

1 other required authorizations from regulatory agencies, without limitation; provided, however,
2 County agrees to cooperate with Operator and to assist Operator to obtain any such approvals,
3 changes, permits or authorization. Operator enters into this Agreement with the knowledge and
4 understanding that Operator shall use the Park consistent with its primary function, to construct,
5 operate, renovate, maintain, repair, and manage up to five baseball diamonds, intended to be
6 comprised of three little league baseball diamonds and one high school regulation baseball diamond
7 and the renovation of a tee ball diamond (collectively, the “Baseball Fields”) and related amenities in
8 the Park (among them, if and to the extent constructed, the Pavilion, security fencing ~~on~~around all
9 fields except the tee ball diamond, field and outside lighting, sound system, score boards, utility lines
10 and equipment to service the fields and amenities, the storage shed, dugouts, bleacher seating,
11 entranceway, entrance treatments, and signage, all of which are hereby approved by the County,
12 together and any other amenity, to the extent any such other amenity is permitted and approved by
13 County, which approval by County shall not be unreasonably withheld, conditioned or delayed),
14 (collectively, the “Related Amenities”). Operator shall use the fields in conjunction with its youth
15 athletic programming, other athletic programming, and may also use the Pavilion, the fields, Related
16 Amenities and the Park for workforce training, including culinary, hospitality, landscaping, grounds
17 keeping, and snow maintenance, event hosting, urban gardens, and for other uses ancillary thereto.
18 Subject to County’s prior written approval, which shall not be unreasonably withheld, conditioned or
19 delayed, Operator may use the Property for additional events for the purpose of raising funds or
20 generating revenues to benefit Operator so long as such events are not inconsistent with the purpose
21 of increasing public access or enjoyment of the Park. As used in this paragraph, and any other part
22 of this Agreement, any requirement of the “County’s approval” or “prior written approval” or
23 “consent” or words of similar import shall be deemed satisfied by the written approval of the
24 Director of Milwaukee County Department of Parks, Recreation and Culture (the “Director”) or
25 said Director’s designee. The Property shall be developed and landscaped in a manner that is
26 consistent with its use as Baseball Fields and Related Amenities and as will enhance public access
27 to and enjoyment of the adjacent areas of the Park and promote park and open space uses. The
28 Director’s approval of the plans for development, landscaping, entranceways, entrance treatments
29 and signage shall be evidence that Operator has complied with the foregoing with respect thereto.
30

31 (b) Public Access and Use of the Park. Operator and County recognize that public use of
32 the Park and Property is mutually desirable. Operator shall include in its programming access to all
33 sectors of the Milwaukee County community, including programming intended to reach minority and
34 other groups. Operator shall also provide for and encourage use of the Baseball Fields and Related
35 Amenities by non-members of Operator whether by groups such as Milwaukee Public Schools or
36 by individual members or organizations of the public. Operator may, however, give priority to its
37 own programming. Operator has set up a reservation system that is accessible to the public.
38 Operator confirms that the County may use the reservation system or any similar system set up by
39 Operator in the future to reserve use of the field on the same terms and conditions ~~as similarly~~
40 ~~situated “Community Partners.” “Community Partners” are those organizations designated as such~~
41 ~~by Operator and which organizations may reserve the field at a discounted rate for other public~~
42 ~~users as the Operator’s reservation policy as~~ similarly situated “Community Partners”. “Community
43 Partners” are those organizations designated as such by Operator. Operator shall make a monthly
44 calendar available to which County may request field reservations through the reservation system
45 preferred by the Operator, such request must occur at least thirty (30) days in advance of the
46 requested date. ~~All reservation fees associated with field reservation will be waived by the Operator~~
47 ~~for the County provided that the County is reserving the field only for individual, single, and one-off~~
48 ~~events that are non-seasonal, non-league, non-tournament, and non-program activities. The~~
49 ~~Operator and the County expressly acknowledge that the intent of waiving fees for County~~
50 ~~reservations is to encourage public access to the Baseball Fields and not to adversely impact the~~
51 ~~finances or programs of the Operator. In addition to the foregoing, Operator agrees on a weekly~~

1 basis to make the Baseball Fields available to the public free of charge for at least four (4) hours,
2 provided such access need not be provided during the winter or if the weather is not conducive to
3 such access, the dates and times of which are to be mutually agreed upon between County and
4 Operator, acting reasonably and in good faith. Operator uses and public uses in the Park shall at all
5 times be subject to the requirements and restrictions in Milwaukee County General Ordinances
6 Sections 47.02 and 47.16, and to all other rules, regulations, policies, and procedures applicable to
7 Properties and space owned by the County, not covered by this Agreement and open for general
8 use by the public. County further represents it will use its best effort to promptly respond and
9 enforce reported violations of the above-referenced ordinances, policies, procedures, rules
10 and regulations.

11
12 3. TERM; EXTENSION TERM. The Agreement shall be for an initial term of
13 approximately ~~thirty fifteen (3015)~~ years (the "Initial Term") commencing as of the above date
14 and expiring on November 30, ~~2048~~2033. Provided that Operator (i) is not then in default under
15 this Agreement, (ii) is maintaining and managing the Park and the Property as herein required,
16 and (iii) is actively operating the Property for its intended purposes, after the Initial Term of the
17 Agreement, Operator shall have the option to extend the term of the Agreement for one (1)
18 additional fifteen (15) year period (the "Extension Term" and, together with the Initial Term, the
19 "Term")~~The County and Operator may mutually agree to extend the term of this Agreement for~~
20 ~~one (1) additional consecutive period of fifteen (15) years ("Extended Term") following the Initial~~
21 ~~Term on the same terms and conditions as apply to the Initial Term.~~ Operator shall exercise
22 this option, if at all, by giving County written notice of its desire to extend the Agreement not
23 later than one hundred eighty (180) days prior to expiration of the Initial Term.

24
25 4. SCOPE OF SERVICES. Operator shall perform and furnish such management services
26 as are appropriate or necessary to construct, to operate, to maintain and to manage the Baseball
27 Fields and Related Amenities as more particularly set forth.

28
29 5. CONSTRUCTION; ALTERATIONS and IMPROVEMENTS.

30
31 (a) This Agreement and the obligations of County and Operator hereunder are contingent upon
32 Operator successfully meeting the Milwaukee County "Due Diligence" requirements (see attached, as
33 Exhibit D). Operator has met these requirements. Prior to commencing construction on the Pavilion,
34 Operator shall have obtained or have readily available through a line of credit or otherwise an amount of
35 not less than one hundred percent (100%) of the estimated cost of demolition of the existing concession
36 stand, and construction of the Pavilion. Prior to commencing construction on any baseball field, Operator
37 shall have obtained or have readily available through a line of credit or otherwise an amount of not less
38 than one hundred percent (100%) of the estimated cost of the field and the security fencing. All costs
39 associated with the demolition, construction and operation of the field, Pavilion and fencing,
40 including hookup of utilities and any and all utility charges for the fields and fencing are the
41 responsibility of Operator.

42
43 (b) Prior to the start of any demolition or construction activities, including any
44 subsequent alterations, renovations or improvements to the Park requiring County approval,
45 Operator shall submit all detailed demolition or construction plans and specifications, and any
46 revisions thereto, to County and to the Architecture and Engineering Division of the Milwaukee
47 County Department Of Administrative Services, together with the name of Operator's proposed
48 contractor(s), for review and approval, which approval shall not be unreasonably delayed or
49 withheld. County's failure to respond within thirty (30) days to a written or electronic request by
50 Operator for approval of construction plans, or within twenty (20) days regarding revisions, shall
51 constitute approval, if, in such written or electronic request, Operator shall have notified County of

1 the time constraint. County may request and Operator shall not unreasonably refuse a reasonable
2 extension of time within which to respond if needed. It is expressly understood that County or the
3 Architecture and Engineering Division cannot and will not approve any revisions that, in their
4 reasonable opinion, are not consistent with Operator's purposes or not consistent with the
5 conceptual design, plans and specifications submitted by Operator. Operator shall reimburse
6 County for the cost of a Milwaukee County Project Manager during the construction phases of
7 the project, including any subsequent construction, alterations or improvements, in an amount
8 not to exceed seven thousand five hundred dollars (\$7,500.00) within thirty (30) days after
9 receipt of an invoice therefor). It is understood by the Parties that Operator anticipates that its
10 improvements to the Park may proceed in stages, with the installation of the Baseball Fields and
11 security fencing being financed, submitted for approval, and constructed as one Phase and the
12 demolition of the existing concession facility and construction of the new Pavilion as a different
13 Phase; and with the equipment and other Related Amenities, to be financed, submitted for
14 approval, and constructed at later dates dependent on the timing of Operator's fundraising. All the
15 provisions and requirements of this Paragraph 5 and its subparts shall apply with equal force and
16 effect to any later construction. The County, through its Parks division, and Operator shall meet at
17 least annually during the Term of this Agreement to review the Operator's use of the Property and to
18 discuss contemplated improvements of the Property and the Park.

19
20 (c) Conditions for approval shall include, but not be limited to provision that: (1)
21 Operator shall obtain, prior to commencing any demolition, alterations, additions and
22 improvements, all necessary permits and licenses from the appropriate governmental
23 authorities; and (2) Operator shall commence demolition or construction of said improvements
24 described in the approved plans and specifications as soon as reasonably practicable following
25 County's approval and shall have a period of thirty–six (36) months or other period of time
26 mutually agreed upon by Operator and County, thereafter to complete the Baseball Fields,
27 Pavilion and security fencing contemplated hereby (subject to extension by reason of force
28 majeure delay).

29
30 1) Operator shall, at all times, obtain a Right-of-Entry ("ROE") Permit from
31 County before performing any ground disturbing activities in any part of the Park. Operator's
32 application for an ROE shall be reviewed and approved by County prior to commencing any
33 ground disturbing activities. The ROE can be obtained at the Milwaukee County Dept. of Parks,
34 Recreation and Culture, 9480 Watertown Plank Rd. Wauwatosa, WI 53226. County approval of
35 the ROE shall not be unreasonably withheld, and any fees for the ROE shall be waived.

36
37 (d) All development and landscaping shall be completed in a manner and consistent
38 with the standards established for other work in the Park. County shall have the right to inspect
39 the work at reasonable times provided it does not interfere with Operator's construction and
40 improvements. Any and all alterations, additions and additional improvements shall be made in
41 compliance with all statutes, laws, ordinances, rules and regulations of any governmental
42 authority having jurisdiction of the Park. Operator shall also indemnify and hold County
43 harmless from and against all statutory liens or claims or liens of any contractor, subcontractor,
44 laborer or any other party which may arise in connection with any alteration, addition or
45 improvement to the Park undertaken by or on behalf of Operator. Any structures, alterations,
46 additions or leasehold improvements installed on the Park by Operator that are necessary for
47 the continued operation of the Park shall become the property of the County upon the expiration
48 or termination of this Agreement. Except as expressly permitted herein, in no event shall
49 Operator make any alterations or additions to the Park without the prior written consent of
50 County, which consent shall not be unreasonably delayed, conditioned or withheld, except in the
51 event of an emergency, when such consent shall not be required, provided that notice shall be

1 given as soon as reasonably possible thereafter. The parties acknowledge that the Baseball
2 Fields and Related Amenities have been approved by the County subject to compliance with the
3 other provisions of this section. Routine instances of maintenance, painting, repair and like-kind
4 replacement of materials needing repair or replacement do not constitute alterations or additions
5 requiring such approval, providing they do not individually exceed \$50,000 in cost.
6

7 (e) Builder's Risk. Operator or its general contractor shall provide Builders Risk
8 insurance coverage on a completed value form insuring for special perils, with Milwaukee
9 County as additional insured and loss payee on the insurance certificate. Coverage is during
10 construction period and is intended to terminate when the work has been completed and the
11 Property is ready for occupancy. In addition, Operator shall not be required to obtain the
12 consent of County to the installation of electric, water, and sewer lines for the Pavilion, field
13 irrigation, lighting, and/or other uses provided that Operator or its contractors obtain any
14 required permits and/or easements.
15

16 (f) Construction Escrow. Prior to commencing construction on the Property, Operator
17 agrees to provide evidence satisfactory to the County that the total amount of funds necessary
18 to demolish the existing concession facility, construct the Baseball Fields, Pavilion and security
19 fence in the Park, as applicable for the applicable phase, are immediately available and
20 dedicated to such purpose and documentation is in place to provide for the orderly
21 disbursement of the funds during the course of construction to pay for all permits, material,
22 labor, supplies, and any other miscellaneous items used or necessary for the construction of the
23 Baseball Fields, Pavilion and security fence, as applicable. Operator shall deliver to County
24 evidence reasonably acceptable to the County that the total amount of such funds are
25 immediately available and dedicated for the above purpose prior to any construction activities
26 taking place on the Park said evidence may be in the form of a letter from a banking institution
27 stating that a line of credit is immediately available to Operator for such purposes in an amount
28 sufficient to cover the costs thereof.
29

30 (g) Licensed Tradespersons. Operator agrees that all renovations and improvements
31 shall be performed by fully licensed contractors and subcontractors or under their supervision
32 who shall utilize industry standard supplies, equipment, and construction methods in the
33 performance of their duties. Operator shall require its contractors and subcontractors to obtain
34 and maintain adequate insurance coverages with liability limits not less than that required of
35 Operator by County. Operator shall have responsibility to enforce compliance with these
36 insurance requirements and provide the County acceptable evidence of insurance for any
37 contractor or subcontractor.
38

39 (h) Construction Documents. Operator agrees that within sixty (60) days after the
40 conclusion of each demolition project, construction project, renovation or improvement project,
41 Operator shall, upon request, provide to County a complete set of construction documents to be
42 included at a minimum: (a) as-built drawings; (b) a copy of all work orders and change orders;
43 (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical
44 fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties;
45 (f) a copy of all approved permits and signed drawings; and (g) City of Milwaukee final
46 occupancy permits; if applicable.
47

48 (i) Ownership of Improvements.

49 1) Upon termination of the Agreement for any reason, the County reserves the
50 right to retain ownership of all renovations, improvements, or alterations on or to the Park,
51

1 including the Pavilion, at no cost to the County. If the County exercises such right, the Operator
2 shall remove, at its costs, all of its equipment and trade fixtures, including, without limitation
3 kitchen and grounds keeping, supplies, displays, and related items and personal property from
4 the Property and the Park within thirty (30) days of the expiration or termination date, and shall
5 repair any damage caused by such removal. Damage caused to the Premises by any removal
6 of personal property or improvements to the Premises will be repaired by the Operator. If for
7 any reason Operator does not comply in a timely manner with its obligations under this
8 paragraph (which shall mean completion within sixty (60) days (as such time frame is extended
9 for force majeure) unless otherwise authorized in writing by the County, then the County may
10 make such repairs or remove, dispose of, or retain such property as the County sees fit. It is
11 mutually agreed that the County may recover from the Operator any and all reasonable costs,
12 as determined by the County, related to this Section. The Operator agrees to surrender the
13 Premises in broom-clean condition, where appropriate, subject to ordinary wear and tear.
14

15 2) In addition to the reservation of the above-referenced right to retain
16 ownership, the County also reserves the right to require the Operator to raze the renovations,
17 improvements, or alterations on or to the Park, including the Pavilion, installed by the Operator
18 at no cost to the County. The Operator shall thereafter restore the area to a safe and slightly
19 condition and stabilize any unvegetated land in a cost-efficient manner reasonably approved by
20 the County. In the event the Operator fails to remove such improvements from the Park or
21 restore the area to a condition reasonably satisfactory to the County within ninety (90) days (as
22 such time frame is extended for force majeure), the County may cause its removal and charge
23 the Operator the reasonable expense thereof.

24 6. OPERATION AND MAINTENANCE.

25 (a) Operation.

26
27
28 1) General. Operator shall operate, maintain and manage the Park, Property,
29 and Baseball Fields and Related Amenities subject to the terms and conditions set forth in
30 this Agreement. Such operation and management shall be conducted in accordance with
31 the terms of this Agreement, including, without limitation, in a manner that will maximize
32 opportunities for public accessibility as set forth in section 2(a) and for achieving and
33 sustaining breakeven or better for each operating year from the operations of the Baseball
34 Fields.
35

36 2) Operational Services. Subject to the terms of this Agreement Operator shall
37 have the right and responsibility to: (i) determine, establish, and implement the policies,
38 standards, prices and schedules for the operation of the Baseball Fields and Related Amenities;
39 (ii) supervise and direct sales and promotion; (iii) hire, train, and supervise all employees of
40 Operator employed at the Park; and (iv) establish accounting and payroll procedures and
41 functions for such employees. The hours of operation of the Property shall not allow any event
42 to begin later than 9:00 pm on any night. The Parties acknowledge and understand that
43 pursuant to Section 47.27 of the Milwaukee County Code of General Ordinances, the County
44 has the authority to adjust the hours of operation of County parks, including the Park, in the
45 County's reasonable discretion, and nothing in this Agreement is intended to limit or abrogate
46 such authority.
47

48 3) Contracts and Agreements. All equipment leases, financing agreements,
49 contracts and agreements relating to the obligations of Operator with respect to the Park and
50 the improvements thereon (including contracts for utility services, maintenance and repair

1 services, landscaping services, and agreements for any other service or function) entered into
2 during the Term of this Agreement shall be entered into by the Operator as the contracting
3 party. The Operator shall not have any authority to enter into any agreement or contract that
4 extends beyond the Term of this Agreement that is not terminable on thirty (30) days written
5 notice or less if the Operator defaults under the terms of this Agreement, or that is secured by
6 all or any part of the Property or Baseball Fields and Related Amenities (excepting only
7 financing leases and installment sales contracts for fixtures and/or personal property). All
8 contracts entered into by Operator regarding the Property or the Baseball Fields and Related
9 Amenities shall automatically expire on the expiration date of this Agreement.

10
11 4) Signs.

12
13 (i) Operator shall have the right and privilege of attaching, affixing,
14 painting or exhibiting signs on the interior and exterior of the Property and the Pavilion with the
15 written approval of County, which approval shall not be unreasonably withheld, conditioned or
16 delayed, provided that: a) any and all signs shall comply with the ordinances of the City of
17 Milwaukee; and b) such signs if and when taken down shall not damage the Park or, if any
18 damage, occurs, Operator shall promptly repair the same; and c) it is expressly understood by
19 Operator that any such signage shall be subject to the applicable terms and conditions set forth
20 by the City of Milwaukee and County which terms and conditions shall be reasonable. It is
21 hereby intended that County and Operator shall cooperate in order to arrive at a mutually
22 agreeable signage program which shall facilitate the exposure of the Property to the general
23 public while at the same time being aesthetically compatible with the Park. Notwithstanding the
24 foregoing, Operator shall have the right, without the approval of the County, to install or place
25 signage recognizing its donors within the Property, within physical structure located at the
26 Property and on the Baseball Fields and Related Amenities, including, without, limitation in and
27 on the Pavilion.

28
29 (ii) Operator agrees to provide the County with prominent
30 acknowledgment signage using the County Parks Logo as integral part of all promotions. The
31 acknowledgment signage must be prominently displayed at the entrance to the Baseball Fields
32 and in all of Operator's print, digital, and TV promotions and advertising related to the activities
33 covered by this Agreement.

34
35 5) Naming Rights. Approval in writing must be obtained from the County for any
36 naming privileges sought in relation to the Baseball Fields, which approval shall not be
37 unreasonably withheld, conditioned or delayed. County's failure to respond within ten (10) business
38 days to a written or electronic request by Operator for approval of a naming privilege shall
39 constitute approval, if, in such written or electronic request, Operator shall have notified County of
40 the time constraint. County may request and Operator shall not unreasonably refuse a reasonable
41 extension of time within which to respond if needed. The County approves the use of Felix
42 Mantilla and Journey House as a part of the name for the Baseball Fields and Related
43 Amenities.

44
45 6) Security. County shall not be responsible for providing any security in connection
46 with the Property, except as set forth below. Operator shall restore and repair, at its sole cost and
47 expense, all of its facilities damaged and defaced as the result of vandalism, graffiti, or other wanton
48 destruction by third parties. County shall provide, or cause to be provided, routine periodic checks
49 of the exterior areas of the Property at least consistent with the level provided by County for other
50 similarly "attractive" areas owned by County.

1 (b) Maintenance.

2
3 1) Operator shall be responsible for any and all maintenance and repairs to
4 the Property and the Pavilion

5
6 2) Operator covenants and agrees that it will keep the Park and Property,
7 including those portions of the Park depicted on Exhibit _ immediately adjacent to and
8 outside of the Baseball Fields and Related Amenities but excluding the wooded areas to the
9 East and North of the Baseball Fields and Related Amenities as such area is depicted on
10 Exhibit _, in a reasonably safe and serviceable condition, and shall otherwise perform all
11 necessary repairs, replacements and maintenance to the Baseball Fields and Related
12 Amenities constructed or installed by Operator, including necessary cosmetic repairs
13 thereto, which shall include such things as: (i) mowing grass; (ii) seasonal snow clearance
14 of sidewalks and parking lots, but only to the extent Operator determines such clearance to
15 be necessary for Operator's activities at the Park; (iii) seasonal daily maintenance and minor
16 repair of the playground, as needed; (iv) collection and disposal of trash, litter, and debris;
17 (v) turf and fencing repairs and replacements; (vi) repairs or replacements which are
18 necessitated by the willful misconduct or negligence of Operator, its agents, employees,
19 guests or representatives; (vii) repairs or replacements which are necessitated by reason of
20 fire or other natural casualty, which events are governed by Paragraph 14 below; (viii)
21 repairs or replacements which are necessitated by reason of a defect in the condition of the
22 Property which existed prior to the effective date of the Agreement; (ix) repairs or replacements
23 which are necessitated by reason of a breach of any warranty or representation of Operator
24 contained in the Agreement or by reason of Operator's failure to perform or observe any term,
25 covenant or condition to be performed or observed by Operator pursuant to the Agreement; and (x)
26 the offsite removal of any waste from any work generated by services provided under this
27 Agreement. The foregoing indemnity shall not cover or include any repairs or replacements arising
28 out of the willful misconduct or negligence of County, its agents, employees, or representatives or
29 arising out of a breach by County of its representations, warranties or obligations hereunder, which
30 shall be County's obligation hereunder. Operator agrees to perform all repairs, maintenance and
31 replacements of the type enumerated in subparagraphs (i) through (x) of this paragraph 6 as
32 expeditiously as is reasonable. In the event the Operator cannot repair or maintain an item
33 enumerated in subparagraphs (i) though (x) above, which directly impacts the condition of the Park
34 and its use, County may, after notice to Operator to perform same and reasonable time for Operator
35 to do so, but in no event less than thirty (30) days (unless the failure to repair endangers public
36 safety) and upon five (5) business days' notice of County's intent to do so, make said repair or
37 maintenance and Operator shall reimburse County for the reasonable costs of said repair or
38 maintenance. In the event of an emergency repair which prevents such notification, County shall
39 notify Operator of said repair as soon as is possible.

40
41 3) Notwithstanding anything to the contrary hereinabove set forth, Operator shall be
42 responsible for the maintenance and repair of its improvements, trade fixtures, equipment and
43 mechanical systems including such periodic preventative maintenance of its improvements, trade
44 fixtures and equipment, as Operator may require. Operator further agrees to comply with such
45 reasonable rules and regulations as County may establish from time to time for the upkeep and
46 maintenance of the Park. Operator shall store its maintenance equipment, as applicable, in the
47 storage shed or area to be included as a Related Amenity. Operator shall not be responsible for
48 any patching, repairs, resurfacing, replacement, or snow removal of the parking areas, drive ways or
49 sidewalks within the Park, provided that Operator may elect to undertake any or all such activities,
50 but if Operator elects to do so it is at Operator's sole cost. Operator shall also not be responsible for
51 any repairs, replacement or similar steps with respect to the playground within the Park except

1 ordinary maintenance and minor repairs, provided that Operator may elect to undertake any or all
2 such activities, but if Operator elects to do so it is at Operator's sole cost.
3

4 4) Endowment Fund. Operator shall establish an Endowment Fund ("Fund") for
5 maintenance of the Baseball Fields and Related Amenities, which shall total one hundred thousand dollars
6 (\$100,000.00). As additional consideration, Operator agrees to augment the Fund by depositing the
7 interest accrued on any balance invested into the Fund, and hereby agrees that if the value of the
8 Fund falls below \$50,000.00 at any time, Operator shall add to the Fund enough assets to maintain
9 a minimum balance of \$50,000.00. Failure to maintain a balance of \$50,000.00 shall be grounds
10 for termination of this Agreement by County, provided Operator fails to cure any such shortage
11 within one hundred and eighty (180) days of receipt of notice from County that the shortage has
12 occurred. The Fund is to be used as follows:
13

14 (i) Maintenance, repair and replacement to assure upkeep of the Property
15 and the improvements to be constructed on the Property.
16

17 (ii) Additional improvements or non-routine maintenance to the Property as
18 may be agreed upon by Operator and County, which approval shall not be unreasonably withheld,
19 conditioned or delayed.
20

21 Management of the Fund shall include the establishment of an interest bearing
22 account(s), changing investment strategies, monitoring account activity, and providing joint
23 written approval of all payments from account assets, which approval by County shall not be
24 unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Operator shall
25 have the right to make withdrawals from the Fund without County's approval, but upon notice to
26 County, for up to \$10,000 for any item described in clause (i) above, provided that the Fund does
27 not fall below \$50,000 as a result thereof and the aggregate amount so withdrawn from the Fund
28 without County approval in any twelve (12) month period does not exceed \$25,000. Operator shall
29 provide County with quarterly reports relating to Fund activities, including funds received, monies
30 spent, and any long-term obligations, including an annual report prepared by independent auditors.
31

32 7. REVENUE; EXPENSES.

33
34 (a) All revenues generated by, payable in connection with or in any way related to the
35 Baseball Fields and Related Amenities shall be the sole property and revenue of Operator.
36

37 (b) Operator shall pay any and all expenses of whatever kind or nature incurred by Operator
38 in constructing, demolishing, operating, maintaining and managing the Baseball Fields and Related
39 Amenities, regardless of the amount of revenues generated by the Baseball Fields or whether or not
40 there are any revenues generated by the Baseball Fields.
41

42 8. ENVIRONMENTAL.

43
44 (a) To the best of County's knowledge, the Park is not in violation of any Environmental
45 Laws (as defined below) and County has no knowledge of (i) the presence on or about the Park
46 of any hazardous materials; (ii) any release or threatened release of any hazardous materials
47 on or affecting the Park; or (iii) the existence of storage tanks on or under the Park. County has
48 received no notice of any investigation proceeding by any governmental agency concerning the
49 presence or alleged presence, release or threatened release of hazardous materials on the
50 Park.
51

1 (b) Operator agrees to accept the Property “as-is” and is solely responsible for
2 conducting its own geotechnical investigation to determine soil bearing capacity and for all site
3 excavation, debris removal, fill and development expenses. In the event that Operator
4 reasonably determines as a result of its own investigation that hazardous materials exist or may
5 possibly exist in or on the Park, Operator shall have the right, at its sole option, by written notice
6 to County, to terminate this Agreement. Operator shall keep the results of its investigations
7 confidential, unless otherwise required by law or court order and except for providing the results
8 thereof to its lenders, donors, attorneys and consultants. In no event shall the discovery or
9 disturbance of any hazardous materials by Operator preclude the Operator from performing its
10 remediation responsibilities as contained in the following paragraph 8(c).
11

12 (c) Operator shall, to the full extent provided for under any environmental laws, rules
13 and regulations (collectively, “Environmental Laws”), be responsible for any repair, cleanup,
14 remediation or detoxification required by the DNR arising out of (1) any hazardous materials
15 brought onto or introduced into the Property or surrounding areas by Operator, its agents,
16 employees, guests or representatives utilizing the Property, or (2) any hazardous materials
17 whose presence pre-exists the commencement of Operator’s Agreement term, located in and
18 on the Property, that are discovered or disturbed as a result of Operator’s construction activities
19 on, at or near the Property.
20

21 9. TAXES. County and Operator intend that the Property shall not be subject to general
22 and special real estate taxes and assessments, it being the parties’ intention that the Property
23 constitute “property owned by any county” within the meaning of Sec. 70.11(2), Wis. Stats., and
24 County and Operator will take such steps as are as reasonably necessary to establish and uphold
25 such tax exemption, provided that Operator shall not be required to change its use of the
26 Property. In addition, Operator is a 501(c)(3) corporation and should not be subject to such
27 taxes. Notwithstanding the foregoing, if the Property is now or hereafter subject to such taxes
28 and assessment, including but not limited to stormwater management fees or other special
29 assessments of the City of Milwaukee, Operator agrees to pay any real estate, personal
30 property or other taxes and fees due and owing with respect to the Baseball Fields and Related
31 Amenities. If, during the term of the Agreement, any special assessment is levied against the
32 Park, then Operator shall be responsible for payments of such special assessment which
33 becomes due and owing during the term of the Agreement with respect to the Baseball Fields
34 and Related Amenities (with such assessments being deemed to be paid over the longest
35 installment period available). Nothing herein contained shall prevent County or Operator from
36 protesting the validity or amount of any such assessment or from taking such action as may be
37 required or permitted by law for enforcing and effecting such protest. In this connection, County
38 or Operator may withhold the payment of any such protested assessments provided County or
39 Operator proceed with such protest according to law and provide reasonably satisfactory
40 security.
41

42 10. UTILITIES; LICENSES; FEES. Operator agrees to pay, when due, all charges
43 and costs for installation and operation of water, sewer, gas, heat, air conditioning,
44 electricity, telephone and any and all other utilities or services, if applicable, for services to
45 the Property. Operator will at its sole expense, provide for the installation of a separate
46 metering system for these utilities if and to the extent practical.
47

48 Operator, at its expense, shall acquire and pay for all permits or licenses which may be
49 required for Operator's business, and also to pay, when due, all occupation taxes and any other
50 charges of a similar nature which may at any time be levied against the Property by reason of
51 Operator's use and occupancy thereof.

1
2 11. INDEMNITY.
3

4 (a) The Operator and County (the “Indemnifying Party”) agree to the fullest extent
5 permitted by law, to indemnify, defend and hold each other harmless, and their agents, officers,
6 and employees, from and against all loss or expense including costs and attorney’s fees by
7 reason of liability for damages including suits at law or in equity, caused by any willful
8 misconduct or negligence of the Indemnifying Party or its agents which may arise out of or are
9 connected with the activities covered by the Agreement; provided that the party seeking
10 indemnification (an “Indemnitee”) notify the other party (an “Indemnitor”) in writing of the
11 existence of such loss, liability, claim, injury, damage or expense promptly after the Indemnitee
12 has obtained actual knowledge that such a loss liability, claim, injury, damage or expense is
13 threatened or pending, and further provided that the Indemnitee afford to the Indemnitor the
14 right, but not the obligation, to assume the defense of such loss, liability, claim, injury, damage,
15 costs and expenses, including reasonable attorneys’ fees connected therewith or resulting
16 therefrom. County’s liability hereunder shall be limited by Wisconsin Statutes 345.05(3) for
17 automobile and 893.80(3) for general liability.
18

19 (b) Environmental. The Operator shall be responsible for any repair, cleanup,
20 remediation or detoxification required by the Wisconsin Department of Natural Resources in
21 compliance with applicable laws arising out of (i) any Hazardous Materials brought onto or
22 introduced into the Property or surrounding areas by the Operator or its agents at any time
23 and/or (ii) Hazardous Materials whose presence pre-exists the commencement of any of the
24 Operator’s demolition or improvements, located in the Property, that are disturbed or
25 exacerbated as a result of the Operator’s construction activities on, at or near the Property
26 during the Term. The Operator shall indemnify, defend and hold the County harmless from any
27 liability, cost, damage, claim or injury (including reasonable attorney fees) arising from
28 Operator’s failure to comply with the preceding sentence. “Hazardous Materials” as the term is
29 used herein shall mean any substance: (i) the presence of which requires investigation or
30 remediation under any Federal, State or local statute, regulation, ordinance, order, action or
31 policy; or (ii) which is or becomes defined as a “hazardous waste” or “hazardous substance”
32 under any Federal, State or local statute, regulation, ordinance, order, action or policy.
33

34 12. INSURANCE.
35

36 (a) Operator agrees to maintain policies of insurance as may arise from claims for damages
37 to property of and/or claims which may arise out of or result from Operator’s activities, by whomever
38 performed, in such coverage amounts as reasonably and consistently required and approved by
39 Milwaukee County’s Risk Manager. Acceptable proof of such coverage shall be furnished to
40 Milwaukee County prior to the commencement of activities under this agreement. A Certificate of
41 Insurance shall be submitted for review for each successive period of coverage for the duration of
42 this agreement, unless otherwise reasonably and consistently specified by Milwaukee County’s Risk
43 Manager, in the minimum amounts specified in Exhibit F.
44

45 (b) Operator shall cause its consultants, contractors and subcontractors to have and
46 maintain in connection with any work being performed at or for the Park insurance policies with at
47 least the following coverage and limits: General Liability \$1,000,000 per Occurrence/\$2,000,000
48 Aggregate, WI Workers’ Compensation Statutory Limit, Employer’s Liability
49 \$100,000/\$500,000/\$100,000, Automobile Liability \$1,000,000 per Accident, Professional Liability (If
50 applicable, required for Construction Managers, Architects, Engineers and Designers) \$1,000,000

1 per Occurrence, and Contractor's Pollution Liability (If applicable, required for general contractor
2 employed for pavilion demolition/construction) \$1,000,000 per Occurrence.
3

4 (c) Operator shall cause its consultants, contractors and subcontractors to name Milwaukee
5 County as an additional insured on the General, Automobile, Employer's and Contractor's Pollution
6 Liability policies and provide a waiver of subrogation in favor of Milwaukee County on the Workers'
7 Compensation and Contractor's Pollution Liability policies as respects to the services provided in
8 this agreement. All Carriers must be approved to do business in the State of Wisconsin and be A
9 rated or better per AM Best's Rating Guide. Certificates of insurance shall be submitted for review
10 to Milwaukee County for each successive period of coverage for the duration of this Agreement.
11

12 13. ASSIGNMENT. Operator may not assign the Agreement and its right, title and interest
13 hereunder, without County's express written consent, which consent shall not be unreasonably delayed,
14 conditioned or withheld. County's consent shall not be required in the event of a merger of Operator with
15 another non-profit entity.
16

17 14. DAMAGE OR DESTRUCTION. If, during the term of the Agreement, including any time after
18 which Operator may have given notice to terminate the Agreement, the entire structural portion of the
19 Property or such portion thereof as shall render the remaining portion thereof unsuitable for the continued
20 conduct of Operator's activities therein, shall be damaged or destroyed more than 50% by fire or other
21 casualty, Operator shall have the right, for a period of ninety (90) days thereafter, by giving written notice to
22 County, to terminate the Agreement, in which event: (a) County shall be entitled to retain all insurance
23 proceeds payable by reason of and with respect to damage or destruction to the Park and improvements
24 constructed by County on the Park; and (b) Operator shall convey and remit to County all insurance
25 proceeds payable by reason of and with respect to damage or destruction to the permanent improvements
26 owned or constructed by Operator on the Property. All other insurance proceeds shall be the property of
27 Operator. If Operator does not elect to terminate the Agreement or if the damage or destruction to the
28 Property does not render the remaining portion thereof unsuitable for the continued conduct of Operator's
29 activities thereon, then the Agreement shall continue in full force and effect, and Operator shall, in
30 accordance with the provisions set forth in paragraphs 6 and 7 hereof, promptly commence and pursue
31 diligently to completion whatever repairs to the Property are necessary to restore the Property to the
32 condition the same were in prior to such damage or destruction and Operator shall be entitled to all
33 insurance proceeds relating to the casualty. All such repairs shall be performed promptly and in a good
34 and workmanlike manner in accordance with all statutes, laws, ordinances, rules and regulations of any
35 governmental authority having jurisdiction over the Property.
36

37 15. CONDEMNATION.
38

39 (a) Total Taking. If, during the term of the Agreement, the entire Property shall be taken by any
40 public or quasi-public authority (which County itself hereby agrees not to do) under its power of
41 condemnation or eminent domain (or is sold under threat thereof), the Agreement shall terminate as of
42 the date possession shall be taken by the acquiring authority. If any part of the Property shall be taken as to
43 render the remainder thereof unsuitable for the continued conduct of Operator's activities thereon,
44 Operator shall have the right to terminate the Agreement on thirty (30) days notice to County.
45

46 (b) Partial Taking. If the portion of the Property taken by any public, or quasi-public authority
47 (which Milwaukee County hereby agrees not to do) under its power of condemnation of eminent domain
48 (or sold under threat thereof) shall not render the remaining portion unsuitable for the continued conduct
49 of Operator's or County's activities thereon, the Agreement shall continue in full force and effect. County
50 shall use such portion of the County's proceeds by reason of such taking necessary to repair and restore
51 the Property as herein provided.

1
2 (c) Compensation Award. If a total or partial taking of the Property occurs, any
3 Compensation Award shall be the sole and exclusive property of County. Notwithstanding the
4 foregoing, nothing contained herein shall be construed to preclude Operator from prosecuting
5 any claim directly against the condemning authority in such condemnation proceedings for loss
6 of business, or depreciation to, damage to or cost of removal of, or for the value of stock or
7 Operator's trade fixtures, furniture, equipment and other improvements made to the Property,
8 and any other property belonging to Operator.
9

10 16. DEFAULT REMEDIES.

11
12 (a) Default by Operator. If (i) Operator fails to pay any of the fees or other sums
13 required hereunder and such failure to pay continues for thirty (30) days after written notice
14 thereof to Operator; or, (ii) default be made in the performance or observance by Operator of
15 any other terms, covenants or conditions herein contained and such default shall continue for
16 sixty (60) days after written notice thereof to Operator (or if such default is not of a type that can
17 reasonably be corrected within sixty (60) days and Operator fails to commence promptly and
18 in good faith to proceed with due diligence to correct such default), then if any such default is
19 not cured within sixty (60) days (as such time frame is extended for force majeure) after a
20 second written notice from County specifying such default, which second notice shall be given
21 after the expiration of the above referenced, applicable grace period, then, in any of the above-
22 described events, County may elect to terminate the Agreement and declare the term of the
23 Agreement ended, to re-enter the Property or any part thereof with judicial process and to expel
24 and remove Operator or any person or persons occupying the same and again to repossess
25 and enjoy the Property. County shall also have the right, at its option, in the event its written
26 notice of default is not cured by Operator within the time provided in this Agreement, to cure any
27 default by Operator and recover from Operator the reasonable costs and expenses incurred by
28 County in curing such default.
29

30 (b) Alternate Dispute Resolution. In the event of any alleged default hereunder by either County
31 or Operator, the parties shall endeavor, in good faith, to utilize an alternative dispute resolution
32 mechanism, which utilizes retired judicial officials prior to the commencement of any litigation or
33 arbitration.
34

35 (c) Remedies Not Exclusive. Any right or remedy conferred on County or Operator under the
36 Agreement shall not be deemed to be exclusive of any other right or remedy which might otherwise be
37 available hereunder or at law or in equity. The rights and remedies hereunder shall be cumulative and
38 may be exercised and enforced concurrently and whenever and as often as occasion therefore arises.
39

40 (d) No Waivers of Rights. The failure of County or Operator to insist upon strict performance of
41 any of the terms, covenants or conditions herein contained shall not be deemed a waiver of any of its
42 rights or remedies and shall not be deemed a waiver of any subsequent breach or default in any of said
43 terms, covenants and conditions.
44

45 17. TERMINATION. County may terminate this Agreement: (a) subject to the terms and
46 conditions of this Agreement; or (b) if Operator ceases to do business as a going concern, or
47 becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or
48 trustee is appointed to take possession of, or an attachment, execution or other judicial seizure

1 is made with respect to, substantially all of Operator's assets or Operator's interest in this
2 Agreement, in each case which is not dismissed within ninety (90) days thereafter.

3
4 18. PROHIBITED PRACTICES.

5
6 (a) During the term of this Agreement, Operator shall not hire, retain or utilize for
7 compensation any member, officer or employee of the County or any person who, to the actual
8 knowledge (without inquiry) of Operator, has a conflict of interest.

9
10 (b) Operator hereby acknowledges that portion of County's Code of Ethics, which states
11 in part: No person may offer to give to any County officer or employee or his immediate family,
12 and no County officer or employee or his immediate family may solicit or receive anything of
13 value pursuant to an understanding that such officers or employees vote, official actions or
14 judgment would be influenced thereby.

15
16 19. TRASH REMOVAL. Operator shall be responsible for the collection and removal
17 of trash, litter, and garbage within the Property and in connection with Operator's operations
18 at the concession stand. County and Operator shall cooperate to allow for the placement of
19 trash, litter, and garbage into a dumpster or waste receptacle within the Park.

20
21 20. MISCELLANEOUS.

22
23 (a) Notices. Whenever in the Agreement it shall be required or permitted that notice be
24 given by any party hereto to the other, such notice shall be given by certified or registered mail,
25 and any notice so sent shall be deemed to have been given on the date that the same is
26 deposited in the United States mail, postage prepaid. Notices shall be addressed to the party
27 as follows:

28
29 If to County:
30 Milwaukee County Department of Parks, Recreation and Culture
31 9480 Watertown Plank: Road
32 Wauwatosa, Wisconsin 53226
33 Attn: Director

34
35 With a copy to:
36 Milwaukee County Corporation Counsel
37 Room 303, Milwaukee County Courthouse
38 901 North Ninth Street, Milwaukee, Wisconsin 53233,
39

40 If to Operator:
41 Journey House, Inc., c/o Dr. Michele Bria, CEO
42 2110 Scott Street
43 Milwaukee, WI 53204

44
45 With a copy to:
46 Attorney Sarah O. Jelencic, Foley & Lardner LLP
47 777 E. Wisconsin Ave.
48 Milwaukee, WI 53202,
49

50 Or at such other address as either party may from time to time specify in writing in lieu
51 thereof. It is further agreed that each party hereto will promptly furnish to the other party hereto

1 a copy of any notice it may receive from any third person, which may affect the rights of any
2 party hereunder.
3

4 (b) Access. County, its agents and representatives shall, upon reasonable notice to
5 Operator, be entitled to enter upon the Property at reasonable times during normal business
6 hours for the purpose of examining and inspecting the condition thereof, and exercising any
7 right or power reserved to County under the Agreement provided, however, that except in the
8 case of an emergency such entry shall be done in a manner so as not to unreasonably interfere
9 with the conduct of Operator's activities thereon, and such entry shall except in the case of an
10 emergency only be made if County is accompanied by a responsible employee of Operator and
11 shall be at the sole risk of County.
12

13 (c) Targeted Business Enterprise (TBE) Utilization. Operator shall commit that Targeted Business
14 Enterprises (TBEs) have an equal opportunity to receive and participate in the project and shall require that
15 its contractors and subcontractors do the same, as required by the Targeted Business Enterprise section of
16 Chapter 42 of the Milwaukee County Code of General Ordinances. Operator shall utilize good faith efforts
17 to achieve its goal of a minimum of 25 percent TBE participation for project costs relating to the hard
18 construction costs of the Baseball Fields and related amenities.
19

20 (d) Equal Employment Opportunities. In, accordance with Section 56.17 of the Milwaukee County
21 General Ordinances and Title 41 of the Code of Federal Regulations, Chapter 60, the Operator Certifies to
22 the County as to the following:
23

24 1) Non-Discrimination. The Operator certifies that it will not discriminate against any
25 employee or applicant for employment because of race, color, national origin, age, sex or handicap which
26 includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or
27 recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for
28 training, including apprenticeship. The Operator will post in conspicuous places, available for employment,
29 notices setting forth the provisions of the non-discriminatory clause. Attached hereto as Exhibit E is an
30 Equal Opportunity Certificate that shall be executed and delivered by Operator simultaneously with the
31 execution and delivery of the Agreement.
32

33 2) Affirmative Action Program. The Operator certifies that it will strive to implement the
34 principles of equal employment opportunity through an effective affirmative program which shall have as its
35 objective to increase the utilization of women, minorities and handicapped persons and other protected
36 groups, at all levels of employment in all divisions of its work force, where these groups may have been
37 previously under-utilized and under-represented. The Operator also agrees that in the event of any
38 disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it
39 has exercised good faith efforts to meet all requirements.
40

41 3) Affirmative Action Plan. To the extent required by applicable law, the Operator certifies
42 that if it has 50 or more employees, it has filed or will develop and submit a written Affirmative Action Plan.
43 Current Affirmative Action Plan, if required, must be filed with any of the following. The Office of Federal
44 Contract Compliance Programs or the State of Wisconsin, or the Milwaukee County Department of Audit,
45 Room 319 Courthouse Annex, 907 North Tenth Street, Milwaukee, Wisconsin 53233.
46

47 4) Non-Segregated Facilities. The Operator certifies that it does not and will not maintain
48 or provide segregated facilities for its employees, and that it does not permit its employees to perform their
49 services at any location under its control where segregated facilities are maintained.
50

1 5) Reporting Requirement. When applicable, the Operator certifies that it will comply with
2 all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.
3

4 6) Compliance. The Operator certifies that it is not currently in receipt of any
5 outstanding letters of deficiencies, show cause, probable cause, or other such notification of
6 noncompliance with EEO regulations.
7

8 7) ADA Accessibility. Operator shall, at Operator's expense, promptly comply
9 with all laws, rules, and regulations applicable to Operator's use of the Pavilion and the Property
10 so that the Pavilion and Property is not in violation of the American with Disabilities Act of 1990
11 and the Architectural Barriers Act of 1968 (the "ADA") and, to the extent required by applicable
12 law, such ADA compliance is approved by the Milwaukee County Office of Persons with
13 Disabilities.
14

15 (e) Surrender of Property. Operator upon termination of the Agreement, by lapse of time or
16 otherwise, agrees peaceably to surrender the Property to County.
17

18 (f) Holding Over. If Operator, with the consent or acquiescence of County, continues to manage
19 the Property after the termination of the Agreement and without the execution of a new Agreement,
20 Operator shall be deemed to be occupying the Property subject to all the applicable terms, conditions and
21 covenants of the Agreement and existing Wisconsin laws.
22

23 (g) Benefit. The Agreement and all of the covenants and conditions herein contained shall be
24 binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
25

26 (h) Provisions Severable. It is the intent of the County and the Operator that the Property
27 be exempt from general property taxes pursuant to the provisions of section 70.11(2), Wis.
28 Stats., as amended or supplemented. Accordingly, if the existence, effect or operation of any
29 provision of this Agreement causes the Property to be subject to general property taxes, such
30 provision(s) shall be null and void and the Agreement shall be construed and enforced as if
31 such provision had never been a part of the Agreement, and the remaining provisions of the
32 Agreement shall remain in full force and effect. Further, if any provision of the Agreement shall be
33 held or declared to be invalid, illegal or unenforceable under any law applicable hereto; such
34 provision shall be deemed deleted from the Agreement without impairing or prejudicing the validity,
35 legality and enforceability of the remaining provisions hereof.
36

37 (i) Governing Law. The Agreement shall be governed by the laws of the State of Wisconsin.
38

39 (j) Records and Audits. Pursuant to Milwaukee County ordinance section 56.30(6)(e),
40 Operator shall allow Milwaukee County or any other party the County may name, when and as
41 they demand, to audit, examine and make copies of records in any form and format, meaning
42 any medium on which written, drawn, printed, spoken, visual or electromagnetic information is
43 recorded or preserved, regardless of physical form or characteristics, which has been created or
44 is being kept by Operator, including but not limited to, handwritten, typed or printed pages,
45 maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files,
46 computer printouts and optical disks, and excerpts or transcripts from any such records or other
47 information directly relating to matters under this Agreement, all at no cost to County. Operator
48 shall not be required to disclose any of its donors. Any subcontracting by Operator in
49 performing the duties described under this Agreement shall subject the subcontractor or its
50 associates to the same audit terms and conditions as Operator. Operator (or any

1 subcontractor) shall maintain and make available to Milwaukee County the aforementioned
2 audit information for no less than three years after the conclusion this Agreement.
3

4 (k) Independent Contractor. Nothing contained in this Agreement shall constitute or be
5 construed to create a partnership or joint venture between the County and its successors or
6 assigns and Operator or its successors or assigns. In entering into this Agreement, and in
7 acting in compliance herewith, Operator is at all times acting and performing as an independent
8 contractor duly authorized to perform the acts required of it hereunder. This Agreement does
9 not create the relationship of principal and agent, of partnership or joint venture, or of any
10 association between Milwaukee County and Operator.
11

12 (l) Any disagreement, dispute or determination required by or arising under the
13 provisions of this Agreement, other than a termination of the Agreement, shall be submitted to
14 the American Arbitration Association and arbitration shall be carried on and concluded in
15 accordance with the then existing Commercial Arbitration rules of the American Arbitration
16 Association, or if it is no longer in existence, any nationally recognized arbitration board or
17 company, and judgment upon the award rendered by the arbitrator(s) may be entered in any
18 court having jurisdiction thereof.
19

20 (m) Headings. Paragraph and subparagraph headings herein are for convenience and
21 reference only and in no way define or limit the scope or content of this Agreement or in any
22 way affect its provisions.
23

24 (n) Waiver. No delay or omission by any of the parties hereto to exercise any right or
25 power occurring upon any non-compliance or failed performance by another party under the
26 provisions of this Agreement shall impair any such right or power or be construed to be a waiver
27 thereof. A waiver by any of the parties hereto of any of the covenants, conditions or
28 agreements hereof to be performed by another, shall not be construed to be a waiver of any
29 succeeding breach thereof or of any other covenant, condition or agreement contained herein.
30

31 (o) Amendments or Further Agreements to be in Writing. No agreement or amendment
32 shall be effective to add to, change, modify, waive or discharge this Agreement in whole or in
33 part, unless such agreement is in writing and signed by all parties bound hereby.
34

35 (p) Deemed Approvals. In the event County fails to respond within thirty (30) days to a
36 written or electronic request by Operator for any approval or consent required or desirable under
37 the terms of the Agreement, and then fails to respond within 10 days after receipt of a second
38 written request stating in all capital letters that "FAILURE TO RESPOND WITHIN 10 DAYS
39 WILL RESULT IN DEEMED APPROVAL" sent by overnight delivery service, or such shorter or
40 longer period as may be specifically provided in the Agreement, then County shall be deemed to
41 have consented to or approved such request.
42

43 (q) Counterparts. This Agreement may be signed in counterparts, which, when taken
44 together, shall be deemed an original for all purposes.
45

46 (r) Assignment. If approved under Paragraph 13 of this Agreement, upon the
47 assignment by Operator of all of its interest in this Agreement or the conveyance by the County
48 of all of its interest in the Park, the transferring party shall be relieved of any further liability
49 under this Agreement arising on and after the date of transfer and such transferee shall be
50 deemed to have assumed all rights and obligations of the transferor hereunder arising on and
51 after the date of transfer. It is expressly understood that the transferor shall notify the other

1 party to this Agreement of any such assignment or conveyance. This Agreement shall be
2 binding upon the parties hereto and their successors and assigns.
3

4 (s) Approvals. All approvals are subject to there being no conflicts with existing and
5 applicable laws, rules or regulations, or other factors beyond the reasonable control of the
6 County.
7

8 (t) No Alterations by County. Nothing set forth anywhere in this Agreement shall be
9 construed to obligate County to remove or modify any existing improvements in, on or under the
10 Park.
11

12 (u) Utilities. Operator is to be responsible for locating and plotting utilities and other
13 infrastructure of the County and others that may be present in the area and which may be
14 impacted by Operator's operations and activities. Operator is also responsible for any damage
15 to these items caused by operations and programming and maintenance and repair work done
16 by the Operator under cover of this Agreement. County shall provide Operator with all
17 information in County's possession or control relating to the location of any such utilities.
18

19 (v) Authority. Each of the parties hereby represents and warrants that the individual
20 executing this Agreement on its behalf has full power and authority to bind such party to the
21 terms and conditions hereof. The parties shall each, at all times, provide the other party with
22 written notice as to the contact person regarding this Agreement.
23

24 (w) Further Assurances. The parties hereto agree to execute immediately upon
25 presentation and deliver such additional documentation as may be required from time to time by
26 either of the parties hereto to further evidence or as are necessary to carry out the terms and
27 conditions of this Agreement.
28
29
30
31

32 **SIGNATURE PAGES FOLLOW:**
33
34

1 **IN WITNESS WHEREOF, County and Operator have executed this instrument under seal**
2 **as of the day and year first above written.**
3
4
5
6

7 **COUNTY: MILWAUKEE COUNTY**

OPERATOR: JOURNEY HOUSE, INC.

8
9 By: _____

By: _____

10
11 Name Printed: _____

Name Printed: _____

12
13 Title: _____

Title: _____

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43 [Signature Page 1 of 2]
44

1 Approved with regards to County Ordinance Chapter 42:

2
3

4 By: _____ Date: _____
5 Community Business Development Partners

6
7

8 Approved: Approved per Sec. 59.255(2)(e), Stats.:

9
10 By: _____ Date: _____ By: _____ Date: _____
11 County Executive Chris Abele Comptroller Scott B. Manske

12
13

14 Approved as to form and independent status: Reviewed by:

15
16

17 By: _____ Date: _____ By: _____ Date: _____
18 County Corporation Counsel County Risk Management

19
20

21 Approved as compliant under Sec. 59.42(2)(b)5, Stats.:

22
23

24 By: _____ Date: _____
25 County Corporation Counsel

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45 [Signature Page 2 of 2]
46 Exhibit Listing:

47

- 48 A. Site Plan of Park
- 49 B. Legal Description and Plat of Land of Park
- 50 C. Depiction of the Property
- 51 D. Due Diligence
- E. Equal Opportunity Certificate

1 F. Insurance Requirements
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(Site Plan of Park)

Exhibit A

Exhibit B

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3 (Legal Description)
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1 **Exhibit D**

2
3 Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE MANUAL
4 Financial & Management 7 MILWAUKEE COUNTY Accounting
5

6 **Due Diligence 7.92**

7
8 CHECKLIST. Prior to recommending any venture for consideration, responsible County
9 agencies shall ensure that any of the following applicable factors have been identified:

- 10
11 • Letter of Full Disclosure and Cooperation
12 • Cash flow projections for the venture.
13 • Operating budget impact.
14 • Debt management responsibilities, schedules and procedures.
15 • Legal liability for all priorities.
16 • Financial reporting systems and controls.
17 • Right-to-audit provisions.
18 • Project feasibility studies and market analysis.
19 • Key factors for success/failure of the venture.
20 • Governance structure and procedures.
21 • Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).
22 • Employee/labor relations impacts (including benefits).
23 • Environmental concerns.
24 o To include a historical or archaeological survey of any and all areas of Mitchell
25 Park impacted by the project.
26 • Tax consequences.
27 • Capital management (e. g. maintenance).
28 • Conflicts of interest/ethics.
29 • Performance measurements.
30 • Organization Chart and Mission Statement
31 • Name of Lending institution or Bank to determine single or combined reporting
32

33 Each relevant item noted above should be included in the description of the proposal, which is
34 subtitled for approval by the County Executive and County Board.
35
36
37
38

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Exhibit E

(Equal Employment Opportunity Certificate for Milwaukee County Contracts)

Exhibit F
Insurance Requirements

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5

Operator shall provide evidence of the following coverages and minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers Compensation and Employers Liability & Disease	Statutory/Waiver of Subrogation \$100,000/\$500,000/\$100,000
General Liability Including Bodily Injury & Property Damage, Contractual & Products/Completed Operations, Fire, Legal, Liquor	\$1,000,000 per Occurrence \$2,000,000 Aggregate
Automobile Liability Bodily Injury & Property Damage All Autos	\$1,000,000 per Accident
Volunteer Accident	\$1,000,000 per Occurrence
Umbrella Liability Policy follows form to General, Automobile, Employer's Liability and Volunteer Accident	\$5,000,000 Aggregate
Property Insurance	Replacement Cost

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Milwaukee County shall be named as an Additional Insured on the General, Automobile, Employer's and Volunteer Accident policies as respects the services provided in this agreement. A waiver of subrogation shall be afforded to Milwaukee County on the Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

Operator shall maintain in force Property Insurance coverage on any and all improvements to the Property, including, but not limited to, the contemplated pavilion building and any other structures or amenities. Said insurance shall include coverage for the replacement value thereof against loss or damage by fire or other insurable hazards.

The insurance specified above shall be placed with a Carrier approved to do business in the State of Wisconsin. All carriers must be A rated or better per AM Best's Rating Guide. Any deviations or waiver of required coverages or minimums shall be submitted in writing and approved by Milwaukee County's Risk Manager as a condition of this agreement.

A certificate of insurance shall be submitted for review to Milwaukee County for each successive period of coverage for the duration of this agreement.

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