



COUNTY FACILITIES PLANNING WORK INITIATION REQUEST FORM

Please complete a form for each new proposal review request.

Work Proposal Name:

Bender Lease - Wake Zone, LLC

Date of Request:

6/15/21

Requesting Department:

Parks

Department Contact Name:

Erica Goblet

High Org:

900

Low Org:

9000

Approval Signature of Department Head:
Guy Smith

DESCRIPTION

Please provide a detailed description of the request:

On March 12, 2021, Milwaukee County issued a competitive Request for Proposals to solicit proposals for Jet Ski and/or other Aquatic Entertainment and Concession Services at Bender Park. Wake Zone, LLC, responded to the Request for Proposals and meeting all terms and conditions of the process, was awarded the opportunity. The term of this agreement is five (5) years with two (2) options to extend the term for one (1) additional consecutive year. The lease is for the pavilion and Tenant is responsible for maintaining the extended use area.

How will this proposal improve your operations, enhance customer service or otherwise benefit your department and the County?

Minimal services were provided by County staff at the pavilion. This will increase services provided and provide additional recreational opportunities.

How does this proposal align with the County's objectives on racial equity?

Please see the County's Vision/Mission/Values and strategic focus areas attached

This agreement was reached through a Request for Proposal that allows all interested parties to apply. The increase in services at the pavilion and ability for Parks to monitor and approve the concession items and offerings allows Parks to ensure access for the public. The agreement also ensures TBE participation if applicable, requires public access, and prohibits discrimination.

Desired Timeline:
Begin Date:

7/1/21

End Date:

6/30/26

Duration:

5 years with two one-year extensions

Anticipated Funding Source *(check all that apply and include amount allocated under each category):*
Operating Budget:
Capital Budget:
Other *(i.e. grants, donations, etc.; please describe):*
Request Involves:
☒ **Parks Property**
☐ **BHD Property**



COUNTY FACILITIES PLANNING WORK INITIATION REQUEST DETERMINATION

CFPSC ACTION FOR CFPSC USE ONLY

CFPSC Project Tracking #:

2021-13

TYPE OF REQUEST (Refer to paragraph 4.3 of the CFPSC charter for more details)

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> 1. Asset Management | <input type="checkbox"/> 2. Move Management | <input type="checkbox"/> 3. Facility Improvements |
| <input type="checkbox"/> 4. New Footprint | <input type="checkbox"/> 5. Contractual Obligations | <input type="checkbox"/> 6. Centralized Facilities Management Process Improvement |

CFPSC Review Comments:

FOR EASEMENTS ONLY

Reviewed & Recommended for Approval:

DAS — FM, AE&ES (Legal Description)

Director, DAS

Corporation Counsel

Note:

1. Easements affecting lands zoned "Parks" require County Board approval.
2. Forward a copy of the recorded easement to AE&ES.

CFPSC RECOMMENDATION

The County Facilities Planning Steering Committee reviewed this proposal on . As evidenced by the authorized signature below, the County Facilities Planning Steering Committee approval of this proposal.

Chair or Vice-Chair:

Date:

County Facilities Planning Steering Committee

LEASE AGREEMENT
BETWEEN
MILWAUKEE COUNTY PARKS
AND
WAKE ZONE, LLC

This Lease Agreement ("Lease") is made and entered into effective _____, by and between the MILWAUKEE COUNTY PARKS (the "County" or "Landlord") and Wake Zone, LLC, ("Tenant" or "Vendor"), as represented by: Ali Abdel. Referenced together, the Landlord and the Tenant are "Parties" to this Lease.

WHEREAS, the Tenant is a Limited Liability Company, which exists to provide jet ski, other water recreation, and concession services; and

WHEREAS, the Tenant wishes to enter into a lease agreement to provide jet ski, other water recreation, and concession services at Bender Park; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution _____ on _____, has authorized Milwaukee County Parks to enter into this agreement with the Tenant for and on behalf of Milwaukee County.

WHEREAS, Milwaukee County is a municipal body corporate in the State of Wisconsin, and it is the Milwaukee County Department of Parks, Recreation and Culture's (Parks) mission to sustain the legacy of our world-class park system by managing and conserving natural, cultural, and recreational resources for the benefit of the community; and

WHEREAS, recognizing that providing jet ski, other water recreation, and concession services at Bender Park is advantageous to both agencies, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

1. **BUILDING AND PREMISES:** Tenant shall lease the pavilion located at Bender Park, 4503 E Ryan Rd, Oak Creek, WI 53154 and agreed upon adjacent areas ("Premises"). The Leased Premises shall be specific areas outlined in Exhibit A. County reserves the right to use one window in the pavilion to sell boat launch passes from April 1 to May 20 each year.
2. **TERM:** This Agreement shall be for an initial term of five (5) years.
3. **RENEWAL:** After the Initial Term of the Agreement, the Parties may mutually agree in writing to extend the term of the Lease for two (2) additional consecutive one-year periods (each a "Renewal Term"). Such option shall be exercised by written notice to Landlord given at least nine (9) months prior to the expiration of the Initial Term or the applicable Extended Term and Landlord agreeing to accept such additional Extended Term, provided however that Tenant continues using the Leased Premises only for the Permitted Use set forth in Section 5 and for no other purposes.
4. **RENT:** The Monthly Base Rent of one thousand dollars (\$1,000) per month shall be paid in May, June, July, and August, and September and any additional payments due under this lease, shall collectively be referred to as "Rent."

Tenant shall pay to Landlord, without demand, offset or delay, when due, Rent monthly in advance on or before the first day of each calendar month throughout the Lease Term. The obligation of Tenant to pay Rent is hereby declared to be an independent covenant.

- a) **SALES REVENUE:** The Tenant shall remit the sum of ten percent (10%) of the Gross Receipts from recreational activities and food and beverage sales to the County. "Gross Receipts" shall mean the total of all receipts (cash, checks, and credit cards) derived from the sale of all merchandise associated with the recreational and concession activities, less sales tax.

Checks shall be made payable to the Milwaukee County Treasurer and mailed or delivered to: Accounting Division, 9480 W Watertown Plank Road, Wauwatosa, WI 53226

Tenant agrees to compile and provide County with a monthly detailed summary report of all sales activities, a financial reconciliation of all commissions owed and paid, and remit to County any additional amounts as may be required. Tenant shall submit such reports within ten (10) days of the end of the preceding month.

- b) **IMPROVEMENTS:** As part of this Lease Agreement, Tenant has agreed to make the following improvements:
- i. Install a new dock for use by Tenant. Tenant shall obtain a Right of Entry permit from Parks prior to installation.
 - ii. Install speed bumps in the parking lot. Tenant shall obtain a Right of Entry permit from Parks prior to installation.
 - iii. Work with the Department of Natural Resources to have buoys put in to define the swimming area at the beach. Tenant will obtain a Right of Entry permit from Parks prior to installation.
 - iv. Install bathrooms locks to automatically unlock bathrooms at 5 a.m. every day. Tenant shall receive Parks' Trades approval prior to installation.
 - v. Install screens on the pavilion service windows. Tenant shall receive Parks' Trades approval prior to installation.
 - vi. Install a quick shower stand for guests. Tenant shall receive Parks' Trades approval prior to installation.

Improvements should be made within one year of execution of this Agreement.

- c) **UTILITIES:** Tenant shall pay to the County the actual utility costs per month for the Property. The County shall invoice the Tenant for such Utilities costs on a monthly basis. Invoices shall be paid within thirty (30) days of issuance. "Utilities" may include sewer, water, gas, telephone, electric, steam, natural gas, and chilled water. The Utilities fee shall also include the fee for garbage pick-up. Any costs related to the installation, service, and maintenance of Utilities, including, but not limited to, the installation of any electrical outlet(s) necessary for the operation of the Tenant, shall be the sole responsibility of the Tenant.

5. PERMITTED USE: Consistent with County ordinances and other applicable laws, Tenant shall have the use of the Premises for its continuing business and administrative activities.
- a. FOOD AND BEVERAGE SALES: Tenant is permitted to sell food and beverages. The concession is a fair-weather operation scheduled to be open daily from 9:00 a.m to 9:00 p.m., during fair-weather "season" to be agreed to between Tenant and County, weather permitting. Tenant shall not dispense or distribute alcohol, if alcohol is being distributed, after 9:00 p.m. At this time Tenant does not desire to serve alcohol, but if there is a desire in the future to have alcohol sold, the County has the right of first refusal to provide alcohol on the Premises. The times of operation may be modified upon the written approval of the Parks Director or his/her designee.
 - b. SPECIAL EVENTS: All special events to be held on the Premises require the written permission of the County and Tenant shall obtain and may be required to pay for a Special Event Permit at the standard County fee in effect at the time of the Special Event from all governmental authorities having jurisdiction over the Premises.
 - c. SIGNAGE: Tenant may display appropriate signage relating to the [use of and/or public access to the Premises] with County's prior written consent, which may not be unreasonably withheld (the "Signage"). Tenant hereby covenants and agrees that Tenant shall, at its own cost and expense: (i) be responsible for ensuring that the Signage is in compliance with all applicable codes, ordinances, statutes, rules and regulations, including any action or rule of any landmark commission having jurisdiction; (ii) obtain and comply with all consents, approvals and permits necessary from all governmental and quasi-governmental authorities and landmark commissions having jurisdiction over the Signage; (iii) insure the Signage as part of its property and shall also carry liability and property damage insurance with respect to the Signage; (iv) ensure that the Signage retains an attractive appearance at all times; and (v) pay all costs associated with creating, designing, manufacturing, installing, cleaning, maintaining, repairing and replacing (if necessary) the Signage. Any signage in County Parks must have the Milwaukee County Parks logo prominently displayed.
 - d. PUBLIC ACCESS AND USE OF THE PREMISES: The Parties recognize that during the Term of this Agreement the Premises is operating as a business entity and that public use of the Premises is mutually desirable. The Premises shall remain open and available to the public during regular hours the [Building/Park] remains open.
 - e. SOUND/AMPLIFIED MUSIC RESTRICTION: Amplified music shall be limited to acoustic and vocal reinforcement to provide background music throughout the Premises and environs. Events or performances with concert style amplification must be approved in writing by the Parks Director or his/her designee. All amplified music approved by the Parks Director or his/her designee, as well as ambient music, shall comply with the appropriate City of Milwaukee and Milwaukee County noise ordinances.
 - f. COUNTY APPROVAL OF ITEMS TO BE SOLD: Tenant shall provide County with a list and pricing information for the products it intends to sell to the public for approval. The Parks Director or his/her designee maintains the right to prohibit the sale or rental of any item that he/she deems to be inappropriate or otherwise within the Milwaukee

County Parks System. Tenant agrees to comply with the County's prohibitions including the sale of gum and glass bottles and to operate subject to the Milwaukee County Parks System's exclusive non-alcoholic beverage contract.

- g. CUSTOMER SERVICE: Vendor shall train employees so that they are aware of the high standards for cleanliness, courtesy, and service required by the Vendor and County. The Vendor will prominently display signage that states the Vendor is a Proud Parks Partner. The signage will include contact information for Parks for customer feedback. Signage will be provided to the Vendor by County.
- h. CLEANLINESS, GARBAGE: Tenant is responsible for maintaining the Premises, as outlined in Exhibit A, in a state of cleanliness and repair to prevent injury to the public, which includes daily removal of litter. Tenant is also responsible for the collection and disposal of all municipal solid waste (trash) and recycling associated with its activities. Tenant is strongly encouraged to establish a recycling program to reduce landfill waste. Tenant may contract with a commercial waste service and, upon coordination with County, place municipal solid waste and recycling containers in a designated area of the parking lot.
- i. RESTROOMS: Vendor shall unlock the restrooms at 5 a.m. and lock the restrooms at 9 p.m. each day. Prior to the automatic locks being installed under section 5(b)(iv), Tenant may provide port-o-potty's, at its cost, for the 5 a.m. to 9 a.m. time period. Vendor shall post public signage at restrooms indicating: (a) restroom opening and closing times, (b) that the Vendor is responsible for maintaining the restrooms, (c) Vendor contact information, and (d) emergency contact information, including where patrons can go for help. Vendor shall permit public access to the restrooms during all hours of operation and provide routine maintenance and ongoing cleaning of the public restrooms during Vendor's operations. Vendor shall also provide all restroom supplies and cleaners as needed. Vendor shall be billed for County's services if it fails to adhere to this Section.
- j. SINGLE-USE PLASTIC AND POLYSTYRENE: Milwaukee County has committed to eliminating the use of single-use plastics and polystyrene in Milwaukee County Parks by the year 2022. Tenant shall provide landlord regular updates (at least twice a season) on its progress toward eliminating the use of single-use plastics and polystyrene in its operations.
- k. DISPOSAL OF FATS, OILS AND GREASE:
 - i. Prevention of FOG Build-up: Tenant shall keep leftover grease and food scraps from going down the drains. Fats, oils, and grease ("FOG") poured down drains can build up in pipes and sewers and cause sewage backups, which can lead to raw sewage overflows. Large amounts of FOG should be collected and stored in drums or barrels for recycling. Small amounts can be poured into a sealed container and thrown away. Tenant should scrape or wipe FOG from dishware and cookware and put it in the trash.

- ii. GCD Installation: Tenant shall have a grease control device ("GCD") meeting all applicable requirements of Wisconsin Administrative Code NR 113 and State of Wisconsin Department of Commerce 82.34 standards. The GCD shall be installed by a plumber licensed in the State of Wisconsin prior to the Tenant's occupancy of the Premises. The GCD shall be installed and connected so that it may be readily accessible for inspection, cleaning and removal of FOG at any time.
- iii. Maintenance: The GCD shall be maintained at the Tenant's sole expense. Maintenance shall include the complete removal of all contents, including floating material, wastewater and settled solids. The GCD shall be cleaned no less frequently than once every six (6) months. Grease interceptors shall be pumped out completely when the total accumulation of FOG, including floating solids and settled solids, reaches twenty-five percent (25%) of the overall liquid volume. Frequency of cleaning will depend upon the type of food prepared and how well grease is managed in the kitchen.
- iv. Waste Disposal: FOG removed from a grease interceptor shall be disposed of in a solid waste disposal system or by a certified grease hauler. FOG removed from a grease interceptor shall be disposed of at a facility permitted to receive such wastes. No FOG shall be returned, decanted or discharged to any grease interceptor or into any portion of any private or County sanitary sewer system or water treatment facility.
- v. Posting of Signage: The Tenant shall post County signage provided to the Tenant regarding FOG disposal in a clear and prominent place in the kitchen at the Premises. County signage shall be posted above the sink at the Premises if such posting is possible and if such posting would not obscure the signage.
- vi. Inspection: County shall have the right of entry into the Premises at any time to make inspections, observation, measurements, sampling, testing, or records review of the GCD to ensure that the Tenant is in compliance with this [Section X]. Operational changes, maintenance and repairs requested by the County shall be implemented by Tenant at Tenant's sole expense.
- vii. Record Keeping: Tenant shall retain and make available for County's inspection and request all records of all cleaning and/or maintenance pertaining to the GCD during the Term. Cleaning and/or maintenance records shall include, at a minimum: (a) the dates of cleaning/maintenance; (b) the names and business addresses of each company or person performing the cleaning/maintenance; (c) the volume of waste removed in each cleaning/maintenance; (d) information regarding each FOG disposal, including location of the waste disposal site and a copy of the original manifest from the hauler, if applicable; and (e) description of any repairs needed to the GCD, date repairs performed and name of repairer. The rights and obligations set forth under this provision shall survive the termination of the Agreement for a period of three (3) years.)

Tenant shall maintain the Premises in good order, including interior and exterior cleaning and janitorial services to the Premises and any environs utilized by Tenant. Tenant shall be responsible for renovating and updating the Premises to ensure the facility is operating in a manner compliant with appropriate codes, laws, and regulations. Tenant shall make all "minor repairs" and/or "major repairs" to all plumbing, HVAC, electrical and lighting (including the replacement of light bulbs), door latches and locks, windows and plate glass/plastic, and signage, where such repairs or replacement are to the existing items in place within the Premises or to those installed by Tenant. County shall have no obligation to make repairs to the Premises.

- a. **Timeliness of Repairs:** Tenant shall perform its obligations under this Section promptly after learning of the need for such repairs, but in any event within thirty (30) days of the occurrence or notice provided by the County, or five (5) days if the issue is related to health and safety. If Tenant fails to make such repairs for which it is obligated within thirty (30) days after County's notice, then the County shall have the right to make the repair with its own staff or contract with a third party to make the repair, and charge all reasonable costs associated with making the repair to Tenant (including salary and benefits if done with County's own staff). The County reserves the right to remove project components or improvements if site conditions warrant and charge related

removal costs to Tenant. Reasons for removal may include but are not limited to health and safety concerns, code violations, lack of alignment between the project and the Parks current mission, visual blight, or an attractive nuisance as determined by Parks staff.

7. FUTURE IMPROVEMENTS:

- a. Prerequisites: Tenant's plans to renovate, improve and alter the Premises hereunder are contingent upon Tenant obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the construction and renovation to the Premises. All costs associated the construction and renovation of the Premises, including disconnection and/or hookup of Utilities in conjunction with such construction or renovation, shall be the responsibility of the Tenant. The County will not incur any costs, pay any expenses or issue any debt associated with the Premises, improvements and renovations to the Premises or equipment used on the Premises during the Term.
- b. County Approval: Prior to the start of any construction or renovation of the Premises, including any subsequent alterations or renovations, Tenant shall submit detailed construction plans and specifications to the State Historical Preservation Office (if applicable), to County and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, together with the name of Tenant's proposed contractor(s), for review and approval. Submittals shall include, but not limited to, shop drawings containing product information and materials and products shall be approved by County. Tenant shall reimburse County for the cost of a Milwaukee County Project Manager (including salary and benefits) during the construction phases of the project, including any subsequent construction, alterations or improvements, in an amount not to exceed Two Hundred Fifty Dollars (\$250.00) per hour, or Seven Thousand Five Hundred Dollars (\$7,500) total for the project. All costs for the Milwaukee County Project Manager work provided over this amount shall be charged to the County's Parks, Recreation, and Cultural Department's operating budget. Conditions for approval shall include, but not be limited to provision that Tenant shall obtain and comply with, prior to commencing any alterations, additions and improvements, all necessary permits, including obtaining a Right of Entry permit from Milwaukee County Parks, and licenses from the appropriate governmental authorities.
- c. Construction Standards: All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County [Buildings/Parks]. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. Tenant shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Premises undertaken by or on behalf of Tenant. Any structures, alterations, additions or improvements installed on the Premises by Tenant (including generic signage permanently affixed to the Premises) shall become the property of County upon the expiration or termination of

this Agreement. In no event shall Tenant make any alterations or additions to the Premises without the prior written consent of County, except in the event of an emergency, when such consent shall not be required, provided that notice shall be given as soon as reasonably possible thereafter. Routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations or additions requiring such approval, providing they do not individually exceed [Five Thousand Dollars (\$5000)] in cost per year.

- d. **Builder's Risk:** Tenant or its general contractor shall provide Builder's Risk insurance coverage on a completed value form insuring for special perils, with Milwaukee County as additional insured and loss payee on the insurance certificate. Coverage is during construction period and is intended to terminate when the work has been completed and the Premises are ready for occupancy. Prior to construction, Tenant shall supply Parks with written evidence of Builder's Risk insurance. Tenant shall not commence construction activities without written approval from the Parks Director and his/her designee. The Parks Director shall provide a written response to the Tenant within thirty (30) days of receiving written evidence of the Tenant's Builder's Risk insurance documents.
- e. **Construction Escrow:** Tenant agrees to provide evidence satisfactory to the County that the total amount of funds necessary to construct the proposed renovations to the Premises are immediately available and dedicated to such purpose and documentation is in place to provide for the orderly disbursement of such funds during the course of construction to pay for all permits, material, labor, supplies, and any other miscellaneous items used or necessary for the construction of the renovations. Tenant shall deliver to County evidence reasonably acceptable to the County that the total amount of such funds are immediately available and dedicated for the above purpose prior to any construction activities taking place on the Premises. Any such evidence of the Tenant's financial capacity shall also include a letter from the Tenant's banking institution stating that the Tenant has secured a line of credit that is immediately available to Tenant for such purposes in an amount sufficient to cover 100% the costs thereof.
- f. **Licensed Tradespersons:** Tenant agrees that all renovations and improvements shall be performed by fully licensed contractors and subcontractors who shall utilize industry standard supplies, equipment, and construction methods in the performance of their duties. Tenant shall require its contractors and subcontractors to obtain and maintain adequate insurance coverages with liability limits not less than that required of Tenant by County. Tenant shall have responsibility to enforce compliance with these insurance requirements and provide evidence of insurance for any contractor or subcontractor as acceptable to the County.
- g. **Construction Documents:** Tenant agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, Tenant shall provide to County a complete set of construction documents to be included as a minimum: (a) as-built drawings; (b) a copy of all work orders and change orders; (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties;

(f) a copy of all construction permits and signed drawings; (g) City of Milwaukee final occupancy permits, if applicable.

- h. **Removal of Equipment and Supplies:** Upon expiration or termination of this Agreement for any reason or no reason, Tenant shall remove, at its costs, all of its supplies, displays, and related items from the Premises within three (3) days of the expiration or termination date, and shall restore the Premises to its prior condition, satisfactory to the [Economic Development Director] or his/her designee. Damage caused to the Premises by any removal of personal property or improvements to the Premises will be repaired by the Tenant. If for any reason Tenant does not comply in a timely manner with its obligations under this paragraph (which shall mean completion within sixty (60) days unless otherwise authorized in writing by [Economic Development Director]), then the County may make such repairs or remove, dispose of, or retain such property as the County sees fit. It is mutually agreed that the County may recover from the Tenant any and all reasonable costs, as determined by the County, related to this Section. The Tenant agrees to surrender the Premises in broom-clean condition, subject to ordinary wear and tear and casualty.
8. **PARKS LOGO:** Tenant is responsible for all marketing and advertising to promote its activities. Tenant shall acknowledge the Parks Department and include the Parks logo, to be approved by Parks Department, in all promotional materials, whether print or digital, directly related to its activities covered under this Agreement.
9. **RIGHTS RESERVED TO COUNTY:** County reserves the right to award a contract with one (1) or more additional vendors to provide other concessionable items in other areas of the [Building/Park]; provided, however, that County shall not contract with a third party to operate another [beer garden] in another area of the [Building/Park]. County further reserves the right to operate its own concession area during any and all events held in its [Buildings/Parks].
10. **PERMITS, LICENSES, AND OTHER COSTS:** Tenant shall procure, maintain, and pay the fees for all appropriate federal, state, and local licenses and permits required for its activities.
11. **COMPLIANCE WITH LAWS – NONDISCRIMINATION, AFFIRMATIVE ACTION AND DBE GOALS:**
 - a. **Generally:** There shall be no discrimination against or segregation of any person, or group of persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the use of the Premises, and Tenant (or any person claiming under or through Tenant) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Premises.
 - b. **Non-Discrimination:** Tenant certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant will post in conspicuous places, available for employment, notices setting forth the provisions of the non-discriminatory clause. Attached hereto as Exhibit B is an Equal

Opportunity Certificate that shall be executed and delivered by Tenant simultaneously with the execution and delivery of the Agreement.

- c. Affirmative Action Program: Tenant certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. Tenant also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.
 - d. Affirmative Action Plan: Tenant certifies that if it has fifty (50) or more employees, it has filed or will develop and submit a written Affirmative Action Plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Comptroller's Audit Services Division, 633 W. Wisconsin Ave, 9th Floor, Milwaukee, WI, 53203.
 - e. Non-Segregated Facilities: Tenant certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.
 - f. Reporting Requirement: When applicable, Tenant certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.
 - g. Compliance: Tenant certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of noncompliance with EEO regulations.
 - h. Targeted Business Enterprise Goals: Tenant shall use reasonable efforts to cause its contractors to establish Targeted Business Enterprise ("TE") participation goals, consistent with Milwaukee County TE goals of [twenty-five percent (25%)] for construction and [ten percent (10%)] for goods and services, purchases and subcontracts, and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist Tenant in soliciting potential TE vendors for the improvements and monitor such goal attainment.
12. COMPLIANCE WITH LAWS – ADA: Tenant shall, at Tenant's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Tenant's use of the Premises pertaining to: (a) accessibility, ensuring that the Premises and environs are fully accessible pursuant to the American with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 and such accessibility is approved by the Milwaukee County Office of Persons with Disabilities; and (b) Tenant's activities on the Premises.

13. INDEMNIFICATION: To the fullest extent permitted by law, Tenant shall indemnify the County for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the Tenant, its agents, or employees. Tenant shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action.

14. ENVIRONMENTAL INDEMNIFICATION: Tenant shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Tenant, or its agents. Tenant hereby agrees to indemnify, defend and hold County harmless from and against any and all liabilities, costs, expenses (including attorney fees), damages (including but not limited to clean-up, remediation or detoxification of) or any other losses caused by its introduction of any such Hazardous Materials into or onto the Premises and any Hazardous Materials brought onto or introduced into the Premises as described below.

- a. "Hazardous Materials" as the term is used herein shall mean any substance: (i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any federal, state, or local statute, regulation, ordinance, or amendments thereto, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), or the Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq.); or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Wisconsin, or any political subdivision thereof; or (iv) the presence of which on lands within the Project Area causes or threatens to cause a nuisance upon the Project Area or surrounding area or poses or threatens to pose a hazard to the Project Area or surrounding areas or to the health or safety of persons on or about the Project Area; or (v) which contains gasoline, diesel fuel, or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenyls (PCBs), asbestos, or urea formaldehyde foam insulation; or (vii) which causes notification of release and required actions in accordance with Chapter 292 Wisconsin Statutes..

15. Insurance. Every contractor and all parties furnishing services or product to Milwaukee County (Milw. Cty.) or any of its subsidiary companies must provide Milw. Cty. with evidence of the following minimum insurance requirements. In no way do these minimum requirements limit the liability assumed elsewhere in the contract. All parties shall, at their sole expense, maintain the following insurance:

- (1) Commercial General Liability Insurance including contractual coverage:
The limits of this insurance for bodily injury and property damage

Combined shall be at least:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising injury Limit	\$1,000,000

(2) Business Automobile Liability Insurance:

Should the performance of this Agreement involve the use of automobiles, Contractor shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Contractor shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.

(3) Workers' Compensation Insurance:

Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.

(4) Employers Liability Insurance:

Such insurance shall provide limits of not less than \$500,000 policy limit.

(5) Excess/Umbrella Liability Insurance:

Such insurance shall provide additional limits of not less than \$5,000,000 per occurrence in excess of the limits stated in (1.), (2.), and (4.) above.

Additional Requirements:

(6) Contractor shall require the same minimum insurance requirements, as listed above, of all its contractors, and subcontractors, and these contractors, and subcontractors shall also comply with the additional requirements listed below.

(7) The insurance specified in (1.), (2.) and (5.) above shall: (a) name Milw. Cty. including its directors, officers, employees and agents as additional insureds by endorsement to the policies, and, (b) provide that such insurance is primary coverage with respect to all insureds and additional insureds.

(8) The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. Milw. Cty. may require higher limits or other types of insurance coverage(s) as necessary and appropriate under the applicable purchase order.

(9) Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against Milw. Cty., its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors, and their insurers.

(10) Contractor shall provide certificates evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Contractor shall require all insurers to provide Milw. Cty. with a thirty (30) day advanced written notice of any cancellation, nonrenewal or material change in any of the policies maintained in accordance with this Agreement. Coverage must be placed with carriers with an A. M. Best rating of A- or better.

16. SITE RESTORATION: Both Tenant and County shall together participate in a pre-season and post-season inspection of the Premises, including the turf. Tenant shall be responsible for any actual documented physical damage to the Premises caused by Tenant, its employees, agents, representatives, and guests, as well as all Premises maintenance, including any necessary site restoration. Within five (5) days of the discovery of any such damage, the Premises shall be restored to the satisfaction of the Parks Director or his/her designee. If damage is not restored by the Tenant after five (5) days of the discovery and the County elects to restore such damage, then the County shall have the right to restore the damage with its own staff or contract with a private company to restore the damage, and charge all reasonable costs directly associated with performing the restoration work, to the Tenant (including salary and benefits if done with the County's own staff.))

17. SECURITY: Unarmed security personnel are permitted within the Premises for the purposes of checking identification and general observation. Tenant shall be solely responsible for and assume all risks related to Tenant's use of security personnel.))

18. INSPECTION BY COUNTY: County shall at all reasonable times have the right to enter the Premises to inspect the condition thereof, and to improve or repair the Premises, and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable; provided, however, such entry shall be done in such a manner that it does not unreasonably interfere with the conduct of Tenant's use of the Premises.

19. INTEREST AND PENALTIES:

- a. Interest: Unless waived by [County Board of Supervisors], Tenant MAY be responsible for payment of interest on amounts not remitted in accordance with this Agreement. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (one-percent (1%) per month or fraction of a month) as described in Wisconsin statutes section 74.47(1). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.
- b. Penalty: In addition to the interest described above, Tenant may be responsible for payment of penalty on amounts not remitted in accordance with this Agreement, as may be determined by County. The penalty shall be the statutory rate in effect for delinquent County property taxes (.5% per month, or fraction of a month) as described in Milwaukee County ordinance section 6.06(1) and Wisconsin statutes section 74.47(2). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

- c. **Audit Results:** If, as a result of an audit, additional amounts are disclosed to be due and owing to the County, interest and penalty shall be calculated thereon in accordance with the above method. Tenant shall remit to the County any additional amounts identified due and owing for the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by the County.
 - d. **Nonexclusivity:** This provision permitting collection of interest and penalty by the County on delinquent payments is not to be considered the County's exclusive remedy for Tenant's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the County of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.
- 20. **COUNTY RIGHTS OF ACCESS AND AUDIT:** The Contractor, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances. Any and all County contracts and solicitations for contracts shall include a statement that the Contractor, lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances.
- 21. **ASSIGNMENT AND SUBLETTING:** Tenant may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the [Parks Director] or his/her designee, and the County Comptroller.
- 22. **RELATIONSHIP OF PARTIES:** Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of Landlord and Tenant.
- 23. **TERMINATION:** County may terminate this Agreement: (a) if Tenant fails to comply with any provision in this Agreement, and such failure continues for forty-five (45) days after a written notice from County setting forth in reasonable detail the nature of such default; (b) if Tenant ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any

proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant's assets or Tenant's interest in this Agreement; (c) in the event that Tenant fails to make significant capital improvements to the Premises pursuant to [Section X] during the initial three (3) Operating Years of the Term; or (d) in the event that County, upon twelve (12) months' prior written notice to Tenant, elects to close or otherwise repurpose the [Premises] from its use as [use described] during the Term. If County terminates the Agreement within the first or second Operating Year of the Term pursuant to Section (d) above, County agrees to buy out one hundred percent (100%) of Tenant's documented capital expenditure investment pursuant to [Section X] in the Premises. In the event that County terminates the Agreement within the third, fourth or fifth Operating Year of the Term pursuant to Section (d) above, County agrees to buy out Tenant's documented capital expenditure investment pursuant to [Section X] in the Premises during the Term on a straight-line depreciation over five (5) years. In addition, if County takes either action contemplated by Section (d) above, County shall make reasonable efforts to relocate Tenant's [operations] to another Milwaukee County [Parks] location reasonably mutually acceptable to Tenant and County. No buy-out by the County shall include any investment Tenant has made in equipment. Tenant may terminate this Agreement at its sole and absolute discretion upon one hundred eighty (180) days' prior notice to County, but such termination shall not trigger the buy-out provision above.

24. DEFAULTS & REMEDIES:

- a. Tenant's Defaults. Tenant agrees that any one or more of the following events shall be considered events of default as said term is used herein:
 - i. Tenant shall fail to contest the validity of any lien or claimed lien and give security to County to insure payment thereof, or having commenced to contest the same and having given such security, shall fail to prosecute such contest with diligence, or shall fail to have the same released and satisfy any judgment rendered thereon, and such default continues for sixty (60) days after notice thereof to Tenant; or
 - ii. Tenant's failure to perform any other covenant or condition of this Agreement within forty-five (45) days after notice and demand, unless the failure is of such a character as to require more than forty-five (45) days to cure, in which event Tenant's failure to proceed diligently to cure such failure shall constitute an event of default.
- b. County's Remedies. If a Default occurs, County shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive County of any other right or remedy allowed it by law:
 - i. County may terminate this Agreement by giving to Tenant notice of County's election to do so, in which event the Term of this Agreement shall end, and all

right, title and interest of Tenant hereunder shall expire, on the date stated in such notice;

- ii. County may enforce the provisions of this Agreement and may enforce and protect the rights of County hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Tenant under any of the provisions of this Agreement.

- c. County's Defaults. County agrees that the following shall be considered an event of default as said term is used herein:

- i. County's failure to perform any other covenant or condition of this Agreement within forty-five (45) days after notice and demand, unless the failure is of such a character as to require more than forty-five (45) days to cure, in which event County's failure to proceed diligently to cure such failure shall constitute an event of default.

- d. Tenant's Remedies. Upon the occurrence of any event of default by County, Tenant shall have any remedy available at law or equity.

25. CASUALTY: If the Premises or the Building is damaged or destroyed by fire or other casualty covered by insurance, then this Lease shall continue in full force and effect and County may proceed to repair or restore the Premises to the condition which County furnished to Tenant upon the commencement of the Term. County shall be under no obligation to restore any Alterations to the Premises made by Tenant unless the same is covered by County's insurance, but nothing herein shall be construed to require County to insure such property. In no event shall County be obligated to expend an amount in excess of the insurance proceeds available to County for such repair or restoration. In the event the Premises are repaired as provided herein, then Tenant shall repair and restore its merchandise, furnishings, furniture, equipment and all alterations, additions and leasehold improvements made by or for Tenant to at least a condition equal to that before its damage. If the Premises or any part of it shall be rendered untenantable by any destruction or damage, then a pro rata portion of the Rent based upon the number of square feet of area in the Premises which are untenantable shall be abated until the Premises or such part thereof shall have been put in tenantable condition. Despite the foregoing, if any destruction or damage to the Premises or to the Building (whether or not the Premises are affected) is so extensive that County, in its sole discretion, elects not to repair or restore the Premises or Building or the proceeds of insurance are not sufficient or available to fully pay the cost of the repair or restoration, then County may terminate this Lease effective as of the date of the damage by written notice to Tenant, with notice to be given within ninety (90) days after the occurrence of the damage or destruction.))

26. **TRANSFER BY LANDLORD:** In the event of a sale or conveyance by County of the Building, the same shall operate to release County from any future liability upon any of the covenants or conditions contained in this lease, and in such event Tenant agrees to look solely to the successor in interest of County in and to this Lease. This Lease shall not be affected by any such sale or conveyance, and Tenant agrees to attorn to the purchaser or grantee, which shall be obligated on this Lease only so long as it is the owner of County's interest in and to this Lease. In the event of the sale or other transfer of County interest in the Building, Tenant shall attorn to the purchaser and recognize the purchaser as Landlord under this Lease.))
27. **AUTHORITY:** If Tenant is a corporation, or limited liability company or other entity, each individual executing this Agreement on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, limited liability company or other entity, as the case may be, and that this Agreement is binding upon said corporation in accordance with its terms without the joinder or approval of any other person.
28. **NOTICES:** All notices with respect to this Agreement shall be in writing, and e-mail shall constitute writing for the purposes of the foregoing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the party addressed as follows:

To Tenant:

To County:

Parks Executive Director
9480 Watertown Plan Road
Wauwatosa, WI 53226

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

This page reserved for electronic signatures



EXHIBIT A



376 0 188 376 Feet

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 CAMLIS



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Notes