

VenuWorks

Management Agreement

This MANAGEMENT AGREEMENT ("Agreement"), made and entered into as of November 28, 2011, by and between the **CITY** of Racine, a municipal corporation organized under the laws of Wisconsin, with offices at 730 Washington Avenue, Racine, Wisconsin 534041 (hereinafter "**CITY**"), and VenuWorks of Racine, LLC, an Iowa limited liability corporation, with offices at 4611 Mortensen Road, Suite 111, Ames, Iowa, 50014 (hereinafter "**VENUWORKS**").

WHEREAS, **CITY** is the Owner of the **Racine Civic Centre**, which consists of Festival Hall and adjoining Festival Park (a multipurpose hall and open grounds area), and Memorial Hall (an auditorium and meeting room facilities), (hereinafter referred to as the "Facility"); and

WHEREAS, **VENUWORKS** is in the business of providing management and operation and marketing services to similar facilities and contractual obligations and possesses the knowledge and expertise to manage, operate, and market the Facility and its pre-existing obligations; and

WHEREAS, **VENUWORKS** is a wholly owned subsidiary of VenuWorks, Inc. ("VWI"), and enjoys the benefits of a services contract with VWI for on-going support, guidance and consultation to be provided to **VENUWORKS** by VWI in the completion of **VENUWORKS'** responsibilities as defined herein, a copy of said contract to be available to the **CITY** upon demand; and

WHEREAS, **CITY** has previously selected **VENUWORKS** to provide said management, operation and marketing services, and **VENUWORKS** desires to continue such engagement on the terms and conditions set forth herein, and

WHEREAS, the **CITY** and **VENUWORKS** further acknowledge herein that the **CITY** intends to continue to maintain and appoint a Facility Advisory Board to oversee operations of the Facility generally, and specifically to meet and work on a regular basis with **VENUWORKS'** Facility management personnel to, among other things, prepare and implement policies and procedures governing the booking and scheduling of events in the Facility, review revenue and operating information, and monitor and advise the parties in regards to performance and operational matters as needed.

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein and other consideration the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE ONE

RETENTION OF VENUWORKS

- 1.1 The **CITY** hereby retains **VENUWORKS** as an independent contractor for the purpose of performing the services described in this Agreement. Subject to the terms and conditions set forth herein, **VENUWORKS** agrees to provide management, operating, and marketing services in accordance with this Agreement, and consistent with existing lease and grant agreements and policies and procedures adopted and/or as may be approved from time to time by **CITY**. **VENUWORKS** agrees to use its best skills, judgment and efforts to maximize revenues from use of the Facility, including, without limitation, marketing and sales and event production and promotion. In providing these services **VENUWORKS** shall manage the Facility in accordance with sound business practices and industry standards. In conducting such services, **VENUWORKS** hereby acknowledges and agrees that it owes a fiduciary obligation to the **CITY**.
- 1.2 The parties to this agreement acknowledge that the **CITY** will retain title, ownership and of the Facility and that **VENUWORKS** will not acquire title to, any security interest in, or any rights of any kind in or to the Facility or any income, receipts or revenues there from.

ARTICLE 2

COMMENCEMENT DATE AND TERM

- 2.1 This Agreement shall be for an additional term of three (3) years, commencing on January 1, 2012 (the "Commencement Date") and expiring on December 31, 2014, unless terminated earlier as set forth herein. The **CITY** has determined that it is beneficial to have the term of this agreement consistent with its fiscal year.
- 2.2 Notwithstanding anything in this agreement to the contrary, the **CITY** shall have the right, in its sole discretion, without penalty or cause, to terminate this agreement effective as of the first and second anniversaries, respectively, of the Commencement Date by giving not less than one hundred fifty (150) days prior written notice of such termination to **VENUWORKS**.
- 2.3 The **CITY** may extend the term hereof on the same terms and conditions for one additional two (2) year period commencing immediately after the initial term or any Renewal Term, as applicable, by giving not less than one hundred fifty (150) days prior written notice of such extension to **VENUWORKS**; provided, however, that the parties shall mutually agree on the amount, terms, and conditions of remuneration for **VENUWORKS** services hereunder.

ARTICLE 3

MANAGEMENT AGREEMENT

- 3.1 Provision of Services. During the term and any renewal term of this Agreement, **VENUWORKS** shall provide the services set forth in this Article 3.
- 3.2 Grant to **VENUWORKS**. **CITY** grants to **VENUWORKS** the right to manage, market, promote, operate and maintain the Facility, and, subject to **CITY** approval, **VENUWORKS** may direct food and beverage sales, sponsorship projects and advertising at the Facility, all the proceeds of which shall accrue to **CITY**, consistent with existing lease and grant agreements as well as policies and procedures adopted by the **CITY**; subject, however, to **CITY'S** right to terminate this Agreement as provided herein.
- 3.3 **VENUWORKS'** Responsibilities. Beginning on the Renewal Date, and continuing through the term of the Agreement, **VENUWORKS** shall assume management responsibilities as set forth below. Where **VENUWORKS** is required to direct or arrange for services or material, **VENUWORKS** shall employ all persons performing such services or shall contract with a third party for the performance of such services. In that regard, it is understood and agreed that **VENUWORKS** may contract with an Affiliate (as hereinafter defined) of **VENUWORKS** for such services and materials, so long as the cost and service quality of such services or materials is comparable in the **CITY'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. In each such instance, **VENUWORKS** shall disclose the employment of or contractual relationship with an Affiliate to the **CITY** in writing prior to ordering such materials and/or services. For purposes of this Agreement, "Affiliate" shall mean with respect to a party, any person or entity that controls, is controlled by or is under common control with such party, with "control" meaning ownership of fifty percent (50%) or more of the voting interests in the entity in question. **VENUWORKS** shall

be obligated to inform the **CITY** of any and all issues or circumstances having a material effect on the operation of the Facility.

- 3.3.1 Marketing and Promotion. Except as otherwise provided in the Anchor Tenant Lease, **VENUWORKS** shall manage and direct all marketing and sales activities which shall be undertaken so as to maximize the use of the Facility by all persons, including independent promoters and Affiliates of **VENUWORKS** so as to provide maximum Revenue, as defined in Paragraph 3.3.14 below for the Facility, and accessibility for the community to the Facility. **VENUWORKS** shall be responsible for ensuring that appropriate programs are booked into the Facility and that suitable media coverage is obtained and shall coordinate such efforts with **CITY**.
- 3.3.2 Scheduling. **VENUWORKS** shall develop and maintain all schedules for events held at the Facility, and scheduling shall be accomplished in accordance with the **CITY**'s policies and procedures, applicable law, and in a manner to maximize the use of the Facility so as to provide maximum Revenue for the Facility and accessibility for the community to the Facility. **VENUWORKS** shall use an event rental agreement acceptable in form to **CITY**. The parties understand and agree that **VENUWORKS** shall be empowered to negotiate event agreements as **CITY**'S agent, subject to **CITY**'S approval, which approval shall not be unreasonably withheld. **VENUWORKS** may deviate from standard rental rates when such negotiation is deemed by **CITY** and **VENUWORKS** to enhance the profitability and/or the community value of the Facility.
- 3.3.3 Operations Plan. In addition to the Business Plan referenced in Section 3.6 hereof, **VENUWORKS** shall prepare and develop an annual operations plan, including an Annual Budget, as defined below, which shall be submitted to **CITY** for approval each year for the following fiscal year. The goals of the Business Plan shall be reflected in the Annual Budget. **VENUWORKS** will cooperate and will work with **CITY** to ensure that the operations plan meets the reasonable requirements and expectations of **CITY**.

- 3.3.4 Food & Beverage / Concessions. **VENUWORKS** shall be responsible for contracting, directing and monitoring the food & beverage services, including alcoholic beverages, to the extent they may be legally sold (it being understood that a separate license is required) at the Facility, subject to **CITY** approval. The manager for the catering and concessions will be accountable to **VENUWORKS'** Facility Executive Director (or his/her designee) for meeting service, quality and financial standards (including the submission of financial statements and budgets) set by **CITY**.
- 3.3.5 Facility Maintenance. **CITY** will be responsible for the performance of all facilities maintenance work, including the Facility and its landscaping, irrigations systems, and grounds. **VENUWORKS** will carry out work required by **CITY** which shall include ordinary maintenance and minor repairs, not included in the Capital Improvement Plan, which may or may not increase the value or extend the life of an asset at the Facility. If there is any discrepancy as to whether Facility Maintenance is to be carried out by **CITY** or **VENUWORKS**, a decision will be made at the reasonable discretion of the Facility Manager, City of Racine's Building Complex Division.
- 3.3.6 Custodial and Cleaning Services. **VENUWORKS** shall provide all routine cleaning and janitorial services at the Facility.
- 3.3.7 Pest Control. **VENUWORKS** shall be responsible for all necessary pest control services, whether performed by **VENUWORKS** or a pest control service engaged by **VENUWORKS**.
- 3.3.8 Snow Removal. **VENUWORKS** shall be responsible for all snow and ice removal services on the pathways, sidewalks, and parking lots owned by the **CITY** in the public access areas of the Facility.

- 3.3.9 Trash Removal. **VENUWORKS** shall be responsible for removal of all trash from the Facility and agrees that it shall not permit any employee, concessionaire or caterer to place refuse outside the buildings on the Facility, except in designated trash containers, the location of which shall be approved by **CITY**. A recycling program shall also be implemented at the facility.
- 3.3.10 Operational Services **VENUWORKS** shall be responsible for all services required to stage (set up and tear down) the Facility for each event, including but not limited to, services involving the stage area, sound system, lighting system, stage rigging, dressing area, stage equipment, loading in and loading out. **VENUWORKS** shall hire and manage all required and necessary management staff, ticket sales personnel, ushers and other personnel required for the operation of the Facility, including but not limited to, ticket taking, novelty sales, program distributions and assistance to patrons generally, including the handicapped.
- 3.3.11 Ticket Sales. **VENUWORKS** shall be responsible for all aspects of ticket sales for events and activities including computerized tickets, utilizing its national contract with Ticketmaster to provide state of the art equipment and software to the Facility at no cost to the **CITY**. Ticket sales services shall include ordering, selling and accounting for tickets, reporting ticket revenues for a given event for each user of the Facility, cash, check, and credit card processing, complete auditing and accounting for each event, providing the **CITY** with a preliminary accounting within 24 hours of an event, and providing a final accounting of the event income and expenses within ten days after each event is held. The amounts charged by the ticketing contractor for service charges, and the Facility's participation in revenues from these service charges, will be consistent with industry standards in Wisconsin.
- 3.3.12 Security. **VENUWORKS** shall be responsible for proper security for events at the Facility and for general security when events are not in progress. Such security may be provided by **VENUWORKS** or by contract, in its discretion. **VENUWORKS** shall review and coordinate exterior crowd management and traffic control with

appropriate local authorities.

3.3.13 Licenses and Permits. **VENUWORKS** shall obtain and maintain all licenses and permits necessary for management and operation of the Facility, subject to the local procedures for the granting of such licenses and permits.

3.3.14 Revenues; Bank Accounts and Payment of Operating Expenses. **VENUWORKS** shall be responsible for the collection of all Revenues and payment of Operating Expenses, as defined in Exhibit A, including payment and remittance of applicable sales taxes. As used herein, "Revenue" is defined as the total amount received by **VENUWORKS** or any other person or entity operating on **VENUWORKS'** behalf from third parties, directly or indirectly arising out of or connected with and on behalf of the Facility, including without limitation, transactions for cash, credit and credit card sales, other benefits from contracts, and any discounts or rebates, less applicable sales taxes. **VENUWORKS**, in cooperation with **CITY**, shall establish two separate interest bearing commercial bank accounts. These accounts shall be in the name of **VENUWORKS** and utilize **VENUWORKS'** federal tax identification number. Signatories shall include those individuals as deemed appropriate by **VENUWORKS** and as authorized by the **CITY**. The names of the commercial accounts shall be **VENUWORKS** Operating Account and **VENUWORKS** Box Office Account. Revenues from the sale of tickets to events at the Facility shall be deposited by **VENUWORKS** into the Box Office Account. After payment from such ticket sales Revenues of all event-related expenses, **VENUWORKS** shall transfer the remaining event ticket sales Revenues to the Operating Account. All other Revenues generated by use of the Facility and collected by **VENUWORKS** shall be deposited in the Operating Account. **VENUWORKS** is authorized to make disbursements from the Box Office Account to promoters or performers in any amount due the performer or promoter as per contracts with them, and to pay budgeted Operating Expenses from the Operating Account. From time to time, **VENUWORKS** may, as appropriate and with **CITY** approval, transfer funds from the Box Office Account to the Operating Account to accommodate cash

flow needs of the Facility. **CITY** has the authority at any time, to obtain information and records from the bank concerning such accounts and to inspect the same. It shall be an Event of Default, as defined below, entitling **CITY** to terminate this Agreement, if **VENUWORKS** withdraws any money from the Operating Account or the Box Office Account except in accordance with this Agreement. Upon termination of this Agreement, and after payment of all approved operating expenses, all remaining funds in the Operating Account and the Box Office Account will be transferred to **CITY**. Interest accrued in these accounts shall be revenue to the Facility and belong to **CITY**.

3.3.15 Petty Cash and Change Funds: **VENUWORKS** and **CITY** agree that **VENUWORKS** necessarily needs to maintain a “Petty Cash and Change Fund” to conduct cash transactions relating to the Facility. Any and all petty cash and change funds shall belong to the **CITY**. **VENUWORKS** shall maintain daily accounting of such funds and report the same to the **CITY** according to procedures, including internal financial control policies and practices, agreed upon by the parties. These funds will be returned to the **CITY** at the end of the contract term.

3.3.16 Payment to Subcontractors: **VENUWORKS** shall not enter into subcontracts for services provided under this Agreement except as noted in the Agreement, without the approval of the **CITY**.

3.3.17 Staffing: **VENUWORKS** shall be responsible for supervision and direction of all personnel staffing at the Facility. All such Facility staff will be in the employment of **VENUWORKS**. All expenses associated with the employment of staff will be considered operating expenses of the Facility. Pre-employment and relocation expenses must be pre-approved by **CITY**. **CITY** has the right to participate in, and approve of, the recruitment, interviewing and hiring of the Executive Director of the Facility, including the creation of a recruiting task force to work with **VENUWORKS** in the hiring process.

3.3.18 Additional Duties. **VENUWORKS** shall also be required to provide, on a timely basis, information, data, and solutions to project issues as may be reasonably requested by **CITY**, together with such other services consistent herewith as **CITY** may reasonably require.

3.3.19 Use of **CITY** Equipment. **VENUWORKS** is authorized to use equipment at the Facility in performance of its obligations hereunder. **VENUWORKS** will conduct and maintain an inventory of Facility equipment to be used by **VENUWORKS** during this Agreement.

3.4 Powers Reserved to **CITY**. **CITY** shall have right of prior approval in connection with, but not limited to, the following:

- (a) The Annual Budget; and
- (b) The Business Plan, as defined below
- (c) Any expenditure for personnel or equipment in excess of budget;
- (d) Policies and procedures governing the booking and scheduling of events in the Facility.
- (e) Matters reserved to the **CITY**.

As used herein the phrase “**CITY** approval” shall mean review by the Advisory Board and approval by the **CITY** Council for (a), (b), (c), and (e) and the Advisory Board for (d).

3.5 Relationship of Parties. **VENUWORKS** is an independent contractor of **CITY** and shall not be deemed to be an employee, joint venturer, or partner of **CITY**. The authority of **VENUWORKS** shall be limited to those matters which are specifically addressed in this Agreement.

3.6 Business Plan. **VENUWORKS** shall submit a Business Plan on an annual basis and shall deliver the same to **CITY** simultaneously with the delivery of the Annual Budget, both of which shall be on a calendar year basis. The Business Plan shall

be subject to the prior written approval of **CITY**. The Business Plan shall be a marketing plan and a projection of Revenues and Operating Expenses for the year and shall include an analysis of the basis and assumptions underlying each line item of Revenues and Operating Expenses. The Business Plan shall in no way become a performance obligation for either **CITY** or **VENUWORKS** but serve as a management blueprint to monitor **VENUWORKS'** performance.

- 3.7 Relationship with **CITY**: **VENUWORKS** shall provide all of its Management Services in a manner which shall ensure full compliance with all **CITY** requirements.

ARTICLE 4

ANNUAL BUDGET

- 4.1 Delivery of Budget On a date to be determined by **CITY** each year during the term, **VENUWORKS** shall submit to **CITY** a proposed annual operating budget for the ensuing year, listing all projected Revenues and Operating Expenses by category, broken down by month, with explanations and assumptions for each Revenue and Operating Expense line item. The proposed annual budget shall include a proposed rent structure for events proposed to take place in the Facility for the ensuing year.
- 4.2 Review of Budget. The proposed annual budget shall be reviewed by **CITY** in accordance with **CITY'S** budget development schedule. Upon approval by **CITY**, the proposed annual budget shall become the final annual budget (the "Annual Budget") for the year. If **CITY** objects to the proposed annual budget or any part thereof, **VENUWORKS** shall be obligated to promptly respond to each such objection and revise the proposed annual budget in connection therewith.
- 4.3 Revision of Annual Budget. **VENUWORKS** and **CITY** may revise the Annual Budget at any time by mutual written agreement.
- 4.4 Certified Statements. Shall submit to **CITY** an annual financial audit report prepared in accordance with generally **VENUWORKS** shall deliver to **CITY**, within twenty (20) days after the end of each calendar month and within forty-five (45) days after the end of each fiscal year, a true and correct statement, certified as true and correct by **VENUWORKS** Facility Executive Director, of all Revenues and Operating Expenses of the preceding calendar month and fiscal year, together with any reasonable supporting documentation requested by **CITY**. **VENUWORKS** shall provide an accounting of each event held at the Facility in said monthly reports for the preceding calendar month. **VENUWORKS** shall submit to **CITY** an

annual financial audit report prepared in accordance with generally accepted accounting principles (GAAP) by an independent certified public accountant approved by **CITY** for the operations under this agreement. **VENUWORKS** shall submit this report to owner by March 31 of each year for the prior year's activity.

ARTICLE 5

THE MANAGEMENT FEES

- 5.1 Base Management Fee. For the term of this contract, **CITY** shall pay **VENUWORKS** a base management fee of \$70,000 per year. On January 1, 2013, and each January 1st thereafter during the term and any renewals of the Agreement, the base fee amount shall be adjusted by a percentage equal to the Annual change in the Consumer Price Index - All Urban Consumers; series ID CUURX200SA0; Not Seasonally Adjusted; Midwest – Size Class B/C; All Items; December 1996=100. Payments for Base Management Fees will be due to **VENUWORKS** by the end of the month for which the management fee is earned.
- 5.2 Variable Fees: The **CITY** shall pay to **VENUWORKS** a variable fee, over and above the base management fee. The variable fee will be determined by weighing **VENUWORKS** performance each fiscal year against goals mutually established by the **CITY** and **VENUWORKS** in the categories of : budgeted subsidy versus actual and **CITY** satisfaction. The definition of each category, and the relative weighted value of each category in regard to determining the variable fee, is as follows:

“**Budgeted Subsidy Versus Actual**” – is a performance calculation based on the FYE actual subsidy versus the Budgeted subsidy as approved by the City and the Authority Board (to include the VenuWorks Base Management Fee). Improving on the budgeted subsidy would create a calculation whereby **VenuWorks** would receive 50% of the subsidy savings. It is understood and agreed by **VenuWorks** that it shall not attempt to achieve subsidy savings through a reduction in services or the quality of services provided.

“CITY Satisfaction” – is the level of satisfaction set annually by the **CITY** Administration, together with the Advisory Board. This category will be calculated utilizing a percentage of the improvement on the budgeted subsidy. **CITY Satisfaction** would be a subjective amount up to or equal to the **Budgeted Subsidy Versus Actual** calculation.

As an Example:

*If the Budgeted Subsidy in FY1X is (\$200,000) and the Actual Subsidy for FY1X is (\$190,000), VenuWorks, based on the **Budgeted Subsidy Versus Actual** calculation would receive a \$5,000.00 bonus. **CITY Satisfaction** would be determined based on a recommendation by the Authority Board but determined by the **CITY**, and would be in the range of \$0-\$5,000.00, based solely on the opinion of how well **VenuWorks** has performed by the Board and **CITY**.*

- 5.3 Commissions: **VENUWORKS** will collect a commission for sponsorships, naming rights, soft drink pour rights, and display advertising contracts. The commission will be 5% of gross annual revenues realized from these combined revenue sources.
- 5.4 Limits on Variable Fees and Commissions: The total of variable fees paid and commissions paid to **VENUWORKS** for each fiscal year shall not exceed the base fees paid in that fiscal year.

ARTICLE 6
PAYMENT OF MANAGEMENT FEES,
AND OPERATING EXPENSES

- 6.1 Deposit of Funds. On the first business day of each January, February, March, April, May and June during the term and any renewal term of this Agreement **CITY** will deposit one sixth (1/6) of the estimated annual deficit as defined in the Annual City Budget into the **CITY** Operating Account.
- 6.2 Management Fees The **CITY** will issue payment for the Base Management Fee to VenuWorks Corporate offices in Ames, Iowa by the end of the month for which the management fee is earned. VENUWORKS will invoice **CITY** and **CITY** will, within thirty (30) days, pay VenuWorks Corporate offices in Ames, Iowa the variable management fees on an annual basis when said amount is calculable.
- 6.3 Insufficient Funds. In the event that the **CITY** Operating Account is projected by **VENUWORKS** to be insufficient to cover the Operating Expenses due and payable during a month (the "Monthly Deficiency"), then the Monthly Deficiency shall be paid by **CITY** into the **CITY** Operating Account not later than five (5) working days after **CITY'S** receipt of notice of the deficiency, along with cash flow projections and other supporting documentation, from **VENUWORKS**. If the amounts deposited by **CITY** in the **CITY** Operating Account exceeded the amounts required to pay the Operating Expenses in any month such positive balance shall be credited against **CITY'S** obligation to make future deposits into the **CITY** Operating Account.
- 6.4 Bi-Monthly Meetings. Representatives of **VENUWORKS'** on-site management and the **CITY** Advisory Board shall meet bi-monthly to review revenues and operating expenses for the prior calendar month. **VENUWORKS** corporate representatives shall meet regularly with the **CITY** to monitor performance and discuss operations.

ARTICLE 7

GENERAL TERMS AND CONDITIONS

- 7.1 Representation of CITY. **CITY** hereby represents and warrants to **VENUWORKS**, as an inducement to **VENUWORKS** entering into this Agreement that it is **CITY'S** intent that the Facility will be permitted to be open to the paying public on a daily basis in a manner consistent with industry practices and the **CITY's** pre-existing leases and agreements and its policies and procedures.
- 7.2 Representation of VENUWORKS. **VENUWORKS** hereby represents and warrants to **CITY** on its own behalf and on behalf of its shareholders, officers, directors and employees, that **VENUWORKS** is fully capable of providing services as outlined in this Agreement.
- 7.3 Standard of Operation. **VENUWORKS** represents and warrants to **CITY** that it shall maintain an efficient and high quality operation at the Facility comparable to other similar facilities and containing facilities similar to those of the Facility.
- 7.4 Accounting Records, Reports and Practices.
- 7.4.1 Maintain Records. **VENUWORKS** shall maintain accounting records relating to the Facility using accounting practices in accordance with generally accepted accounting principles consistently applied and the **CITY's** existing procedures.
- 7.4.2 Internal Financial Controls. **VENUWORKS** shall establish internal financial control policies and practices which are in accordance with generally accepted accounting principles in the industry and acceptable to **CITY**.
- 7.4.3 CITY Access. **CITY** shall have unlimited access to all accounting records and supporting documentation of **VENUWORKS** relating to the Facility during the term and any renewal term of this Agreement and for a period of six (6) years thereafter. All such records shall be submitted to the **CITY**, if and when, **VENUWORKS** is

terminated. Such right to access shall be exercised in a reasonable manner.

7.4.4 Audit Disclosure. The books, records, documents and accounting procedures and practices of **VENUWORKS** relevant to this Agreement are subject to examination by the **CITY** and either the Legislative Auditor or the State Auditor for a period of six (6) years after the creation or, in the case of procedures and practices, the year in which performed.

7.5 Default, Right to Cure, Termination. It shall be an event of default ("Event of Default") hereunder if either party hereto: (i) fails to pay or deposit sums due by one party to the other within seven (7) days after written notice by the other of such failure, or (ii) fails to perform or comply with any other obligation of such party hereunder within thirty (30) days after written notice by the other of such failure (which notice shall specify, in sufficient detail, the specific circumstances so as to give the defaulting party adequate notice and the opportunity to cure the same); provided however, that if the default is of a nature that it cannot be cured within thirty (30) days, then the defaulting party shall not be deemed in default hereunder if it commences to cure the default within ten (10) days after the effective date of the notice of such default and diligently proceeds to cure such default within ninety (90) days after the effective date of notice.

7.5.1 If the **CITY** loses its statutory authority to operate the Facility and grounds, subject of this Agreement, this Agreement shall automatically terminate. If **VENUWORKS** is adjudged a bankrupt, or if it makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of its insolvency, **CITY** may, without prejudice to any right or remedy, terminate this Agreement. If **VENUWORKS** fails to make prompt payment to its creditors, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Facility, or otherwise is guilty of an Event of Default and should fail to initiate the necessary remedial measures in accordance with Section 7.5 after written notice from the **CITY** to do so and thereafter diligently prosecute such

measures, then **CITY** may, without prejudice to any right or remedy terminate this Agreement. In such case, **VENUWORKS** shall be entitled to receive the Fees earned to date.

7.5.2 Dispute Resolution. No claim, dispute or other matter in question between the parties hereto, arising out of this Agreement, as the same may be amended from time to time, or the breach thereof, shall be submitted to arbitration except upon the written agreement of the parties hereto. Prior to the initiation of any litigation between the parties concerning any dispute, and as a condition precedent to such initiation, it is agreed that there shall be a meeting of the parties, and if needed, mediation. At such meeting, **VENUWORKS'** designated representative, or his/her designee, and the **CITY** Manager, or his/her designee, will hear all arguments concerning the merits of any dispute. After the presentations, the General Manager and **CITY** Manager and/or their designees shall discuss and attempt to resolve the dispute. If they 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. **VENUWORKS** shall continue to perform under this Agreement pending the resolution of any dispute.

7.6 Jurisdiction. The parties submit to the jurisdiction of the district courts sitting in Racine County with respect to any claim or proceeding arising out of or related to this Agreement.

7.8 Insurance.

7.8.1 Employment Matters. In connection with the employment of its employees, **VENUWORKS** shall pay all applicable social security, unemployment, 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, unemployment insurance and workers' compensation. **VENUWORKS** shall indemnify and hold harmless the **CITY** from all costs, expenses, claims or damages resulting from any failure of **VENUWORKS** to comply with this Section.

7.8.2 Insurance Requirements:

7.8.2.1 Workers Compensation Insurance: **VENUWORKS** shall purchase and maintain during this contract, workers compensation insurance in accordance with Wisconsin statutory requirements and employers liability insurance with limits of not less than \$500,000 per accident and per employee for bodily injury.

7.8.2.2 General Liability Insurance: **VENUWORKS** shall purchase and maintain during this contract, commercial general liability insurance including liquor liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence / \$2,000,000 in aggregate for Bodily Injury, Personal Injury, and Property Damage. Policy coverage shall include Premises and Operations, Products and Completed Operations, less inclusive and no more restrictive than the coverage provided by a standard Commercial General Liability Policy form (ISO CG 00 01 96) with standard Bodily Injury and Property Damage exclusions, and standard Personal and Advertising Injury exclusions. Any additional exclusion shall be clearly identified on the Certificate of Insurance and shall be subject to the approval of **CITY** and **VENUWORKS**. The insurance required by this contract shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the State of Wisconsin and currently rated "A" or better by the A.M. Best Company.

7.8.2.3 Automobile Liability Insurance: **VENUWORKS** shall purchase and maintain during this contract, automobile liability insurance on a per occurrence basis with a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage. Coverage shall include any owned, all hired and non-owned motor vehicles used in the performance of this contract by **VENUWORKS** or its employees. The insurance required by this contract shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the State of Wisconsin and currently rated "A" or better by the A.M. Best Company.

7.8.2.4 Umbrella and Excess Liability Insurance: **VENUWORKS** shall purchase and maintain during this Agreement an umbrella and excess insurance policy on a per occurrence basis with limits of liability of not less than \$5 million per occurrence / \$5 million in aggregate. Any umbrella and excess insurance shall be written on a per occurrence basis on a pay on behalf form providing the same coverage and endorsements required of the primary policies.

7.8.2.5 Property Insurance: **CITY** will maintain property insurance coverage on the Facility itself. **VENUWORKS** shall assume all risks for loss of or damage to its own property at the Facility and **VENUWORKS** may maintain such insurance, at its sole expense, as it deems necessary to protect its own property.

7.8.2.6 Subcontractors: **VENUWORKS** shall require all its subcontractors who perform work and / or services under this contract to meet appropriate insurance requirements as reasonably required by **CITY**. **CITY**'s insurance consultant shall review such requirements prior to letting of subcontracts.

7.8.2.7 Deductibles and Self-Insured Retention: Any policy deductible or self-insured retention must be declared on the Certificate of Insurance and shall be subject to the approval of the **CITY**.

7.8.2.8 Professional Liability Insurance: **VENUWORKS** shall purchase and maintain

professional liability insurance coverage, at its expense, throughout the term of this Agreement and any renewal period(s), and for twelve (12) months after termination of this Agreement, in the minimum amount of \$1,000,000, and if written on a claims made basis, be able to purchase an extended reporting period of at least twelve (12) months at the cancellation of this Agreement or the coverage, whichever should occur first.

7.8.2.9 Proof of Insurance: **VENUWORKS** shall furnish **CITY** with Certificates of Insurance, and a copy of the policies if requested by **CITY**. The name of the project or contract shall be listed on the certificates of insurance along with any deductible or self-insured retention. Such insurance, except workers compensation and professional liability, shall name the **CITY** as an additional insured. Before commencing any performance under this Contract **VENUWORKS** shall deliver all the Certificates of Insurance to **CITY** certifying that the policies stipulated above are in full force and effect. All insurance shall remain in effect during the life of the contract.

7.8.3 Insurance Cancellation or Material Change Notice: The certificates of insurance shall state that the insurance company will provide thirty (30) days written notice prior to cancellations, non-renewal, or material change including reduction of insurance coverage or limits. The notice will be sent to the **CITY**, via certified mail.

7.8.4 Reserved

7.8.5 Cooperation: Each party agrees to cooperate fully with the other in promptly providing such insurance underwriting and other information as may be necessary or appropriate to obtaining and maintaining the insurance described herein. The parties further agree to cooperate with the insurance companies and agents by responding promptly to their reasonable requests.

7.8.6 Crime Insurance. During the term of this Agreement **VENUWORKS** shall maintain

Crime Insurance, with an insurer acceptable to **CITY** (such acceptance by **CITY** not to be unreasonably withheld or delayed), providing at least the following coverage 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 coverage is provided on a "blanket" limit basis, a blanket limit of \$1,000,000 shall be considered to be sufficient to comply with this provision. The policy shall include an endorsement providing that any "employee" of **VENUWORKS** shall not be deemed to also be an "employee" of **CITY** for purposes of the coverage afforded under the Employee Dishonesty coverage part. **CITY** shall be both a Loss Payee (as its interests may appear) and an Additional Insured under such policy, which policy shall be written to apply to the Crime exposures arising under or in connection with this Agreement, and not to any other unrelated Crime exposures incurred by **VENUWORKS** or **CITY** under any other similar agreements or otherwise.

7.8.7 Insurance Cost: The cost of providing insurance hereunder shall be an Operating Expense, except for professional liability insurance.

7.8.8 Insurance Terms. Insurance terms not otherwise defined in this Agreement shall be interpreted consistent with insurance industry usage.

7.8.9 Tort Liability Limit Insurance referenced in this Agreement, except Workers Compensation/Employers Liability and professional liability, shall list **CITY** as additional insured. Furthermore, the **CITY's** liability, if any, shall be governed by the provisions of the State Laws of Wisconsin..

7.9 Indemnity. **VENUWORKS** agrees to indemnify, hold harmless, protect, and defend

the **CITY**, its agents, representatives and any Affiliated or related entities against any and all claims, loss, liability, damage, costs and expenses, including reasonable attorney's fees, that are alleged to have occurred as a result of or due to the breach of contract, negligence or willful misconduct of **VENUWORKS**, its agents, consultants, subcontractors, employees or representatives, to the extent that such claim, loss, liability, damage, cost or expense is alleged to have been caused by **VENUWORKS**, its agents, consultants, subcontractors, employees or representatives. **VENUWORKS** hereby waives any claims it may, now or in the future, have against **CITY** which claims are or should have been covered by the insurance specified in this Agreement.

- 7.10 Damage to and Destruction of the Facility. If all or part of the Facility is rendered unusable by damage from fire and other casualty which, in the reasonable opinion of **CITY**,
- (a) can be substantially repaired under applicable laws and governmental regulations within 365 days from the date of such casualty (employing normal construction methods without overtime or other premium), then **CITY** shall forthwith repair such damage. During the period during which the Facility or any part thereof remains unusable until such time as the Facility resumes full operation, (i) the Base Management Fee shall be reduced to \$5,000 per month, and **VENUWORKS** and **CITY** shall jointly decide on an operating budget for the duration of the repair period and shall jointly determine whether to retain personnel during the repair period, and (ii) subject to applicable law, the term and any renewal term of this Agreement shall be extended by the amount of time in which the Facility is closed to the general public due to said damage; or
 - (b) cannot be substantially repaired under applicable laws and governmental regulations within 180 days from the date of such casualty (employing normal construction methods without overtime or other premium), then **CITY** shall notify **VENUWORKS** thereof. In such case, either **CITY** or **VENUWORKS** may elect to terminate this Agreement as of the date of such casualty by written notice delivered to the other not more than 60 days after receipt by **VENUWORKS** of **CITY'S** notice

concerning the reconstruction.

7.11 Employees.

7.11.1 Employees of **VENUWORKS**. All persons engaged at the Facility in operating any of the services hereunder shall be the sole and exclusive employees of **VENUWORKS** and shall be paid by **VENUWORKS**, except for those individuals employed or utilized by subcontractors of **VENUWORKS**, as provided for in this Agreement but in no event deemed an employee of **CITY**. In connection with the employment of its employees, **VENUWORKS** shall pay all applicable social security, reemployment insurance, worker's compensation or other employment taxes or contributions to insurance plans, and retirement benefits, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, reemployment insurance and worker's compensation, and shall defend, indemnify and save **CITY** harmless from any responsibility therefore. **VENUWORKS** and its subcontractors and affiliates shall comply with all applicable laws, ordinances and regulations including, without limitation, those pertaining to human rights and non-discrimination. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be canceled or terminated by **CITY** for a violation of this paragraph.

7.11.2 Employee Expense . All costs of employment of Facility employees incurred by **VENUWORKS** shall be an operating expense of the Facility.

7.11.3 Employee Standards. **VENUWORKS** will employ trained and neatly uniformed employees and said employees shall conduct themselves at all times in a proper and respectful manner. Any dismissal shall be in accordance with **VENUWORKS'** 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 organizational agreements which may be in effect at the time of said dismissal and **VENUWORKS** shall defend, indemnify and save **CITY** harmless from any claim, cause of action,

expense (including attorneys' fees) lost, cost or damage of any kind or nature arising therefrom.

7.11.4 Employee Non-Compete Clause Waiver. **VENUWORKS** shall not have a non-compete agreement and/or clause in its employment contract or relationship with the employees hired or appointed by it to manage the Facility pursuant to the terms and conditions of the Agreement except for the Executive Director that **VENUWORKS** may appoint as its onsite manager, with **CITY** approval. A non-compete restriction as the term is used in this Agreement, is a restriction prohibiting **VENUWORKS** employees from performing in the same or similar management or operational capacity at this Facility but under the employment of the **CITY** or another entity other than **VENUWORKS**. With regard to the **VENUWORKS** executive director, **VENUWORKS** may invoke a non-compete restriction for the first three years of the executive director's employment. Subsequent non-compete restrictions may limit the executive director from working for a competing management company in the operation of the Facility but shall not limit the executive director's ability to work directly for the **CITY**.

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

7.13 No Payment by CITY. Notwithstanding anything in this Agreement or exhibits hereto to the contrary, **CITY** shall not be obligated to reimburse **VENUWORKS** as

Operating Expenses or otherwise for costs and expenses (including attorneys, fees) for litigation which is covered by **VENUWORKS'** defense and indemnification obligations set forth in Sections 7.11.3, and 7.12, and 7.15 herein.

- 7.14 Termination for Cause or Convenience. Notwithstanding anything herein contained to the contrary, either party may terminate this Agreement by giving ninety (90) days written notice to the other party within thirty (30) days following the end of any fiscal year in which there occurred a Financial Shortfall equal to or greater than five percent (5%) of budgeted gross Revenues for that year. A "Financial Shortfall" shall be defined as the failure to accomplish the budgeted financial outcome for a given fiscal year. In the event of early termination for any reason, **CITY** shall pay to **VENUWORKS** all amounts owing hereunder and accrued through the date of termination.
- 7.15 Compliance with Laws. **VENUWORKS** will comply with all federal, state and local ordinances, statutes, rules and regulations as they relate to the operation of the Facility. **VENUWORKS'** failure to comply with such ordinances, statutes, rules and regulations relating to the Facility shall be an Event of Default under this Agreement and shall entitle **CITY** to terminate this Agreement pursuant to the provisions of Section 7.5 hereof. **VENUWORKS** agrees that it shall not be entitled to any dispute and/or litigation costs (including attorneys' fees) as Operating Expenses pursuant to Subparagraph (1) of Exhibit A with regard to its failure to comply with ordinances, statutes, rules and regulations as set forth herein.
- 7.16 Non-waiver. The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
- 7.17 Amendment. The parties may amend this Agreement only by written agreement executed by the parties.

- 7.18 Choice of Law. The laws of the State of Wisconsin shall govern the rights and obligations of the parties under this Agreement.
- 7.19 Severability. Any provision of this Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of this Agreement.
- 7.20 Notices. Any notice required herein shall be in writing and shall be deemed effective and received (a) upon personal delivery; (b) five (5) days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; or (c) one (1) business day after deposit with a national overnight air courier, fees prepaid, to **VENUWORKS** or **CITY** at the following addresses:

If to **CITY**: **CITY** Manager
 CITY of Racine
 730 Washington Avenue
 Racine, WI 53403

If to **VENUWORKS**: VenuWorks of Racine, LLC
 4611 Mortensen Road, Suite 111
 Ames, IA 50014
 Attention: President

Either party may designate an additional or another representative or address for notices upon giving notice to the other party pursuant to this paragraph. For the purposes of this Agreement, "business day" shall mean a day which is not a Saturday, a Sunday or a legal holiday of the United States of America.

- 7.21 Representatives. **CITY'S** representative to **VENUWORKS** in connection with Facility operations shall be the **CITY** Manager, and the **VENUWORKS**

representative shall be **VENUWORKS'** on-site Executive Director at the Facility.

- 7.22 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 God, riot, civil commotion or other matter or condition of like nature, including the unavailability of sufficient fuel or energy to operate the Facility, 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.
- 7.23 Labor Dispute. In the event of a labor dispute which results in a strike, picket or boycott affecting the Facility or the services described in this Agreement, **VENUWORKS** shall not be deemed to be in default or to have breached any part of this Agreement. **VENUWORKS** shall immediately remedy such labor dispute by all appropriate legal means after consultation with the **CITY**.
- 7.24 Non-Discrimination. During the performance of this Agreement, **VENUWORKS** shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. **VENUWORKS** shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. **VENUWORKS** shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for work under this Agreement, and will require all of its subcontractors for such work in turn to incorporate the same requirements in all of their subcontracts for such work. **VENUWORKS** further agrees to comply with all aspects of the Minnesota state law and the American with Disabilities Act of 1990, as the same may be amended from time to time.

7.25 Intellectual Property Rights. Except for intellectual property rights owned by **VENUWORKS** prior to entering into this Agreement and that it brings to this Agreement in its performance for the benefit of the **CITY**, the **CITY** shall share all rights, title and interest in all of those intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this Agreement. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by **VENUWORKS** employees employed at the Facility in the performance of this Agreement. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks or other materials, whether in tangible or electronic forms, prepared by **VENUWORKS**, its employees, agents or subcontractors employed at the facility, in the performance of this Agreement. **CITY** shall be provided a copy of such Works and Documents created under this Agreement. Any use of such Works and Documents beyond the scope of the Agreement by either party is without liability to the other, and any party using such Works or Documents agrees to defend and indemnify the other from claims or liability to the extent caused by such use.

7.26 Integration. This Agreement and all appendices and exhibits hereto embody the entire agreement of the parties relating to the services to be provided hereunder. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Exhibits hereby integrated hereto are:

Exhibit A: Operating Expenses

Exhibit E: Ground Lease

Exhibit F: State Grant Agreement

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

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

For **CITY**

BY

DATE

Its: **CITY** Manager

VENUWORKS of Racine, LLC

By: Steven L. Peters

DATE

Its: Member

Exhibit A

Operating Expenses

The term "Operating Expenses" shall mean the following and shall be, in all cases, subject to the Annual Budget:

- (a) on-the-job payroll cost, including wages, bonuses and commissions paid to employees and the cost of paid holidays, vacations, severance benefits, sick leave, employment practices liability, work compensation and other compensation and benefits; cost of training; payroll processing costs;
- (b) employer contribution cost, in relation to employees carried on the on-the-job payroll mentioned in the foregoing clause (a), of every nature whatsoever, including but not limited to, social security, reemployment insurance, benefits for medical and hospital care, disability, death, termination, retirement or pensions, or insurance or annuity contracts to provide any of the foregoing, and all payments, other than those referred to in the foregoing clause (a), required under any collective bargaining agreement to which **VENUWORKS** is a party, or under any state or federal law or any regulations promulgated there under;
- (c) cost of medical and security examination for employees on the on-the-job payroll;
- (d) cost of purchasing, renting, maintaining and cleaning uniforms;
- (e) cost of equipment, materials and supplies, including the cost of installation thereof;
- (f) cost of insurance, permits, licenses and fees;
- (g) cost of property, business, privilege, sales and all taxes other than taxes based on net income, provided that any penalties or fines for failure to collect and remit sales taxes shall not be an Operating Expenses but shall be borne by **VENUWORKS**;
- (h) cost of marketing, promotions and advertising; cost of travel on behalf of Facility;
- (i) cost of necessary outside professional services (including the annual audit), upon prior written approval by the **CITY**;
- (j) cost of the Commodities, (i.e. food stuffs' purchased for resale to the public)
- (k) cost of utilities;

- (l) except for those litigation costs in connection with **VENUWORKS** obligations under Sections 7.11.3, 7.12, and 7.15, litigation expenses or other costs (including attorneys' fees) incurred by **VENUWORKS** in connection with any proceeding; provided however that **CITY** shall not be obligated to pay any such fees or costs (including attorneys' fees) unless prior to incurring any legal expense (including attorneys' fees), **VENUWORKS** shall consult with the **CITY**, and **CITY** and **VENUWORKS** shall jointly determine the course of action (including payment obligations thereof) to be taken with regard to any claim made against **VENUWORKS** or **CITY** (concerning the Facility) or to be made by **VENUWORKS** or **CITY**.
- (m) cost of installation of Additional Equipment and replacements thereof;
- (n) cost of replacements of pots, pans, dishes, linens, uniforms, silverware and glassware necessary for the operation of the Concessions;
- (o) cost of ordinary maintenance and repair of the Facility and the equipment, Additional Equipment and replacements thereof;
- (p) cost of ordinary housekeeping of the Facility;
- (q) all necessary costs related to **VENUWORKS** corporate staff travel, lodging, and supply costs incurred in connection with servicing **CITY'S** needs at Facility, subject to **CITY** approval;
- (r) all other expenses not specifically set forth in this Exhibit but not including the cost of home office overhead relating to the services provided by **VENUWORKS** hereunder, subject to **CITY'S** prior written approval of any such expense, which approval shall not be unreasonably withheld or denied.