

MANAGEMENT AGREEMENT

This MANAGEMENT AGREEMENT ("Agreement"), is made and entered into this ____ day of _____, 2006 by and between the CITY OF RACINE, a municipal corporation of the State of Wisconsin with principal offices at 730 Washington Avenue, Racine, Wisconsin 53403 ("Owner"), and Compass of Racine, LLC, an Iowa company, with offices at 103 East 6th Street, Suite 200, PO Box 625, Ames, Iowa 50010 ("Manager"), collectively hereinafter called the "Parties" and individually as a "Party".

WHEREAS, pursuant to the terms of the Management Agreement dated November 19, 2004, the Manager has been providing management and marketing services ("Services") to the Owner by managing the Racine Civic Centre, which consists of Festival Hall and adjoining grounds, a multipurpose hall and open area, and Memorial Hall, an auditorium and meeting room facilities; and

WHEREAS, the Agreement as now extant expires December 31, 2006; and

WHEREAS, the Parties desire to revise and extend the term of their agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1

RETENTION OF MANAGER

Owner hereby retains Manager as an independent contractor for the purpose of performing the Services described in this Agreement. Subject to the terms and conditions set forth herein, Manager agrees to provide the Services in accordance with this Agreement, to perform the Services consistent with the procedures, policies and contract forms approved by Owner, and Manager and Owner accept the relationship of trust and confidence established between them by this Agreement. The purpose of that relationship and this Agreement is to enable Manager and Owner to work together to efficiently and effectively manage the timely marketing and sales effort and the operations of the Civic Centre in a manner that best serves Owner's needs. Manager agrees to furnish its best skill and judgment in performing the Services and to cooperate with Owner's agents in furthering the interests of Owner. Manager agrees to use its best efforts to furnish efficient business administration and supervision and to maximize revenues for the Civic Centre. In conducting such services Manager hereby acknowledges and agrees that it owes a fiduciary obligation to Owner. Owner acknowledges that it will cooperate with Manager to operate the Civic Centre according to those sound business practices and industry standards consistent with Owner's policies and procedures.

The Parties acknowledge that Owner will retain title, ownership and exclusive control of the Civic Centre and that Manager will not acquire title to, any security interest in, or any rights of any kind in or to the Civic Centre, or to any incomes, receipts or revenues therefrom.

ARTICLE 2

COMMENCEMENT DATE AND TERM

The Agreement shall be for a term of five years (the "Term"), commencing on January 1, 2007 (the "Commencement Date") and expiring on December 31, 2011, unless earlier terminated as set forth herein. Any references herein to a period of a "year" shall mean a calendar year, unless otherwise specifically provided.

ARTICLE 3

MANAGEMENT AGREEMENT

3.1 Provision of Services. During the Term, Manager shall provide Owner the Services generally described in this Article 3 and as additionally described in this Agreement, and shall be further subject to the provisions of Racine Municipal Code §82-201(a), which is attached hereto as Exhibit B.

3.2 Grant to Manager. Owner agrees that Manager will have the exclusive right to manage, market, promote, operate and maintain the Civic Centre, except as otherwise provided herein, and to sell sponsorship rights and advertising at the Civic Centre during the Term, subject to and consistent with Owner's policies and procedures, and subject to Owner's right to terminate this Agreement as provided herein.

3.3 Manager's Responsibilities. Manager shall charge lessees standard rates that shall be subject to the prior approval of Owner's Common Council. Manager's recommendations for rates and fees shall be included in the annual budget and business plan submitted by Manager to Owner for approval, as described in Article 4 herein. Rate and fee increases shall not exceed 5% per year without further approval of Owner's Common Council. Rate and fee increases of 5% or less per year do not require Owner's approval. Manager shall notify Owner of any rate or fee increase at least 60 days prior to its effective date. Rates for 2004 and Proposed Rates for 2005 are as described in Exhibit C, attached hereto. In directing or arranging for services or material, Manager shall employ all persons performing such services or shall contract with a third party for the performance of such services, except as otherwise provided herein (see, e.g., section 7.3), and excepting that Owner shall provide all maintenance and repair services for the heating, ventilating and air conditioning systems for the Civic Centre, and shall invoice Manager for the cost thereof. Manager's responsibilities shall include, with limitation, grounds maintenance consisting of: grass cutting, trimming shrubs, bushes and trees, and planting of flowers, including the Festival Hall island area in the street right of way in front of the building, and litter pick up; minor maintenance including, without limitation, replacing light bulbs, perform minor electrical and plumbing repairs -- includes labor and materials; janitorial work, including, without limitation, all labor and materials; set-up, including labor and materials. Major maintenance to be performed by Owner shall include maintenance and preventive maintenance for heating, ventilating and air conditioning systems, elevators, electrical systems and compressors. Manager shall be responsible for maintenance of all kitchen equipment. Capital projects such as roof replacement and structural repairs shall be Owner's responsibility. Manager may contract with an Affiliate of Manager (as hereinafter defined) for such services and materials, so long as the cost and service quality of such services or materials

is comparable in Owner's sole judgment and discretion to the cost and service quality of such services or materials if performed or delivered by an unrelated third party. Within thirty days prior to each such instance, Manager shall disclose to Owner, in writing, such intended employment or contractual relationship, including the details of the related materials and/or services. For the purposes of this Agreement, "Affiliate" means any person or entity that controls, is controlled by or is under common control with Manager, with "control" meaning ownership of fifty percent (50%) or more of the voting interests in the entity in question.

No later than sixty days after the Commencement Date, Manager shall prepare and submit to Owner for approval certain facility procedures, addressing significant elements of its services, reports and contract forms. Owner's approval will not be unreasonably withheld. Once approved, these procedures and practices shall be implemented by Manager.

3.3.1 Marketing and Promotion. Manager shall manage and direct all marketing and sales activities. Manager shall conduct a promotional campaign for the Civic Centre in accordance with a plan for promotion which shall be prepared and submitted to Owner for approval within ninety days after the date of this Agreement. This plan will augment and incorporate the marketing plan and budgets previously submitted and approved by Owner. The plan for promotion shall be reviewed and updated at least once each year with the proposed plan update delivered to Owner simultaneously with delivery of the annual budget as part of the annual business plan.

3.3.2 Scheduling. Manager shall develop and maintain all Civic Centre event schedules. These shall be prepared in accordance with Owner's policies and procedures, applicable law, and appropriate accessibility for the community to the Civic Centre, including the scheduling of annual events set forth in Exhibit D. Manager shall negotiate event agreements, based on Owner approved forms, as the Owner's agent. Manager shall, on a monthly basis, provide Owner's designated representative with the events schedule to enable Owner to properly program HVAC controls, and Manager shall update the schedule on a weekly basis.

3.3.3 Operations Plan. In addition to the Business Plan referenced in Section 3.5 hereof, Manager shall prepare and develop an annual operations plan, including an Annual Budget, as defined below, which shall be submitted to Owner by March 1, 2005 for 2005, and as provided in section 4.1 for subsequent years. The goals of the Business Plan shall be reflected in the Annual Budget. Manager will cooperate and work with Owner to ensure that the operations plan meets Owner's reasonable requirements and expectations.

3.3.4 Concessions. Manager will manage the concession services at the Civic Centre, including Owner's contracts existing on the Commencement Date (see Exhibit E) for the sale, through manual service, vending machines and other methods (Concessions), of the commodities and services set forth in subsections (i) through (iv) hereof (Commodities), or supervise the conduct of the Concessions by third-parties, subject to Owner's prior approval, further subject to expiration or termination of Owner's contracts existing on the date of this Agreement, and except as otherwise provided herein:

- i. Foods of all kinds, including candies, cooked foods, prepared foods, ready to serve foods, sweets, desserts, ice cream and popcorn.
- ii. Beverages of all kinds, including alcohol beverages, to the extent they may legally be sold (it being understood that a separate license or permit is required), or hereafter may become legally able to be sold, in accordance with applicable laws, ordinances, rules and regulations, and with respect to alcohol beverages, further subject to expiration or termination of Owner's existing contract for the sale of alcohol beverages.
- iii. Tee-shirts, programs, souvenirs and other “novelty” items (Novelties), excepting that lessees of the facilities may sell food, beverages and Novelties during their events on the premises. Manager may subcontract concession and catering services subject to Owner’s approval, and Manager shall manage these subcontracts.
- iv. Tobacco and tobacco products shall not be sold at the Civic Centre.

3.3.5 Maintenance. Manager shall manage, directly or through Owner approved subcontracts, the maintenance of the Civic Centre and its grounds in a manner and to the extent prescribed by Owner, including but not limited to general cleaning, lawn mowing, flower planting and maintenance and tree care, subject to expiration or termination of Owner's existing grounds maintenance contract

3.3.6 Custodial and Cleaning Services. Manager shall manage, directly or through Owner approved subcontracts, routine cleaning and janitorial services.

3.3.7 Pest Control. Manager shall manage, directly or through Owner approved subcontracts, pest control.

3.3.8 Snow Removal. Manager shall manage, directly or through Owner approved subcontracts, snow removal on the Civic Centre pathways and sidewalks designated by Owner, subject to expiration or termination of Owner's contract for such work for the Civic Centre existing on the date of this Agreement.

3.3.09 Trash Removal/ Recycling. Manager shall manage, directly or through Owner approved subcontracts, removal of all trash from the Civic Centre and agrees that it shall not permit any employee, concessionaire or caterer to place refuse outside the Civic Centre adjacent to the kitchen area, except in designated trash containers, the location of which shall be approved by Owner. Manager shall recycle cardboard and glass, metal and plastic beverage containers, and shall on a quarterly basis report to Owner the quantities recycled.

3.3.10 Operations Services. Manager shall manage, directly or through Owner approved subcontracts, services required to stage (set up and tear down) the Civic Centre for each event, excepting that Manager may, at its sole discretion, authorize lessees to perform their

own set up and tear down. Manager shall hire and manage all required and necessary management staff, ticket sales personnel, ushers and other personnel.

3.3.11 Ticket Sales. Manager shall manage, directly or through Owner approved subcontracts, ticket sales for events and activities including computerized tickets. Ticket sales services shall include ordering, selling and accounting for tickets, reporting ticket revenues for a given event for each user of the Civic Centre, cash and credit card processing, complete auditing and accounting for each event, and providing an accounting of the event income and expenses within ten days after each event is held. Ticket suppliers shall be selected and recommended by Manager and approved by Owner. All discounts, rebates and other benefits accruing to the Civic Centre from the sale of tickets through any vendor, including without limitation, Manager's Affiliates, shall be for the sole benefit of the Civic Centre, excepting that previous lessees of the facilities (prior to January 1, 2005) may sell tickets for their own events and new lessees (after January 1, 2005) may do so upon the mutual agreement between lessee and Manager.

3.3.12 Security. Manager shall manage, directly or through Owner approved subcontracts, security and pedestrian movements and circulation for events at the Civic Centre and for general security when events are not in progress. Manager shall coordinate crowd management and traffic control with Owner. During the months of June and July, Manager shall unlock and open and close and lock bicycle path gates at times designated by Owner. Additionally, Manager shall periodically lock the gate to the playground at the northeast area of the Festival Park site, but only when necessary for Manager's operations, and then unlock the gate as soon thereafter as practicable.

3.3.13 Licenses and Permits. Manager shall obtain and maintain all licenses and permits necessary for the management and operation of the Civic Centre subject to Owner's procedures for the granting of such licenses and permits, except as otherwise provided herein.

3.3.14 Revenues; Payment of Operating Expenses; Occupancy Charge. All financial records, cash receipting, accounts payable, accounts receivable, purchasing, and payroll functions for the operations of the Civic Centre shall be the responsibility of the Manager. All receipts related to activities under this Agreement shall be deposited by Manager in an operating account on a daily basis. Manager's payment of operating expenses under this Agreement shall include, but not be limited to, payment of all utility costs, sewer charges, and any and all other operational expenses for the Civic Centre. Operating Expenses shall be items other than revenues listed in Exhibit F, Owner's Civic Centre budget for 2004.

Manager shall keep, and provide to Owner upon Owner's request, books, records, journals, accounts, and ledgers as may be reasonably required to properly and accurately reflect the amounts of receipts and expenses in accordance with generally accepted accounting principles.

Owner shall have the right, at any time and upon reasonable notice, to have a representative inspect and verify Manager's books relating to this Agreement. Owner may at any time, upon reasonable notice, at its sole discretion and at its own expense, have an audit performed upon Manager's activities under this Agreement.

Manager shall pay Owner a monthly occupancy charge equal to 1/12 of the annual depreciation of the Civic Centre land improvements, buildings and improvements, and equipment, payable to

Owner by the 1st day of each month during the Term. The occupancy charge shall be an operating expense of the Civic Centre.

3.3.15 Staffing. Manager shall employ all Civic Centre personnel staffing.

3.3.16 Concessions Supervision. Manager shall manage the food, beverage and other concessionaires authorized to operate at the Civic Centre, except as otherwise provided herein and except as provided under contracts in effect on the date of this Agreement.

3.3.17 Additional Duties. Manager shall also be required to provide on a timely basis, information, data, and solutions to Civic Centre related issues as may be reasonably requested by Owner, together with such other services consistent herewith as Owner may reasonably require.

3.4 Relationship of Parties. Manager is an independent contractor and shall not be deemed to be an employee, joint venturer or partner of Owner. The authority of Manager shall be limited to those matters that are specifically addressed in this Agreement.

3.5 Business Plan. Within sixty days after the Commencement Date, Manager shall submit to Owner for approval a complete business plan for the first year of this Agreement (the "Business Plan"), which will augment and incorporate the marketing plan and budgets previously submitted and approved by Owner. The Business Plan shall be a marketing plan and a projection of Revenues and Operating Expenses for each Contract Year during the Term of this Agreement. It shall include an analysis of the basis and assumptions underlying each line item of Revenues and Operating Expenses. The business plan will also provide a general long term projection for the remaining Term of the Agreement. Manager shall update the Business Plan on an annual basis and shall deliver the same to Owner simultaneously with the delivery of the Annual Budget.

ARTICLE 4

ANNUAL BUDGET

4.1 Delivery of Budget. Manager shall submit to Owner a proposed annual operating budget for each year, listing all projected Revenues and Operating Expenses by category, segregated by month, with explanations and assumptions for each Revenue and Operating Expense line item. The proposed annual budget shall include a proposed event rent structure for the ensuing year, segregated and classified, if necessary, by types of events to be held at the Civic Centre. The date for submitting an annual budget will be determined each year by Owner, which will provide Manager at least sixty days written notice of such date, but not later than September 15 of each year for the next year.

4.2 Review of Budget. The proposed annual budget shall be reviewed by Owner within thirty days after submission, subject to Owner's budgeting process, which may require a longer period for review. Upon approval by Owner, which approval shall be granted or denied in Owner's sole discretion, the proposed annual budget shall become the final annual budget (the "Annual Budget") for the next year. If Owner objects to any part of the proposed annual budget,

Manager shall promptly respond to each such objection and revise the proposed annual budget in connection therewith. To the extent a proposed annual budget has not been adopted by Owner as the annual budget by the first day of any year, those portions of the proposed annual budget to which Owner did not object shall be deemed to be the Annual Budget, and the previous year's Annual Budget shall be deemed to be the Annual Budget as to those portions of the proposed annual budget to which Owner did object, until the entire proposed annual budget has been accepted by Owner.

4.3 Revision of Annual Budget. Manager and Owner may revise the Annual Budget at any time by mutual written agreement.

4.4 Certified Statements. Within twenty days after the end of each month and within forty-five days after the end of each year, Manager shall deliver to Owner a true and correct statement, certified as true and correct by an officer of Manager, of all Revenues and Operating Expenses of the preceding quarter or year, whichever is applicable, together with any supporting documentation reasonably requested by Owner. Manager shall provide an accounting of each event held at the Civic Centre in the monthly reports for the preceding month. Monthly statements shall reflect current month and year-to-date activity. Manager shall submit to Owner an annual financial audit report prepared in accordance with generally accepted accounting principles (GAAP) by an independent certified public accountant chosen by Owner in accordance with generally accepted accounting standards for the operations under this agreement. Manager shall submit this report to Owner by March 31 of each year for the prior year's activity.

ARTICLE 5

MANAGEMENT AND CONSULTING FEES

5.1 Management Fee. Commencing on January 15, 2007 and continuing on the fifteenth day of each month thereafter, Owner shall pay to Manager a Management Fee for the then-current month prorated for any partial months (the "Management Fee"). For purposes of calculation, a monthly Management Fee of \$5,167.81 for calendar year 2006 shall serve as the Base Management Fee. The Management Fee for 2007 and subsequent years shall be the Base Management Fee as increased annually by the percentage increase in the Annual Consumer Price Index-All Urban Consumers; Not Seasonally Adjusted; Midwest Area-Size Class B/C; All Items; Base Period-December 1996=100; Bureau of Labor Statistics Series ID CUURX200A0; 2004 Annual to be used as the basis for adjustments. Manager shall submit a detailed monthly invoice to Owner for the Management Fee.

5.2 Variable Fees. Owner shall annually pay Manager, if applicable, a Variable Fee equal to 50 percent of the the actual decrease in Owner's audited Annual Subsidy of the Racine Civic Centre.

5.2.1 Calculation. For calculation purposes, the "Annual Subsidy" shall be defined as the net operating loss of the Racine Civic Centre, net of the occupancy charge, depreciation, and Manager's Management Fee as described in Section 5.1 herein, for the average of the three immediately preceding calendar years.

5.2.2 Payment. Ninety percent of any Variable Fees due to Manager for each contract year, based upon the then-available calculation using pre-audited financial statements, shall be paid by Owner to Manager no later than February 15 of the next year or 15 days after the receipt by Owner of Manager's financial statements, whichever is later. Final payment of any remaining Variable Fees due to Manager for each contract year, based upon the audited financial statements, shall be paid by Owner to Manager no later than July 1 of the next year.

ARTICLE 6

DEFICIT PAYMENTS

6.1 Deficit Payments to Manager. Manager shall provide Owner a monthly report that reflects the current month and year-to-date activity. It is anticipated that Operating Expenses may exceed Revenues in each Contract Year during the Term of this Agreement and that the deficit in each Contract Year, as estimated and set forth in the Annual Budget, will be paid by Owner, with 1/6 the estimated deficit paid in advance each month for the first six months of each year, as required to maintain the Civic Centre operations. If applicable, Owner shall pay Manager a Deficit Payment on a monthly basis. Payment by Owner to Manager of any invoice amount or amount shall be made within thirty days after the invoice or monthly report is submitted, excepting that Owner shall promptly advise Manager in writing of any disputed portions of the Deficit Payment request or invoice, and Owner may withhold payment of such disputed amounts until Manager has provided additional supporting documentation and the Parties have resolved the issues. Payments due but unpaid, and not subject to an appropriate withholding shall bear interest at the rate of 1% per month.

6.2 Profit Payment to Owner. If the Civic Centre operations under this Agreement result in an operating profit in any year, Manager shall remit to Owner said profit on or before the audited financial statements are due for the audited year.

6.3 Monthly Meetings. Representatives of Manager's onsite management and Owner shall meet not later than the twentieth of each month to review revenues and Operating Expenses for the prior month.

ARTICLE 7

CONCESSIONS

7.1 Operations. To the extent possible under the terms of any existing food and beverage contracts between Owner and a third party contractor, Manager shall cause the Concessions to be operated and conducted so that all persons who patronize the Civic Centre shall always be promptly and satisfactorily served. All foods and beverages sold shall be of the highest standard of quality and purity for the type of food or beverage provided, shall be stored and handled at all times consistent with excellent standards of sanitation, preservation and purity, shall always be well prepared and satisfactorily served and shall always conform to the

requirements of all applicable federal, state and municipal laws, statutes, ordinances and regulations. Unless disclosed in accordance with applicable law, no imitation, adulterated or misbranded commodities shall be stored, displayed or sold by Manager or any concessionaire. The quality, quantity, price and brands of all items of food, liquor, beer or other items to be sold shall be determined by Manager consistent with the standard of operation required by Section 8.3 hereof.

7.2 Timing of Operations. Owner and Manager acknowledge that it is not always feasible to operate all the Concessions on a daily basis. Periodically, Owner and Manager will confer in an effort to agree upon the nature and scope of operation which is consistent with their respective interests. Manager will provide reasonable and adequate service consistent with the activities at the Civic Centre for each event.

ARTICLE 8

GENERAL TERMS AND CONDITIONS

8.1 Representation of the Owner. Owner hereby represents and warrants to Manager, as an inducement to Manager entering into this Agreement, that it is Owner's intent that the Civic Centre will be operated on a daily basis in a manner consistent with Owner's policies and procedures.

8.2 Representation of Manager. Manager hereby represents and warrants to Owner on its own behalf and on behalf of its shareholders, officers, directors and employees, that none of such persons is subject to a "non-compete" agreement in favor of any other similar management firm, which agreement would preclude the performance by Manager or any of such persons of its or their obligations hereunder.

8.3 Standard of Operation. Manager represents and warrants to Owner that it shall maintain an efficient and high quality operation at the Civic Centre comparable to other similar locations and containing features similar to those of the Civic Centre.

8.3.1 Additional Capital Improvements; Equipment. From time to time, it may be desirable to consider additional capital improvements ("Additional Capital Improvements") and the purchase of additional equipment (Additional Equipment) for the Civic Centre. At any time Manager or Owner may request a meeting to confer to consider the advisability of any Additional Capital Improvements and Additional equipment. Either manager or Owner may request that such proposed expenditures be placed in Owner's 5 year capital improvement plan. Owner's Common Council shall have final authority with respect to approval or disapproval of expenditures for Additional Capital Improvements and Additional Equipment. Either Manager or Owner may request that such proposed expenditures be placed in Owner's 5 year capital improvement plan. Owner's Common Council shall have final authority with respect to approval or disapproval. Owner shall not provide Manager with licensed or unlicensed motor vehicles under this Agreement and motor vehicles shall not be considered "Additional Equipment" under the terms of this Agreement. The Parties acknowledge that Memorial Hall is on the National

Register of Historic Buildings and, consequently, it is imperative that preventive maintenance and timely repairs are performed to protect Owner's investment in the facility. Maintenance to Memorial Hall in the nature of structural repairs, roofing repairs, maintenance and repairs to mechanical systems and the electrical system shall be Owner's responsibility. Owner shall also have sole discretion with respect to the ability to remodel the facility consistent with the standards and requirements for buildings on the National Historic Register. Manager shall obtain Owner's prior written approval prior to any redecorating in Memorial Hall, including painting, wallpaper or other similar decorating work.

8.3.2 Equipment Maintenance. Except as otherwise provided herein, Manager shall maintain and repair all equipment necessary for the proper operation of the Civic Centre including, without limitation, the Additional Equipment, and replacement thereof, all capital improvements located at the Civic Centre and the Additional Capital Improvements and replacements thereof in accordance with the Annual Budget and all manufacturer's warranty and preventive maintenance requirements, and the cost thereof shall be an Operating Expense.

8.3.3 Miscellaneous Requirements. Manager shall not mark up any invoice received for Manager's responsibilities under this Agreement nor shall Manager mark up the cost of any product purchased by Manager for its work under this Agreement nor for any other item of cost or expense that Manager incurs and inserts as an expense under this Agreement. Manager shall disclose to Owner any ownership interest of Manager or its affiliated companies in the corporations, companies, associations, individuals or any other entities from which Manager is obtaining services under this Agreement. Manager shall not receive rebates, refunds, kickbacks or any return from a contractor or sub-contractor providing Manager services under this agreement, unless such payments are in the normal course of business and are promptly, fully and accurately reflected on Manager's statements provided to Owner hereunder.

8.3.4 Inspection Right. Owner shall have the right at any time to inspect its facilities that are the subject of this Agreement.

8.3.5 Request for Major Repair. Manager shall notify Owner of Manager's intent to make a repair the cost of which is expected or becomes known to exceed \$500, and the Parties shall discuss the method of repair that is both reasonable and economic. The Parties acknowledge that each has an interest in proper maintenance and protection of the facilities that are the subject of this Agreement and each shall act in good faith to preserve the facilities and to do so in an economically viable manner.

8.4 Accounting Records, Reports and Practices.

8.4.1 Maintain Records. Manager shall maintain accounting records related to the Civic Centre using accounting practices in accordance with generally accepted accounting principles consistently applied and Owner's existing procedures.

8.4.2 Internal Financial Controls. Manager shall establish internal financial control policies and practices that are in accordance with generally accepted standards in the industry, consistent with Owner's approved procedures, and reasonably acceptable to Owner.

8.4.3 Owner Access. Owner shall have unlimited and total access to all accounting records and supporting documentation of Manager relating to the Civic Centre during the term of this Agreement. All such records shall be promptly provided to Owner in the event that Manager is terminated. Such right to access shall be exercised in a reasonable manner.

8.5 Termination of the Agreement

8.5.1 If the Civic Centre operation is suspended for ninety days or more, or if the facilities become unusable for ninety days due to fire, flood, wind or other calamity, then either Owner or Manager may seek suspension of this Agreement. The Parties shall mutually agree on staff retention, relocation and status, including all attendant costs and expenses. In the event that any suspension is in effect for ninety days or more, or any three such suspensions are in effect for at least ninety days each, then Manager shall have the right to terminate this Agreement on thirty days' written notice to Owner. Manager shall recover from Owner payment for all services performed, the Manager's Operating Expenses and reimbursable costs under this Agreement to date, and Manager's Fees earned to date.

8.5.2 If Manager fails to perform any of its obligations under this Agreement and if Manager fails to initiate the necessary remedial measures within ten days after written notice from Owner to do so, and thereafter fails to diligently prosecute such measures, then Owner may, at its election, perform such obligations. Manager's Fee shall be adjusted accordingly, including a 15% penalty of the Owner's cost to cure Manager's failure to perform. Such penalty may not be reimbursed to Manager as a cost under this Agreement. Manager shall cure any problem within ten days, unless such cure cannot reasonably be accomplished during that period.

8.5.3 If Manager is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, Owner may terminate this Agreement, without prejudice to any right or remedy. In such case, Manager shall be entitled to receive the Manager's Fees earned to date, or if it refuses or fails, except in cases for which an extension of time is provided, to supply sufficient staff or home office support, or if it fails to make prompt payment to its creditors, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Civic Centre, or has otherwise breached a provision of this Agreement and if Manager fails to initiate the necessary remedial measures in accordance with Section 8.5.1 after written notice from Owner to Manager to do so, and thereafter fails to diligently prosecute such measures, then Owner may terminate this Agreement, without prejudice to any right or remedy. In such case, Manager shall be entitled to receive the Manager's Fees earned to date.

8.5.4 Owner may terminate this Agreement for its convenience at any time by providing ninety days written notice to Manager. In the event of termination not the fault of Manager, Manager shall be compensated for all Services performed to the termination date.

8.6 Dispute Resolution.

8.6.1 Unless otherwise agreed in writing, all claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement, including any amendments thereto, or any breach thereof, shall be decided by resort to litigation.

8.6.2 Prior to the initiation of any litigation between Manager and Owner concerning any dispute, and as a condition precedent to such initiation, it is agreed that there shall be an Executive Resolution Meeting, and if needed, a mediation. At the meeting, the Chief Executive Officer of Manager or designee, and Owner's Mayor or designee, will hear presentations from their respective staffs or representatives concerning the merits of any dispute. After the presentations, the Chief Executive Officer and Mayor and/or their designees shall discuss and attempt in good faith to resolve the dispute. If such persons are not successful in resolving the dispute, the Parties shall participate in a mediation with a mutually agreed upon mediator. Each Party shall share equally in the cost of any such mediation. If the dispute remains unresolved, the Parties may litigate the matter in accordance with the Agreement. Manager shall continue its work pending the resolution of any dispute whether pursuant to Executive Resolution, mediation or litigation.

8.6.3 Any legal proceeding of any nature brought by either Party hereto against the other Party to enforce any right or obligation under the Agreement, including amendments thereto, or arising out of any matter pertaining to the Agreement, including amendments thereto, or the work to be performed hereunder, shall be submitted for trial before any state court of competent jurisdiction in Wisconsin. The Parties expressly consent and submit to the jurisdiction of any such court and Manager agrees to accept service of process outside of the State of Wisconsin in any matter to be submitted to any such court pursuant hereto.

8.7 Insurance, Indemnity and Waiver of Subrogation.

8.7.1 Employment Matters. In connection with the employment of its employees, Manager shall pay all applicable social security, re-employment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, re-employment insurance and worker's compensation. Manager shall indemnify, defend and hold harmless Owner from all costs, expenses, claims or damages resulting from any failure of Manager to comply with this Section 8.7.1

8.7.2 Liability Insurance

8.7.2.1 Manager shall purchase and maintain such insurance as will protect it and Owner from the claims set forth below which may arise out of or result from Manager's operations under this Agreement, whether such operations be performed by Manager or by anyone directly or indirectly employed or contracted for by Manager. Such insurance, except worker's compensation and professional liability, shall name Owner, its departments, officers, employees, agents and authorized volunteers as additional insured provided, however, that such insurance requirement is not in any manner intended to waive any statutory limitation on liability or to waive any procedural requirement relating to the claims process that Owner, its departments, officers, employees, agents or authorized volunteers are entitled to under Wisconsin law. Additionally, it is the Parties' intent that the insurance requirements not be interpreted in a manner that places liability on Owner for injuries or damages of any nature whatsoever (no limitation) arising out of occurrences, events, accidents or incidents over which Owner does not exercise control under this Agreement.

- (a) Claims under worker's compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed under this Agreement.
- (b) Claims for damages arising from bodily injury, occupational sickness or death of any person other than Manager's employees under any applicable employer's liability law.
- (c) Claims for damages arising from bodily injury or death of any person other than Manager's employees.
- (d) Claims for damages insured by personal injury or bodily injury liability coverage and which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by Manager or (2) by any other person.
- (e) Claims for damages, other than to the Civic Centre itself, because of injury to or destruction of tangible property, including loss of use therefrom.
- (f) Claims for damages arising from bodily injury or death of any person or claims for property damage arising from the ownership, maintenance or use of any motor vehicle.

8.7.2.2 Manager's Commercial General Liability Insurance shall include premises – operations, independent contractors, completed operations, and blanket contractual liability on all written contracts, all including broad form property damage coverage.

8.7.2.3 Manager's Worker's Compensation insurance, Employers Liability, Umbrella Excess, Comprehensive General and Automobile Liability Insurance, as required by Sections 8.7.2.1; and

8.7.2.4 shall be written for not less than limits of liability as follows:

- (a) General Liability
Commercial General Liability to be ISO Form (1986 version or more recent) – Occurrence Form. If not ISO Form, coverage must include Premises/Operations; Independent Contractors; Products/completed Operations; Personal Injury; Broad Form Property Damage including Completed Operations; Broad Form Contractual Liability.

Required Limits:

\$1,000,000 per Occurrence Combined Single Limit for Bodily Injury, Personal Injury and Property Damage

\$2,000,000 Annual Aggregate Limit specifically for the Civic Centre contract which is the subject of this Agreement.

(b) Automobile Liability

Business Automobile Liability to be ISO Form (1987 version or more recent) – Code 1 “Any Auto” symbol to be used.

Required Limits:

\$1,000,000 per Occurrence Combined Single Limit for Bodily Injury and Property Damage.

(c) Worker's Compensation

Statutory Worker’s Compensation Insurance for all states and jurisdictions where Manager has work locations and standard Employer’s Liability Insurance, to include U.S. Longshoremen’s and Harbor Worker’s Act and F.E.L.A. where applicable.

Required Limits:

\$1,000,000 per Occurrence limit for Employers’ Liability.

(d) Umbrella

An Umbrella Policy or Excess Casualty Policy on an Occurrence Form is required excess of the General Liability, Automobile Liability and Employer’s Liability Limits.

Required Limits:

\$1,000,000 per Occurrence
\$4,000,000 Annual Aggregate Limit

(e) Professional Liability Insurance.

Manager will maintain professional liability insurance coverage, at its expense, throughout the term of this Agreement and for each of the three years following expiration or termination of this Agreement, in the minimum amount of \$1,000,000. Proof of insurance coverage shall be provided upon Owner’s request.

8.7.2.4 Deductibles, Self-Insured Retentions and Insurer

Qualifications. All deductibles, co-payment clauses, and self-insured retentions must be declared to and approved by Owner. Insurance required hereunder shall be issued by an A.M. Best “A-VII” Rated or better carrier and approved to conduct business in the State of Wisconsin.

8.7.2.5 Each of the foregoing policies shall provide that such insurance may not be canceled or not renewed, or any endorsements restricting or reducing coverage added without thirty days’ prior written notice to Owner. Proof of Insurance, including copies of policies and Endorsements on Owner's request, showing such coverages to be in force shall be filed with Owner prior to commencement of this Agreement or before an exposure to loss may occur. If Owner is damaged by failure of Manager to purchase or maintain such insurance or to so notify Owner, Manager shall bear all costs properly attributable thereto.

8.7.2.6 Owner shall not be liable for nor pay as any element of cost under this Agreement any loss, claim, liability, penalty or other charge against Manager to the extent that such amount results from Manager’s alleged violation or violation of any Federal or State or local law or regulation.

8.7.3 Owner Provided Insurance

8.7.31 Owner shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect it against claims which may arise from Owner’s activities under this Agreement and not arising from Manager’s acts or omissions hereunder.

8.7.3.2 Owner shall purchase and maintain such boiler and machinery insurance as may be required or necessary. This insurance shall protect the interests of Owner and shall name Manager as additional insured.

8.7.4 Crime Insurance. During the term of this Agreement, Manager shall maintain Crime Insurance, with an insurer acceptable to Owner, providing at least the following coverages in at least the amounts set forth below for each coverage:

- (a) Employee Dishonesty - \$500,000;
- (b) Depositor’s Forgery - \$500,000;
- (c) Money & Securities - \$500,000 (each, “Inside” and “Outside”)
- (d) Computer Theft - \$500,000;
- (e) Wire Transfer Fraud - \$500,000;

provided, however, that if such coverages are provided on a “blanket” limit basis, a blanket limit of \$500,000 shall be considered to be sufficient to comply with this provision. The policy shall include an endorsement providing that any “employee” of Manager shall be deemed to also be an “employee” of the Owner for purposes of the coverage afforded under the Employee Dishonesty coverage part. Owner shall be both a Loss Payee (as its interest may appear) and an Additional Insured under such policy, which policy shall be written to apply only to the Crime exposures arising under or in connection with this Agreement, and not to any other unrelated Crime exposures incurred by Manager or Owner under any other similar agreements or otherwise.

8.7.5 To the fullest extent permitted by applicable law, Manager agrees to indemnify, defend and hold harmless Owner from and against any and all claims, suits, actions, judgments, fines, penalties, loss, damage, costs, or expense (including but not limited to attorneys' and consultants' fees and other associated expenses), whether direct or indirect for bodily injuries and/or property damage (including loss of use thereof) arising out of Manager's activities or resulting from the performance of services or the delivery of goods called for by this Agreement. This indemnity and related insurance coverages shall be applicable only if the protection provided Owner under this Section 8 is inadequate. Such obligations shall not be construed to waive, negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to either Manager or Owner.

8.7.6 Neither Owner nor Manager shall be liable to the other Party for any indirect, special, incidental or consequential loss or damage whatsoever, including but not limited to lost profits, loss of use, loss of use of capital, interest or prospective advantage, whether founded on contract, negligence, or otherwise under this Agreement, except as specifically provided herein.

8.7.7 All insurance premiums for the coverage described in this Section 8 shall be operating expenses of the Civic Centre.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Employees of Manager. All persons engaged at the Civic Centre in providing any of the Services hereunder shall be the sole and exclusive employees of Manager and shall be paid by Manager, except for those individuals employed or utilized by subcontractors of Manager, as provided for in this Agreement but in no event deemed an employee of Owner. In connection with the employment of its employees, Manager shall pay all applicable social security, re-employment insurance, worker's compensation and other employment taxes and contributions to insurance plans, and retirement benefits, and shall comply with all federal and state laws and regulations relating to employment generally, such as minimum wages, social security, re-employment insurance and worker's compensation, and shall defend, indemnify and save Owner harmless from any responsibility therefor. Manager shall comply with all applicable laws, ordinances and regulations including, without limitation, those pertaining to human rights and non-discrimination, as the same may be amended from time to time, all of which are incorporated herein by reference. Manager will employ trained and neatly uniformed employees and Manager's employees shall conduct themselves at all times in a proper and respectful

manner. Any dismissal shall be in accordance with Manager's corporate policy and applicable federal, state or local laws which may be in effect and, further, shall be in compliance with applicable union or labor organization agreements which may be in effect at the time of said dismissal. Manager shall defend, indemnify and save Owner harmless from any claims, causes of action, expense (including attorneys' and consultants' fees and other associated expenses) losses, costs or damages of any kind or nature arising therefrom, except in the case of express written direction from Owner.

9.2 Availability of Location. Manager agrees that, except as a result of full or partial destruction of the Civic Centre, the Civic Centre will be made available for all events scheduled therein and Manager agrees to defend, indemnify and save Owner harmless from and against any and all claims, causes of action, expenses (including attorneys' and consultants' fees and other associated expenses) losses, costs and damages arising from the failure of the Civic Centre to be available in the condition necessary for the conduct of such events for scheduled events due to the negligence or willful misconduct of Manager, its agents, servants, employees or contractors of any tier, and in such case, Manager shall pay to Owner the estimated Revenues, less Operating Expenses, for such event within five (5) days after the event was to have taken place.

9.3 No Payment by Owner. Notwithstanding anything in this Agreement or Exhibits hereto to the contrary, Owner shall not be obligated to reimburse Manager as Operating Expenses or otherwise for costs and expenses (including attorneys' and consultants' fees and other associated expenses) for litigation which is covered by Manager's defense and indemnification obligations set forth in Section 9.1 and 9.2 above.

9.4 In any emergency affecting the safety of persons or property, Manager may act, in its sole discretion, to prevent threatened damage, injury or loss. Any increase in Manager's Fee or term of this Agreement on account of emergency work shall be determined by mutual agreement.

9.5 Compliance with Laws. Manager will comply with all federal, state and local statutes, rules, ordinances and regulations as they relate to the operation of the Civic Centre. Manager's failure to comply with such statutes, rules, ordinances and regulations relating to the Civic Centre shall be cause for termination under this Agreement. Manager agrees that it shall not be entitled to any dispute and/or litigation costs (including attorneys' and consultants' fees and other associated expenses) as Operations Expenses with regard to its failure to comply with statutes, rules, ordinances or regulations as set forth herein.

9.6 Waivers. Waivers by either Party of any default by the other Party shall not be deemed a waiver by such Party of any other default. This Agreement contains all the covenants, stipulations and provisions agreed upon by the Parties, and neither Party shall be bound by nor be liable for any statement, representation, promise or agreement not set forth herein. No changes, amendments or modifications of the terms hereof shall be valid unless reduced to writing and signed by the Parties. Both Owner and Manager acknowledge and recognize the inherent risk and prejudice to each of them in regard to any oral modification of this Agreement since miscommunication, lack of communications, misunderstandings or mistakes can occur in such situations and in the event Owner and Manager should orally agree to any modification of this Agreement, it is expressly agreed by Owner and Manager that any such modification must

be reduced to writing, receive approval of the Parties and signed by the Parties before such modification is valid and enforceable under this Agreement.

9.7 Notices. All notices, requests, demands, consents and approvals required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given when delivered personally or by FAX, addressed to the parties as follows:

(a) If to Owner:

City Clerk, Room 102
730 Washington Ave.
Racine, WI 53403

(b) If to Manager:

President, Compass of Racine, LLC
103 East 6th Street, Suite 200
PO Box 625
Ames, IA 50010

The foregoing shall not be construed to require that notice be given in the manner above set forth for daily and routine matters such as approval of invoices or where another form of notice is specifically set out in this Agreement.

9.8 Governing Law. This Agreement shall be construed, interpreted and governed by the laws of the State of Wisconsin.

9.9 Severability. Every part, term or provision of this Agreement is severable from all others and notwithstanding any possible future finding by duly constituted authority that a particular part, term or provision is invalid, void or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby.

9.10 Assignment. Except as to the Assignment of proceeds, neither Owner nor Manager shall assign its interest in this Agreement without the written consent of the other. This Agreement shall inure to the benefit of and be binding upon the Owner and Manager and their respective heirs, executors, administrators, successors and such assigns as may be permitted hereunder.

9.11 Representatives. Owner's representative to Manager in connection with Civic Centre operations shall be designated by Owner in writing, and Manager representative shall be Manager's onsite Manager at the Civic Centre.

9.12 Force Majeure. Neither party shall be obligated to perform hereunder, and neither shall be deemed to be in default, if performance is prevented by fire, earthquake, flood, act of Nature, riot, civil commotion or other matter or condition of like nature, including the unavailability of sufficient fuel or energy to operate the Civic Centre or any law, ordinance, rule,

regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, war or governmental law and regulations.

9.13 Labor Dispute. In the event of a labor dispute that results in a strike, picket and/or boycott affecting the Civic Centre or the Services described in this Agreement, Manager shall not be deemed to be in default or to have breached any part of this Agreement unless Manager's actions and/or omissions caused said strike, picket and/or boycott. Manager shall immediately remedy such labor dispute by all appropriate legal means after consultation with Owner.

9.14 Equal Employment Opportunity. Manager shall not, in performing its Services, discriminate against any employee or applicant for employment because of age, race, color, handicap status, veteran status, religion, sex, sexual preference or national origin. Manager shall comply with all provisions of Executive Order No. 11426 of September 24, 1965, as amended, and the rules, regulations and relevant orders of the Equal Employment Opportunity Commission.

9.15 Section Headings. Section headings in this Agreement are for convenience only and shall have no effect on the interpretation of this Agreement.

9.16 Schedule References. All references to days, months or years in this Agreement means calendar days, months and years.

9.17 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

OWNER:

MANAGER:

City of Racine

By: _____
Gary Becker, Mayor

By: _____
Title: _____

ATTEST

ATTEST

By: _____
Janice Johnson-Martin, City Clerk

By: _____
Title: _____

Approved as to form:

By: _____
Rob K. Weber, City Attorney

Funds are available to satisfy the liabilities created hereunder:

By: _____
David L. Brown, Interim Finance Director

/agreement/04/civic centre.compass.1021