Scheduling Agent in support of the Governmental Program;

(e) restrictions, if any, relating to persons eligible to benefit from Governmental Program programming operated, managed or produced by the Operator and Scheduling Agent;

(f) names and addresses of all of the Operator's and the Scheduling Agent's respective employees providing services related to the Governmental Program and/or the Properties;

(g) report of Governmental Program programming provided by the Operator and the Scheduling Agent on the Properties;

(h) number of persons to whom Governmental Program programming was provided by the Operator and the Scheduling Agent for the preceding calendar year, and to the extent possible, the residence area of the persons and whether they are adults or minors;

(i) report on the physical condition of the Amphitheater and an itemization of needed repairs and improvements;

(j) report on the physical condition of the Furnishings and City Equipment and an itemization of needed replacement Furnishings and City Equipment;

(k) statement of fees and charges applicable to programming provided by the Operator and the Scheduling Agent in furtherance of the Governmental Program; and

(l) explanation of any programming sub-contracted by the Operator and the Scheduling Agent in furtherance of the Governmental Program.

8.8 Determination of Continued Governmental Use. The Operator and the Scheduling Agent shall provide any additional records or other information reasonably requested by the City in order to allow the City to annually determine that the Operator and the Scheduling Agent are using and conducting their activities with respect to the Properties in furtherance of the Governmental Program and for no other purpose.

8.9 Audit. The City may audit the financial statements delivered by the Operator and the Scheduling Agent to City pursuant to this Agreement, either on an independent basis or in

conjunction with the City's annual audit. As determined by the City in its reasonable discretion, and upon written notice to the Operator and/or the Scheduling Agent of such determination, the City will retain a reputable auditing firm, acceptable to the City, to conduct an audit of the Operator's and/or Scheduling Agent's financial statements related to the Properties at the City's expense. The audit report shall include the following information:

- (a) the financial condition of the Operator and/or the Scheduling Agent, and their ability to perform their obligations under this Agreement;
- (b) the status of all Operator or Scheduling Agent projects related to the Governmental Program;
- (c) the status of all subcontracts to which the Operator and/or Scheduling Agent are parties relative to the Properties; and
- (d) such other matters relating to the Operator's and/or Scheduling Agent's revenues and expenses relative to the Governmental Program, which may affect the interests of the City, and such other information as the City may require.

8.10 Notice to City. The Operator and the Scheduling Agent shall each inform the City of unbudgeted single transactions or circumstances of which either Party has knowledge having or which may have a material effect on the operation of the Governmental Program or the Properties. Such notice by the Operator or the Scheduling Agent to the City shall be in writing and provided to the City within 30 days of the Operator's or the Scheduling Agent's determination that a material issue or circumstance exists that requires disclosure to the City. For purposes of this Agreement, an issue having a "material effect on the Governmental Program or the operation of the Properties" includes matters which will have a cost impact of Five Thousand Dollars (\$5,000.00) or more.

8.11 State Grant Agreement Requirements. In addition to the requirements related to the State Grant and the State Grant Agreement set forth elsewhere in this Agreement, the provisions set forth in this Section are required under the State Grant Agreement.

- (a) The Parties acknowledge and recognize that this Agreement is subject to the terms and conditions of the State Grant Agreement. Accordingly, this Agreement must be approved in writing by the Commissioner, and absent such approval it is null and void and of no force or effect. The Parties agree to cooperate to obtain all necessary approvals and signatures under the State Grant Agreement.
- (b) The Parties acknowledge and recognize that the terms, conditions and provisions of the State Grant Agreement control over any inconsistent provisions in this Agreement.
- (c) The Parties acknowledge that the City is a public body with authority under the Act to own the Amphitheater and operate the Governmental Program.

(d) This Agreement may be terminated by the City if there is an Event of Default by the Operator or the Scheduling Agent, or in the event that the City is no longer authorized by law to own the Property or operate the Amphitheater.

(e) This Agreement will automatically and immediately terminate upon a termination of the Governmental Program or change in the Governmental Program that no longer allows the City to continue to own or operate the Amphitheater for the Governmental Program. The City will give the Operator and Scheduling Agent as much notice as possible and, to the extent permitted by Law, the Parties shall use good faith efforts to enter into a new agreement with the same or substantially similar terms as this Agreement.

(f) The Operator and Scheduling Agent are prohibited from creating or allowing any voluntary lien or encumbrance or any involuntary lien or encumbrance upon the Amphitheater or Properties, except with the advance written consent of the Commissioner.

(g) Any changes, alterations, or modifications to this Agreement must be agreed to, in writing, by the Commissioner.

8.12 Compliance as to Bonds.

(a) Subject to direction from Minnesota Management and Budget and the requirements of Section VIII.6. of the G.O. Compliance Checklist for Use Contracts for the Project, if interest on any bonds issued by the State for the Project is intended to be excludable from gross income for federal income tax purposes (“Tax-Exempt Bonds”) and if the City or the Commissioner determines, based upon the written notice of nationally recognized bond counsel, that any action under this Agreement creates a significant risk that interest on any Tax-Exempt Bonds will not be excludable from gross income for federal income tax purposes, the Parties shall negotiate in good faith to agree on alternative action to avoid such a result. In no event shall the foregoing agreement require any Party to amend or modify any material term of this Agreement.

(b) The Operator and Scheduling Agent each irrevocably waive any claim for depreciation or investment credit with respect to the Properties and the Amphitheater and shall not deduct any payments to the City provided for in this Agreement as rent.

8.13 State Right to Access Records. The Parties shall each take any such actions and provide any records or other information related to the Properties to the Commissioner as the Commissioner shall determine necessary to ensure that the interest to be paid on the GO Bonds supporting the Grant is exempt from federal taxation.

ARTICLE NINE
Utilities

9.1 Utilities and Services.

(a) The Operator shall be responsible for contracting for all utilities serving the Properties, including but not limited to, fuel oil, gas services, trash collection, cable or satellite television, internet connection fees for public internet, or any other like utilities.

(b) The City shall be responsible for contracting for electricity, telephone, water, sewer service, storm sewer service, subject to reimbursement from the Operator for all costs associated with such utilities.

(c) The City shall maintain its own secure, non-public internet connection service at the Amphitheater and shall not be reimbursed by the Operator for the cost of this internet service.

9.2 No Warranty. The Operator does not warrant that any of the services referred to above will be free from interruption. The City does not warrant that any other services that City provides upon or to the Properties will be free from interruption. The City and the Operator acknowledge that any one or more of such services may be suspended if there is Force Majeure, or if repairs or improvements must be made for reasons beyond the control of either Party. Any such interruption or discontinuance of services shall never be deemed an eviction or disturbance of the Operator's use and possession of the Property, or any part thereof, or render either Party liable to the other Party for damages or relieve the Operator or the City from performance of their respective obligations under this Agreement.

ARTICLE TEN
Subcontracting and Assignment

10.1 Assignment. Neither the Operator nor the Scheduling Agent shall assign their respective responsibilities under this Agreement to any third party without first obtaining the written consent of the City to such assignment.

10.2 Subcontracting. The City acknowledges that as a part of its management, operating and production responsibilities, the Operator is required to (i) license Concessionaires, vendors or third party designees for purposes of providing Concessions or merchandise products and services and to provide access to those Concessionaires, vendors or designees to areas inside or within proximity of the Amphitheater for purposes of vending, selling or otherwise distributing Concessions or merchandise; (ii) license or grant Advertising Rights at the Amphitheater, (iii) lease any equipment for use or operation in the Amphitheater. Such licensing, provision of products and services, Advertising, and production of Events shall be in accordance with the terms of this Agreement. Furthermore, the City acknowledges that the Operator and the Scheduling Agent will work in close cooperation in scheduling, operating and producing National Events at the Amphitheater in furtherance of the Governmental Program, and authorizes the Operator to cause any of its obligations under this Agreement to be satisfied by and through the Scheduling Agent without requiring the approval of the City, provided that in so satisfying the Operator's obligations hereunder, the Scheduling Agent shall at all times be subject to the terms and conditions of this

Agreement to the same extent as the Operator would be if the Operator were to perform such obligation(s) itself.

10.3 Third Party Beneficiary. The City shall be a third-party beneficiary of any assignment, license, or subcontract entered into by the Operator or the Scheduling Agent with respect to the Governmental Program and/or the Properties.

10.4 Subordination of Third-Party Contracts. Any assignment, license or subcontract entered into by the Operator or the Scheduling Agent with respect to the Governmental Program or the Properties shall be subject to the terms of this Agreement. This Agreement shall prevail.

ARTICLE ELEVEN

Subordination

11.1 Subordination. This Agreement is subject and subordinate to all present or future financial encumbrances on the Properties and is further subject to all present and future easements, conditions and encumbrances of record, and to all applicable Laws. Further, this Agreement shall be subordinate to the provisions of and requirements of the State Grant Agreement and any other existing or future agreement between the City and the State of Minnesota relative to the State Grant, the Project or the development, operation, or maintenance of the Amphitheater. Such subordination shall be self-executing without further act on the part of City, the Operator or the Scheduling Agent; provided, however, that Operator and the Scheduling Agent shall each at any time hereafter, at the request of the City or any lien holder, or any purchaser of the Property, execute any instruments that may be required, and the Operator and the Scheduling Agent hereby irrevocably authorize the City to execute and deliver in their name(s) any such instrument if the Operator or the Scheduling Agent fails to do so.

ARTICLE TWELVE

Alterations and Capital Improvements

12.1 No Representations. The City has made no promise to alter, remodel, repair or improve the Properties after the Substantial Completion Date and has made no representation of the condition of the Properties or the suitability of the Properties for the purpose stated herein other than what is contained in this Agreement.

12.2 Capital Improvements. Subject to the City's right to make Capital Improvements to the Properties pursuant to Section 3.5.5 (provided that the City will not unreasonably interfere with the use and operation of the Amphitheater or the Properties in performing any such Capital Improvement) and the provisions of this Agreement, the Operator shall construct Capital Improvements identified in the Capital Improvement Plan with funds in the Capital Expenditure Reserve Fund in accordance with this Article. Unless initiated by the City or otherwise agreed by both Parties, Capital Improvements under this Section shall be at the sole expense of the Operator.

12.3 Capital Expenditure Reserve Fund.

12.3.1 Establishment.

(a) The Capital Expenditure Reserve Fund shall be established by the Operator. The fund shall be entitled “Amphitheater Capital Expenditure Reserve Fund” and shall be utilized for the purpose of funding Capital Improvements.

(b) The City’s representative will have the right to review and be consulted on all uses of the Amphitheater Capital Expenditure Reserve Fund.

12.3.2 Deposits into the Capital Expenditure Reserve Fund by Operator. The Operator shall deposit the Capital Costs Payment into the Capital Expenditure Reserve Fund when due. Any investment income earned on the amounts in the Capital Expenditure Reserve Fund shall be added to the principal of the Capital Expenditure Reserve Fund and used as provided in this Agreement.

12.3.3 Payment for Capital Improvements. The funds in the Capital Expenditure Reserve Fund shall not be used for Ordinary Maintenance, Major Maintenance, or Alterations, but shall be used solely for the payment of Capital Improvements as set forth herein. Notwithstanding the foregoing, the City may provide written authorization for the use of Capital Expenditure Reserve Funds for Ordinary Maintenance, Major Maintenance, or Alterations upon written request by the Operator for such use. Subject to the terms of this Agreement, the cost of Capital Improvements shall be paid from the Capital Expenditure Reserve Fund. To the extent that funds in the Capital Expenditure Reserve Fund are not sufficient to pay for any authorized Capital Improvements, the City may pay the additional cost of such Capital Improvements from sources other than the Operating Fee, subject to the approval of the City’s governing body. If the City does not approve any such expenditures, the Operator may elect to pay any such expenditures, but is not required to pay for such expenditures.

12.4 Other Alterations. The Operator shall not make any Capital Improvements or Alterations to the Amphitheater or the Properties not identified in the Capital Improvement Plan without the written consent of the City. Consent shall be obtained by submitting a written description to the City of the proposed Alteration, including its location, size, proposed use, funding source, and any other information that may be required by the City. The City may approve, disapprove, require more information, or require certain modifications to the proposed Alteration in its sole judgment and discretion. The Operator’s final written proposal including a clear indication of the City’s assent and signed by the City shall constitute written consent of the City. Unless otherwise agreed by both Parties, approved Alterations under this Section shall be at the sole expense of the Operator. Nothing herein shall limit the Operator’s ability to make temporary or other minor alterations that will not alter the Properties or the Amphitheater in a permanent way or affect the ongoing operation of the Governmental Program.

12.5 Insurance and Security. The Operator shall require appropriate insurance, faithful performance bonds, and labor and material bonds for all contractors who work on the Properties, and shall allow no mechanic’s liens to be incurred or filed against the Properties.

12.6 Lien Waivers. The Operator shall provide lien waivers to the City from any contractors or subcontractors furnishing material, service or labor to any alteration or improvement, which the City may, in its discretion, require in advance of approving the alteration or improvement.

12.7 Protection from Liens. The Operator shall promptly pay for all alterations and improvements that are requested by the Operator and approved by the City under this Agreement, and shall promptly pay all laborers employed and all subcontractors furnishing material or services to the Operator for such alterations and improvements. The Operator hereby covenants and agrees that the Operator will not permit or allow any mechanics' or materialmen's liens to be placed on the City's interest in the Properties during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so filed against the City's interest, the Operator shall take all steps necessary to remove it within 120 days of its being filed. The Operator may contest any such mechanic's liens and prosecute all proceedings for the purpose of such contest pursuant to Minn. Stat. § 514.01, *et seq.* provided the Operator first posts a surety bond, in favor of and insuring the City, in an amount equal to 125% of the amount of any such lien, or otherwise protect the City from foreclosure of the Properties.

12.8 Improvements Property of the City. Any Capital Improvements or Alterations made to the Amphitheater or the Properties shall become a part thereof and remain the property of the City and be surrendered with the Amphitheater and Properties to the City without compensation to the Operator on the Expiration Date.

ARTICLE THIRTEEN **Representations and Warranties**

13.1 Representations and Warranties of City.

(a) The City represents and warrants that the City is a municipal corporation organized and existing under and by virtue of and pursuant to the laws of the State of Minnesota and has the power to enter into this Agreement and carry out its obligation hereunder.

(b) On the conditions that the City is able to secure the State Grant funding and required matching funds from non-State sources to fund the Project, the City shall undertake reasonable efforts to construct the Project in accordance with the Amphitheater Final Plans.

13.2 Representations and Warranties of Operator. The Operator makes the following representations and warranties:

(a) The Operator is organized as a corporation, active and in good standing under the laws of Missouri, and registered with the Minnesota Secretary of State, and has

the power and authority to enter into this Agreement and to perform its obligations hereunder and is not in violation of the laws of the State of Minnesota or any other State.

(b) The Operator shall maintain its status as a corporation, active and in good standing under the laws of Missouri, and registered with the Minnesota Secretary of State, at all times from and after the Effective Date while the Term or any Renewal Term are in effect.

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Operator is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(d) The Operator will cooperate with the City with respect to any litigation commenced with respect to the Property, so long as the Operator is not an adverse party to such litigation.

(e) Whenever any Event of Default occurs and if the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Operator under this Agreement, and the City prevails in such action, the Operator agrees that it shall, within 30 business days of written demand by the City, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

(f) The Operator shall promptly advise the City in writing of all litigation or claims affecting any part of the Properties and all written complaints and charges made by any governmental authority materially affecting the Properties or materially affecting the Operator or its activities.

(g) The Operator has the resources and capability to satisfy its obligations under this Agreement to operate, manage and produce Events at the Amphitheater as required herein.

(h) The Operator shall not create any lien, encumbrance, easement, license, right-of-way, covenant, condition or restriction that would encumber the title to the Amphitheater or Properties, without the prior written approval of the City, to be granted or withheld in its sole discretion.

(i) The Operator acknowledges the City's contributions to the Project and to thereafter maintaining the Amphitheater during the Term and any renewal Term as otherwise specified in this Agreement, and further warrants that the Operator will not to seek subsidies or other financial assistance from the City to cover any Operator Expenses or other expenses made the responsibility of the Operator hereunder.

13.3 Representations and Warranties of the Scheduling Agent.

(a) The Scheduling Agent is organized as a corporation, active and in good standing under the laws of Kansas, and registered with the Minnesota Secretary of State, and has the power and authority to enter into this Agreement and to perform its obligations hereunder and is not in violation of the laws of the State of Minnesota or any other State.

(b) The Scheduling Agent shall maintain its status as a corporation, active and in good standing under the laws of Kansas, and registered with the Minnesota Secretary of State, at all times from and after the Effective Date while the Term or any Renewal Term are in effect.

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Scheduling Agent is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(d) The Scheduling Agent will cooperate with the City with respect to any litigation commenced with respect to the Properties, so long as the Scheduling Agent is not an adverse party to such litigation.

(e) Whenever any Event of Default occurs and if the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Scheduling Agent under this Agreement, and the City prevails in such action, the Scheduling Agent agrees that it shall, within 30 business days of written demand by the City, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

(f) The Scheduling Agent shall promptly advise the City in writing of all litigation or claims affecting any part of the Properties and all written complaints and charges made by any governmental authority materially affecting the Properties or materially affecting the Scheduling Agent or its activities.

(g) The Scheduling Agent has the resources and capability to satisfy its obligations under this Agreement.

(h) The Scheduling Agent shall not create any lien, encumbrance, easement, license, right-of-way, covenant, condition or restriction that would encumber the title to the Amphitheater or the Properties without the prior written approval of the City, to be granted or withheld in its sole discretion.

(i) The Scheduling Agent acknowledges the City's contributions to the Project and to thereafter maintaining the Amphitheater during the Term and any renewal Term as otherwise specified in this Agreement, and further warrants that the Scheduling Agent will not to seek subsidies or other financial assistance from the City to cover any Booking Expenses or other expenses made the responsibility of the Scheduling Agent hereunder.

ARTICLE FOURTEEN **Destruction or Damage**

14.1 Operator Obligations. The Operator agrees:

(a) That it will obtain all necessary state and local permits for its operations as necessary.

(b) That it will operate in accordance with all federal, state and local laws and regulations.

(c) That it will be solely responsible for security of the Amphitheater and the Operator's Property and any items of City-owned property placed under the Operator's control during any Event and for any loss, damage, or destruction thereof occurring during any Event.

(d) That during each Event it will keep the Properties in such repair as at the commencement of the said Event, reasonable wear and tear and damage by fire or extended coverage perils only excepted.

(e) That it will not injure, overload or suffer to be injured or overloaded the Properties or any part thereof.

(f) That it will not make or suffer any unlawful, improper or offensive use of the Properties (as reasonably determined by the City's City Council in light of the purposes of this Agreement, the Project, and the Governmental Program) or any use thereof contrary to any Law, or which shall be injurious to any person or property or which shall be liable to endanger or affect any insurance on the said Properties.

14.2 Casualty Damage.

(a) The City shall have no liability to the Operator or the Scheduling Agent if all or a substantial portion of the Amphitheater is partially or wholly destroyed by fire or casualty, or if the Amphitheater cannot be used because of a valid governmental order prohibiting its use.

(b) In the event of total or partial destruction rendering the Amphitheater not suitable for National Events or of a valid governmental order prohibiting use of the Amphitheater for National Events, this Agreement will be suspended immediately as to National Events until the governmental order ceases to prohibit use for National Events or the Amphitheater is repaired. The City shall notify the Operator and Scheduling Agent, within ninety (90) days from the date the Amphitheater is no longer suitable for National Events, whether the City will rebuild or repair the Amphitheater. If the City decides to rebuild or repair the Amphitheater, this Agreement will continue to be suspended until the Amphitheater is suitable for National Events and the City shall notify the Operator and the Scheduling Agent of the City's best estimate of when the Amphitheater will be suitable for National Events again. For each six (6) month period while this Agreement is suspended, the Term shall be extended by six (6) months, if permitted under the State Grant Agreement. During the period of time while the Amphitheater is not suitable for National Events, finding a substitute location for National Events shall be the Operator's sole responsibility and expense, provided the City shall provide such assistance as the Operator may reasonably request and the Operator shall retain all revenues from such National Events at a substitute location with no obligation to make payments to the City under Article Seven herein. During any such period of suspension, the Operator shall only be responsible for the necessary Operator Expenses related to the Amphitheater so long as the City or its contractors have not taken possession of the Amphitheater to repair such damage. If the City decides not to rebuild the Amphitheater, this Agreement shall terminate and the City shall pay over to the Operator any unapplied available insurance proceeds related to the Operator's Property.

14.3 Restoration. In the event of partial destruction of the Amphitheater, the Amphitheater shall be deemed suitable for National Events, if eighty percent (80%) of the Amphitheater seats can be used, if access to the Amphitheater is not obstructed, if the supporting areas (stage, back stage, restrooms, concession areas and points of sale) are useable, as reasonably determined by the Operator, and if use is deemed safe by competent authority. In such event, this Agreement shall continue in full force and effect with no reduction in the Management Fee or in the other payments due from the Operator to the City or the Scheduling Agent or in any payments due from the City to the Operator pursuant to this Agreement. All insurance proceeds from the insurance carried pursuant to Section 17.1 shall be applied to the restoration of the Amphitheater in the event of any partial destruction. The City shall restore the Amphitheater as soon as reasonably practicable, but no later than within one (1) year of the City's receipt of the insurance proceeds relating the such damage or destruction; otherwise, either the Operator or the Scheduling Agent may terminate this Agreement and the City shall pay over to the Operator any unapplied available insurance proceeds related to Operator's Property.

ARTICLE FIFTEEN
Indemnification

15.1 Operator Indemnification of City. The Operator shall indemnify, protect, save, hold harmless and insure the City, and its respective officers, employees and members and agents, from and against any and all claims and demands for, or litigation with respect to, all damages which may arise out of or be caused by the Operator's or its agents, employees, contractors or subcontractors with respect to the Operator's performance of its obligations under this Agreement or its presence on or use of the Properties, or that of the Operator's employees, members, board, officers, agents, volunteers, clients and invitees. The Operator shall defend the City against the foregoing, or litigation in connection with the foregoing, at the Operator's expense, with counsel reasonably acceptable to the City. The City, at its expense, shall have the right to participate in the defense of any Claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of the City or any of its officials, employees or agents. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.

15.2 Scheduling Agent Indemnification of City. The Scheduling Agent shall indemnify, protect, save, hold harmless and insure the City, and its respective officers, employees and members and agents, from and against any and all claims and demands for, or litigation with respect to, all damages which may arise out of or be caused by the Scheduling Agent's or its agents, employees, contractors or subcontractors with respect to the Scheduling Agent's performance of its obligations under this Agreement or its presence on or use of the Properties, or that of the Scheduling Agent's employees, members, board, officers, agents, volunteers, clients and invitees. The Scheduling Agent shall defend the City against the foregoing, or litigation in connection with the foregoing, at the Scheduling Agent's expense, with counsel reasonably acceptable to the City. The City, at its expense, shall have the right to participate in the defense of any Claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of the City or any of its officials, employees or agents. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.

15.3 Assumption of Risk. The Operator and Scheduling Agent both know, understand and acknowledge the risks and hazards associated with using the Properties for the purposes stated herein and hereby assumes any and all risks and hazards associated therewith. The Operator and Scheduling Agent hereby irrevocably waive any and all claims against the City or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by the Operator or Scheduling Agent as a result of the Operator's or Scheduling Agent's use of the Properties, and hereby irrevocably release and discharge the City and any of its officials, employees or agents from any and all claims of liability.

15.4 City Indemnification. The City shall indemnify the Operator and Scheduling Agent against any and all claims and demands for damages which may arise out of or be caused by the City's use of the Properties or any defective conditions on the Premises not caused or contributed to by the Operator or Scheduling Agent.

15.5 No Third-Party Right of Action. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the Operator, the Scheduling Agent or the City. The services of the Operator and the Scheduling Agent under this Agreement are being performed solely for City's benefit, and no other entity shall have any claim against the Operator or the Scheduling Agent because of this Agreement or the performance or nonperformance of services provided hereunder.

15.6 Additional Indemnification by Operator. Due to the fact that the Operator will be selling and distributing alcoholic beverages during National Events and such Local Events as requested by the City, the Operator specifically agrees to defend and hold harmless the City and its respective officers, employees and members and agents, from any and all liability for claims for injury, death or property damage, relating to or resulting from the sale, use, consumption or distribution of alcoholic beverages on or about the Amphitheater or Properties during any Event operated or produced by the Operator.

ARTICLE SIXTEEN
Compliance with Laws, Ordinances and Regulations

16.1 Throughout the Term of this Agreement, the Operator and the Scheduling Agent, at their sole cost and expense, shall promptly comply with all present and future Laws.

16.2 The Operator and Scheduling Agent shall likewise observe and comply with, or shall cause to be observed and complied with, all the requirements of all policies of comprehensive general liability, fire and other insurance at any time in force with respect to the Properties.

ARTICLE SEVENTEEN
Insurance

17.1 City's Required Insurance. The City shall maintain property insurance on the Amphitheater located on the Property, at the City's expense. The City shall name the Operator and the Scheduling Agent as additional insureds. The City shall be responsible for maintaining sufficient insurance coverage for its own activities on the Properties during Events not operated and produced by the Operator.

17.2 Operator's Required Insurance. The Operator shall maintain, at the Operator's expense, insurance on the Operator's property located in and upon the Properties and shall assume the risk of loss to such property on the Properties. The Operator shall further maintain, at the Operator's expense, the following insurance policies covering its operations, activities and presence on the Properties in the listed amounts:

Worker's Compensation

Statutory Limits

Employer's Liability	\$500,000 each accident \$500,000 disease policy limit \$500,000 disease each employee
Commercial General Liability	\$2,000,000 property damage and bodily injury per occurrence \$4,000,000 general aggregate \$4,000,000 Products – Completed Operations Aggregate
Comprehensive Automobile Liability	\$1,000,000 combined single limit each accident (shall include coverage for all owned, hired and non-owned vehicles)
Umbrella or Excess Liability	\$1,000,000

17.3 Scheduling Agent's Required Insurance. The Scheduling Agent shall maintain, at the Scheduling Agent's expense, insurance on the Scheduling Agent's property located in and upon the Properties, if any, and shall assume the risk of loss to such property on the Properties. The Scheduling Agent shall further maintain, at the Scheduling Agent's expense, the following insurance policies covering its operations, activities and presence on the Properties in the listed amounts:

Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000 each accident \$500,000 disease policy limit \$500,000 disease each employee
Commercial General Liability	\$1,000,000 property damage and bodily injury per occurrence \$4,000,000 general aggregate \$4,000,000 Products – Completed Operations Aggregate
Comprehensive Automobile Liability	\$1,000,000 combined single limit each accident (shall include coverage for all owned, hired and non-owned vehicles)
Umbrella or Excess Liability	\$1,000,000

17.4 Additional Requirements.

(a) All policies required of the Operator or Scheduling Agent in this Article shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per project" basis.

(b) With the exception of the Worker's Compensation policies, all policies required of the Operator or Scheduling Agent in this Article shall insure the defense and indemnity obligations assumed by the Operator or Scheduling Agent, as applicable, under this Agreement, and shall name the City as an additional insured under the policy.

(c) All policies required of the Operator or Scheduling Agent in this Article shall contain a provision that coverages afforded thereunder shall not be canceled or non-renewed, nor shall coverage limits be reduced by endorsement, without 30 days prior written notice to the City.

17.5 Certificates of Insurance. True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, shall be provided to the City by the Operator and Scheduling Agent prior to the Substantial Completion Date and will be attached hereto as **Exhibit H**.

17.6 Effect of Failure to Provide Insurance. If either of the Operator or the Scheduling Agent fails to provide the insurance required by this Article or to require the specified insurance from subcontractors, as applicable, then such Party will defend, indemnify and hold harmless the City and the City's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, the City may require the Party to:

- a. Furnish and pay for a surety bond, satisfactory to the City, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from the Party's insurance company.

The indemnifying Party will take the action required by the City within 15 days of receiving notice from the City.

Notwithstanding the foregoing, the City reserves the right to terminate this Agreement pursuant to Article Eighteen in the event that insurance requirements are not maintained or required as provided herein during the term of this Agreement.

ARTICLE EIGHTEEN **Default and Remedies**

18.1 Operator Default. If the Operator shall default in the payment of any sum required to be paid by the Operator under this Agreement and such default shall continue for 15 days after written notice to the Operator, or if the Operator shall default in the observance or performance of any other covenants or conditions in this Agreement, which the Operator is required to observe or perform, and such default shall continue for 30 days after written notice to the Operator, or if a default involves a Hazardous Condition and is not cured by the Operator immediately upon written notice to the Operator, or if the interest of the Operator in this Agreement shall be levied upon under execution or other legal process, or if any voluntary petition in bankruptcy or for corporate reorganization or any similar relief shall be filed by the Operator, or if any involuntary petition in bankruptcy shall be filed against the Operator under any federal or state bankruptcy or insolvency act and shall not have been dismissed within 30 days following the filing thereof, or if a receiver shall be appointed for the Operator or any of the property of the Operator by any court and such receiver shall not be dismissed within 30 days from the date of appointment, or if the Operator shall make an assignment for the benefit of creditors, or if the Operator shall abandon or vacate the Property, then the City may treat the occurrence of any one or more of the foregoing events as a breach of this Agreement and thereupon at its option may, without notice or demand of any kind to the Operator or any other person, terminate this Agreement and immediately resume exclusive possession of the Properties, in addition to all other rights and remedies provided at law or in equity.

18.2 Scheduling Agent Default. If the Scheduling Agent shall default in the payment of any sum required to be paid by the Scheduling Agent under this Agreement and such default shall continue for 15 days after written notice to the Scheduling Agent, or if the Scheduling Agent shall default in the observance or performance of any other covenants or conditions in this Agreement, which the Scheduling Agent is required to observe or perform, and such default shall continue for 30 days after written notice to the Scheduling Agent, or if the interest of the Scheduling Agent in this Agreement shall be levied upon under execution or other legal process, or if any voluntary petition in bankruptcy or for corporate reorganization or any similar relief shall be filed by the Scheduling Agent, or if any involuntary petition in bankruptcy shall be filed against the Scheduling Agent under any federal or state bankruptcy or insolvency act and shall not have been dismissed within 30 days following the filing thereof, or if a receiver shall be appointed for the Scheduling Agent or any of the property of the Scheduling Agent by any court and such receiver shall not be dismissed within 30 days from the date of appointment, or if the Scheduling Agent shall make an assignment for the benefit of creditors, or if the Scheduling Agent shall abandon or vacate the Property, then the City may treat the occurrence of any one or more of the foregoing events as a breach of this Agreement and thereupon at its option may, without notice or demand of any kind to the Scheduling Agent or any other person, terminate this Agreement, in addition to all other rights and remedies provided at law or in equity.

18.3 City Default. If the City shall default in the payment of any sum required to be paid by the City to the Operator under this Agreement, or if the City shall default in the observance or performance of any of the other covenants, obligations or conditions in this Agreement, which the City is required to observe or perform, and such default shall continue for 30 days after written notice to the City, then the Party affected by the City's default may treat the occurrence of any one or more of the foregoing events as a breach of this Agreement and thereupon at its option may terminate this Agreement, in addition to all other rights and remedies provided at law or in equity.

ARTICLE NINETEEN
Miscellaneous

19.1 Voluntary and Knowing Action. The Parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

19.2 Authorized Signatories. The Parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

19.3 Relationship of Parties. With respect to the Operator's management, operating and production responsibilities under this Agreement, the Operator at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of the City for any purpose. Further, with respect to the Scheduling Agent's responsibilities under this Agreement, the Scheduling Agent shall at all times and for all purposes hereunder, shall be an independent contractor is not an employee of the City for any purpose. No statement contained in this Agreement shall be construed so as to find the Operator or the Scheduling Agent to be an employee of the City, and neither the Operator nor the Scheduling Agent shall be entitled to any of the rights, privileges, or benefits of employees of the City, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

The Operator and the Scheduling Agent shall both comply with the applicable provisions of all Federal and State tax laws.

The Operator and the Scheduling Agent shall both at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein.

The Operator and the Scheduling Agent are responsible for hiring sufficient workers to perform the services/duties required by this Agreement, withholding their taxes and paying all other employment tax obligations on their behalf.

The authority of the Operator and the Scheduling Agent with respect to the Properties shall be limited to those matters which are specifically addressed in this Agreement.

19.4 Notices. All notices required under the terms of this Agreement shall be deemed to have been properly served or given three days after their deposit in the United States mail if sent by registered or certified mail, return receipt requested, postage prepaid, or two days after deposit in a nationally recognized overnight courier service, addressed to the City, the Operator or the Scheduling Agent at the addresses identified in Article One or to such other address within the

continental limits of the United States and to the attention of such Party as the Parties may from time to time designate by written notice to the other Parties.

19.5 Condemnation. If all or any part of the Properties are taken in condemnation proceedings instituted under power of eminent domain or is conveyed in lieu thereof under threat of condemnation, any money paid because of such condemnation or conveyance shall be paid to the City.

19.6 Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, the Operator and the Scheduling Agent both agree that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Party and involve transactions relating to this Agreement. The Operator and the Scheduling Agent both agree to maintain these records for a period of six years from the Expiration Date.

19.7 Governing Law. This Agreement shall be deemed to have been made and accepted in Stearns County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.

19.8 Data Practices. The Parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*

19.9 Nondiscrimination. Neither the Operator nor the Scheduling Agent shall discriminate against any employee, applicant for employment, or user or participant in the Governmental Program. The Operator and the Scheduling Agent and their employees and agents shall not discriminate because of race, religion, color, creed, age, disability, sex, national origin, sexual orientation, or status with regard to public assistance, or as otherwise prohibited by state or federal law, against any person by refusing to furnish such person any service or privilege offered to or enjoyed by the general public, nor shall the Operator or the Scheduling Agent or their employees and agents publicize the facilities provided under this Agreement in any manner that would directly or inferentially reflect on the acceptability of the patronage of any person because of race, religion, color, creed, age, disability, sex, national origin, sexual orientation, status with regard to public assistance, or other protected status as described in state or federal law. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.

19.10 Dispute Resolution. The Parties agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall first be submitted to mediation utilizing the Minnesota District Court Rule 114 Roster. The Operator and the Scheduling Agent further agree to require an equivalent

dispute resolution process governing all contractors, subcontractors, suppliers, consultants, and fabricators concerned with the Project, the Governmental Program and/or the Properties.

19.11 Force Majeure. The Parties shall each be excused from performance under this Agreement while and to the extent that either of them are unable to perform, because of a Force Majeure. In the event any Party is rendered unable wholly or in part by Force Majeure to carry out its obligations under this Agreement then the Party affected by Force Majeure shall give written notice with explanation to the other Parties immediately.

19.12 Interest by City Officials. No elected or appointed official, officer, or employee of the City or the City shall during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

19.13 No Waiver. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.

19.14 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

19.15 Headings, Captions and Recitals. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the agreement or any provision hereof. The recitals set forth at the beginning of this Agreement are a part of this Agreement.

19.16 Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any Party or Parties, and any undischarged obligations of the City, the Operator or the Scheduling Agent arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.

19.17 Exhibits. The exhibits attached to this Agreement are considered an integral part of it as if fully set forth within it.

19.18 Entire Agreement. All prior understandings, letters of intent, discussions and agreements are merged in the governing terms of this Agreement, which is a complete and final written expression of the intent of the Parties. Every warranty or representation binding upon the City is set forth in this Agreement. The City makes no further warranties or representations and neither the Operator nor the Scheduling Agent have relied on any other warranties or representations, express or implied, relative to the condition of the Properties, the Governmental

Program, or the terms of this Agreement. In the event of a conflict or inconsistency between the terms of this Agreement and those of any other agreement between the Parties, the terms of this Agreement shall govern.

19.19 Modification/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by an authorized representative of each of the City, the Operator, and the Scheduling Agent, and approved by the Commissioner.

19.20 Execution. This Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any Party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing Party.

[Remainder of page left intentionally blank]

Approved by:

**COMMISSIONER OF MINNESOTA
MANAGEMENT & BUDGET**

By: _____

Date: _____

EXHIBIT A
Legal Description of Property

Lot 001, Block 002 of TRANSFORMER QUARRY, in the City of Waite Park, according to the plat thereof on file and of record in the office of the County Recorder, Stearns County, Minnesota

EXHIBIT B
Legal Description of Adjacent Property and Parking Lot Property

Adjacent Property:

Lot 001 Block 001 of TRANSFORMER QUARRY, in the City of Waite Park, according to the plat thereof on file and of record in the office of the County Recorder, Stearns County, Minnesota

Parking Lot Property:

LOT OUTLOT B
PARKWAY PARK CITY
PLAT 2
SECTION 17 TOWNSHIP
124 RANGE 028

EXHIBIT C

AMPHITHEATER FINAL PLANS AND SPECIFICATIONS

[Plans and Specifications attached hereto]

EXHIBIT D

STATE GRANT AGREEMENT

[Grant Agreement attached hereto]

EXHIBIT E

RESTRICTIONS ON AMPHITHEATER USE

1. No part of the Amphitheater or the Properties shall be utilized for: (a) adult oriented materials or uses associated with sexually oriented businesses, as that term is defined in Section 78.2 of the Waite Park City Code or successor provisions thereto (the “Code”), (b) the sale, lease, trade or other transfer of firearms; (c) any sales of drug related paraphernalia; (d) activities not permitted by any license required to be held by the Operator; (e) pawnshop, as that term is defined in Section 75.2 of the Code; (f) massage parlor; or (f) tattoo parlor.
2. No part of the Amphitheater or the Properties shall be used for outdoor storage of any kind except as expressly permitted by the City.
3. No part of the Amphitheater or the Properties shall be used for the storage or disposal of garbage, refuse, or debris, except to the extent that such storage or disposal is an “accessory use” to the Amphitheater, as defined and provided for in the Code.
4. No freestanding broadcasting towers nor telecommunications antennas shall be erected on any part of the Properties except as expressly permitted by the City; provided, however, that this restriction shall not prohibit the installation of concealed antennas, wiring, metal or carbon filter elements, and satellite dishes used to receive radio, television, or electromagnetic waves.
5. No sale of alcohol or liquor for off premises consumption shall be made on the Amphitheater or the Properties.

EXHIBIT F

ADVERTISING STANDARDS

“Advertising Standards” shall mean the standards set forth below which shall apply to all Advertising and Advertising Rights:

- (a) the term during which any such Advertising or Advertising Rights shall apply shall, at the option of and upon notice from the City, expire no later than the expiration of the Term (whether on its scheduled Expiration Date or by earlier exercise of any termination rights in this Agreement);
- (b) any exercise of Advertising Rights by the Operator shall be in compliance with all Laws;
- (c) the Operator shall not display advertising on the Amphitheater or the Properties or any portion thereof which:
 - (1) is contrary to law or promotes any unlawful activity or purpose;
 - (2) is reasonably likely to be offensive to the general public;
 - (3) does not meet national network television broadcast standards for advertising;
 - (4) contains advertising related to tobacco products; or
 - (5) contains political advertising.
- (d) the Operator shall not display the name of any entity that is engaged in any of the activities listed in paragraph (c) above the Amphitheater or the Properties;
- (e) all Advertising shall comply with all signage, zoning and similar Laws;
- (f) signage must at all times comply with the requirements contained in Chapter 53 of the Waite Park City Code and any other applicable Laws; and
- (g) the Operator shall not permit any name to be given to the Amphitheater or the Properties, or any portion thereof that is the name of or a tribute to a living person.

EXHIBIT G

CPI INCREASE TABLES

Table G.1		
Operating Fee for National Events		
7.2 (a)		
Year	2% Increase	
	Cost per Year per Event	Percent Increase
2025	\$4,244.83	N/A
2026	\$4,329.73	2%
2027	\$4,416.32	2% or CPI *
2028	\$4,504.65	2% or CPI *
2029	\$4,594.74	2% or CPI *
2030	\$4,686.64	2% or CPI *
2031	\$4,780.37	2% or CPI *

Annual increase shall be based on CPI or 2% whichever is less. Calculations are based on 2%, numbers will change if CPI is under 2%

Table G.2		
Additional Operating Fee		
7.2 (b)		
Year	2% Increase	
	Cost Per Year per Event	Percent Increase
2025	\$2.12	N/A
2026	\$2.16	2%
2027	\$2.21	2% or CPI *
2028	\$2.25	2% or CPI *
2029	\$2.29	2% or CPI *
2030	\$2.34	2% or CPI *
2031	\$2.39	2% or CPI *

Annual increase shall be based on CPI or 2% whichever is less. Calculations are based on 2%, numbers will change if CPI is under 2%

Table G.3		
Capital Cost Payment		
7.3 (a)		
Year	2% Increase	
	Cost Per Year per Event	Percent Increase
2025	\$0.50	N/A
2026	\$0.51	2%
2027	\$0.52	2% or CPI *
2028	\$0.53	2% or CPI *
2029	\$0.54	2% or CPI *
2030	\$0.55	2% or CPI *
2031	\$0.56	2% or CPI *

Annual increase shall be based on CPI or 2% whichever is less. Calculations are based on 2%, numbers will change if CPI is under 2%

** CPI - Consumer Price Index for all Urban Consumers. This rate will be set on June 1st of each year for the upcoming year, for City of Waite Park budgeting purposes. City of Waite Park will submit in writing each year by June 15th to the Operator the proposed upcoming rate for the next year. This letter will show the rates in the agreement and the % of increase.*

EXHIBIT H

CERTIFICATES OF INSURANCE

[Certificates to be attached hereto no on or before substantial completion]