



Purchasing Division

CONTRACT AMENDMENT
NO. 2

DATE: December 5, 2022
FROM: City of Grand Junction Purchasing Division
TO: Pinnacle Venue Services, LLC d/b/a OVG360
RE: Contract Amendment to the Management Agreement regarding the Management of Two Rivers Convention Center, Avalon Theatre and Las Colonias Amphitheater, with the original Contract Agreement RFP-4287-20-SH dated February 17, 2017 as extended and amended by Contract Extension 4670-19-SH dated July 12, 2019 and again by Contract Extension 4815-20-SH dated September 10, 2020, and as amended by Contract Amendment No. 1, dated April 27, 2022 (collectively, the "Contract")

This Contract Amendment is executed as of the 5th day of December, 2022 (the "Contract Amendment No. 2 Effective Date"), by and between the City of Grand Junction, Colorado, a Municipal Corporation in the County of Mesa, State of Colorado, hereinafter in the Contract Documents referred to as the "City" or "Owner" and Pinnacle Venue Services, LLC d/b/a OVG360, hereinafter in the Contract Documents referred to as the "Manager" or "Contractor." The Contract shall be clarified, modified, superseded and supplemented as of the Contract Amendment No. 2 Effective Date, as hereinafter described.

Contract Documents: The Owner's Request for Proposal RFP-4287-16-SH and any Addenda to the Contract Documents as set forth above, and this Signed Contract Amendment No. 2, as finally negotiated, compose the Contract Documents all of which are incorporated herein by this reference as if fully set forth.

The Contractor and Owner in consideration of the mutual covenants, promises, and agreements herein contained, agree to amend the contract as follows:

The Contract will be extended for a (5) year period, commencing January 1, 2023, and concluding December 31, 2027, subject to annual appropriation, with an option for one (1) additional three (3) year period, concluding December 31, 2030, also subject to annual appropriation. The Owner shall notify Manager of its intent to exercise its option to engage Manager for the foregoing option by September 1, 2027.

ARTICLE 13 of the Contract shall be deleted in its entirety and replaced with the following:

"ARTICLE 13
CONTRIBUTIONS BY MANAGER

Section 13.1 Manager shall engage in fundraising activities to offset Operating Costs; including applying for available grant funding and engaging in a fundraising campaign to solicit donations for the Venues and its operations.

Section 13.2 Manager Contribution. Manager shall make a capital contribution of up to US \$500,000 (the "Investment") at the Venues for leasehold improvements and/or capital equipment dedicated to the Venues. City and Manager shall mutually agree upon the specific equipment and improvements to be purchased or made with the Investment, as well as the location for such improvements or installation of such equipment. The Investment shall be made over the course of the 2023 Operating Year but in any event shall be made in full by March 1, 2024.

Once identified, the specific equipment and other related tangible personal property to be purchased with the Investment shall be set forth in a writing to be signed by the parties and updated by the parties from time to time as necessary to reflect any replacements or substitutions thereof. All equipment, improvements and other items purchased with the Investment, including any replacements or substitutions thereof, shall be owned by Manager until payment of the Buyout Amount (as described below), and the City agrees to execute such documents as Manager shall reasonably request evidencing Manager's ownership interest in such improvements and equipment, including financing statements. For the sake of clarity, nothing in this paragraph shall be construed as requiring Manager to replace any equipment or other personal property at its own cost.

The Investment shall be amortized on a straight-line basis over an eight (8) year period (at the rate of 1/96 per month), commencing on January 1, 2023. Within five (5) days of the expiration of early termination of this Agreement (for any reason whatsoever, including without limitation, if the City does not exercise its option to extend the Term as set forth in Contract Amendment No. 2, or if due to a breach, default or bankruptcy event by or affecting Manager), the City shall immediately pay to Manager the unamortized amount of the Investment (the "Buyout Amount"). In the event that the City fails to pay Manager the Buyout Amount when due, the Buyout Amount shall accrue interest at the rate of one and a half percent (1.5%) per month, or the highest rate permitted by law, whichever is less. In such event, and without limiting any other rights or remedies available to it, Manager may reenter the Venues, with or without process of law, and remove in a commercially reasonable manner the improvements or equipment purchased with the Investment and retain or dispose of such improvements or equipment as Manager sees fit. In such event, Manager shall retain its right to receive the Buyout Amount, but any proceeds from the sale of such improvements or equipment, less the cost to Manager of removing, storing and selling such improvements or equipment, shall reduce the Buyout Amount.

The City covenants and agrees not to permit any liens or encumbrances to attach to the leasehold improvements and equipment purchased with the Investment, and hereby waives any right to attach any claim, lien, or attachment to such improvements or equipment. Once the Investment is fully amortized or the Buyout Amount is paid in full to Manager, title to the equipment and improvements purchased with the Investment will become vested in the City, and Manager agrees to execute all necessary documents to evidence same. The rights of Manager set forth in this Section shall be in addition to any other rights of Manager at law or in equity."

The original Contract is amended as noted. All other conditions remain the same.

[Signatures Follow]

ACCEPTED AND AGREED as of the Contract Amendment No. 2 Effective Date:

CITY OF GRAND JUNCTION ("City") or ("Owner")

By: 

12/22/2022
Date

Print Name: Greg Caton

Title: City Manager

PINNACLE VENUE SERVICES, LLC d/b/a OVG360 ("Contractor") or ("Manager")

By: 

1/18/2023
Date

Print Name: Francesca L. Bodie

Title: Authorized Representative



CONTRACT AGREEMENT-4815-20-SH

To: Tom Paquette, Managing Partner
Pinnacle Venue Services, LLC
20770 US 281 N. #108-484
San Antonio, TX 78258

**SERVICE DESCRIPTION: AGREEMENT FOR
RFP-4287-16-SH MANAGEMENT OF TWO RIVERS CONVENTION
CENTER, AVALON THEATRE AND LAS COLONIAS AMPITHEATER**

This CONTRACT is executed as of the 10th day of September, 2020, by and between the City of Grand Junction, Colorado, a Municipal Corporation in the County of Mesa, State of Colorado, hereinafter in the Contract Documents referred to as the "Owner" and Pinnacle Venue Services, LLC, hereinafter in the Contract Documents referred to as the "Contractor." This award shall cover the time period from January 1, 2021 through December 31, 2022.

This Contract Agreement will be a two (2) year agreement, subject to annual appropriation by the City with an option for three (3) additional one-year periods, also subject to annual appropriation.

The Contractor and the Owner, in consideration of the mutual covenants, promises, and agreements herein contained, agree to the contract as follows:

Scope of Work: The Contractor shall perform for the City the Services set forth in the Original Agreement as a result of RFP-4287-16-SH. This contract is for **management of the Two Rivers Convention Center, Avalon Theatre, and Las Colonias Park Amphitheater**.

The Contractor will continue to supply the Operating Budget and Insurance information as stated in the Original Agreement.

Contract Documents: The Owner's Request for Proposal RFP-4287-16-SH and any Addenda to the Contract Documents, and the Signed Agreement as finally negotiated compose the Contract Documents, all of which are incorporated herein by this reference as if fully set forth.

Compensation and Method of Payment: For satisfactorily performing the Services described in and required by the Contract Documents, the financial terms for **Two Rivers Convention Center and Avalon Theatre** will continue as follows:

Contractor shall be responsible for any operating costs above the Owner's annual subsidy of \$225,000. The first \$100,000 of net operating revenue above the \$225,000 will be paid to the Contractor as a management fee. Any net operating revenue above the \$100,000 of net operating revenue will be split evenly (50/50) between the Owner and the Contractor.

The financial terms for **Los Colonias Park Amphitheater** will be as follows:

For each ticket sold at \$20 or higher, \$2.00 will be paid to the Owner.

For each ticket sold from \$10 to \$19.99, \$1.00 will be paid to the Owner.

Twenty-five percent (25%) of net revenue from sales of sponsorships and commercial or pouring or naming rights shall be paid to the Owner.



There is no guarantee of minimum or maximum quantities. Compensation is dependent solely on events and situations as they occur. The parties acknowledge that this Contract Extension is not intended to amend the financial terms of the Contract Documents, and in the event of any ambiguity regarding the interpretation hereof, the language of the Contract Documents shall control, taking into account the parties' past practice.

In Witness whereof, the parties hereto have caused this Contract Extension to be duly executed, intending to be bound thereby.

CITY OF GRAND JUNCTION:

Authorized Signature: _____

Title: City Manager

Date: 9/16/2020

PINNACLE VENUE SERVICES, LLC:

Authorized Signature: _____

Title: Authorized Representative

Date: 9-16-20



CONTRACT EXTENSION-4670-SH

To: Tom Paquette, Managing Partner
Pinnacle Venue Services, LLC
20770 US 281 N. #108-484
San Antonio, TX 78258

**SERVICE DESCRIPTION: AGREEMENT EXTENSION FOR
RFP-4287-16-SH MANAGEMENT OF TWO RIVERS CONVENTION
CENTER, AVALON THEATRE AND LAS COLONIAS AMPITHEATER**

This CONTRACT is **extended** as of the **12th day of July, 2019**, by and between the **City of Grand Junction, Colorado**, a Municipal Corporation in the County of Mesa, State of Colorado, hereinafter in the Contract Documents referred to as the "Owner" and **Pinnacle Venue Services, LLC**, hereinafter in the Contract Documents referred to as the "Contractor." This award shall cover the time period from **January 1, 2020** through **December 31, 2020**.

The original Contract Agreement signed on January 17, 2017 was a three (3) year agreement, subject to annual appropriation by the City with an option for two (2) additional years, also subject to annual appropriation. This extension is the first of the two additional years.

The Contractor and the Owner, in consideration of the mutual covenants, promises, and agreements herein contained, agree to **extend the contract award** as follows:

Scope of Work: The Contractor shall perform for the City the Work set forth in the Original Agreement as a result of RFP-4287-16-SH. This contract is for **management of the Two Rivers Convention Center, Avalon Theatre, and Las Colonias Park Amphitheater.**

The Contractor will continue to supply the Operating Budget and Insurance information as stated in the Original Agreement.

Contract Documents: The Owner's Request for Proposal RFP-4287-16-SH, Contractor's Response Form, any Addenda to the Contract Documents, and the Signed Agreement as finally negotiated compose the Contract Documents, all of which are incorporated herein by this reference as if fully set forth.

Compensation and Method of Payment: For satisfactorily performing the scope of work described in and required by the Contract Documents, the financial terms for **Two Rivers Convention Center and Avalon Theatre** will continue as follows:

Contractor shall be responsible for any operating costs above the Owner's annual subsidy of \$225,000. The first \$100,000 of net operating revenue above the \$225,000 will be paid to the Contractor as a management fee. Any net operating revenue above the \$100,000 of net operating revenue will be split evenly (50/50) between the Owner and the Contractor.

The financial terms for **Los Colonias Park Amphitheater** will be as follows:

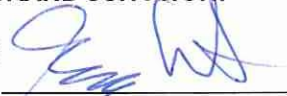
**For each ticket sold at \$20 or higher, \$2.00 will be paid to the Owner.
For each ticket sold from \$10 to \$19.99, \$1.00 will be paid to the Owner.
Twenty-five percent (25%) of net revenue from sales of sponsorships and commercial or pouring or naming rights shall be paid to the Owner.**



There is no guarantee of minimum or maximum quantities. Compensation is dependent solely on events and situations as they occur.

In Witness whereof, the parties hereto have caused this Contract Extension to be duly executed, intending to be bound thereby.

CITY OF GRAND JUNCTION:

Authorized Signature: 

Title: City Manager

Date: 12/27/2019

PINNACLE VENUE SERVICES, LLC:

Authorized Signature: 

Title: President, OVG Facilities

Date: 12-19-19

December 14, 2016

Jay Valentine

Internal Services Manager

City of Grand Junction

Dear Jay,

Per our discussion, this letter will serve as a Statement of Intent/Agreement in Principle regarding the Pinnacle Venue Services (PVS) proposal for the management of the Two Rivers Convention Center (TRCC) and Avalon Theatre. I've also include some information and ideas of how to handle logistics with the City. Hopefully, this will also serve as a basis for drafting an agreement; we have a standard agreement that is modified based on specific venues and details from which we can begin the work to develop a Services Agreement for TRCC and Avalon Theatre.

PVS will provide full management services for the TRCC and Avalon Theatre: we believe we can operate the venues more efficiently by implementing some industry best practices generating additional revenue and being responsible for more effectively managing operating costs and services. We will operate the venues as efficient businesses.

PVS will be responsible for:

- Hiring and managing all venue staff
- Staff payroll & benefits
- Event Booking and scheduling
- Event sales
- Working with VCB and business stakeholders
- Event promoter negotiations and relations
- Establishing rental rates and guidelines in an event booking scheduling policy
- Financial management including monthly financial reporting, budgeting, and forecasting
- Managing all operating expenses and securing 3rd party service contracts
- Marketing the venues and events
- Website and social media management
- Public relations related to the venues
- Sponsorship sales
- Operations including routine and preventative maintenance
- Event management, event set-up and changeover
- F&B services management

- Customer Service
- Security operations
- Box office operations
- Ticketing services management
- Parking operations for applicable lots
- IT and telecommunication services
- Securing appropriate insurance policies
- Communication with and reporting to the city

The City will be responsible for:

- Providing an annual operating subsidy of \$225,000 (see additional information below)
- All capital repairs and improvements (see additional information below)
- Providing required information such as necessary insurance policy requirements, local tax information, licenses, permits, local codes, etc.
- Providing for all reasonable transition costs during the first six months of the agreement including PVS corporate support travel related expenses (transportation, lodging, meals, etc.), venue senior level staff recruiting and relocation expenses (if necessary), and any necessary IT and telecommunications equipment, etc.

Financial Terms

Our proposal is that PVS will guarantee the City's bottom line for operating both the TRCC and Avalon Theatre. PVS will be responsible for any operating costs above the City's annual subsidy of \$225,000. The first \$100,000 of net operating revenue above the \$225,000 will be paid to PVS as a management fee. Any net operating revenue above the \$100,000 of net operating revenue will be split evenly (50/50) between the City and PVS.

Based on the current approved operating budget, the City will advance two months of projected expenses to the venues' operating account. After the first month, PVS will produce financial statements to determine if additional funding from the City is necessary to operate the venues. After each month, PVS will reconcile the venues' financial standing for review with the City and determining what amount of funding, if any, is necessary for the upcoming month(s).

Maintenance and Capital Improvements

PVS will be responsible for all operations related expenses including general day-to-day maintenance. The City will be responsible for all capital improvements. Unless other mutually acceptable terms are established, general maintenance and capital projects will be allocated using the current projected

budgets of the City for those expenses for the first year. Any repairs and maintenance over that budgeted amount would be the responsibility of the City.

Staffing

Current staff and each position's duties will be evaluated. Our goal is to retain as many of the current staff as possible. City employees at the venues will be transferred to PVS' payroll and benefits at a date to be determined after the execution of an operating agreement.

Agreement Term

We are proposing a three (3) year agreement, subject to annual appropriation by the City with an option for two (2) additional years. (We would consider a five (5) year agreement with additional option years, especially if the amphitheater was added to the agreement.) The start date is January 1, 2017.

Amphitheater Management Services

We are excited for the opportunity to provide management services for the future amphitheater. We would like to learn more about this project. With additional information, we would include that in our management services agreement with the appropriate terms at the appropriate date.

Additional Services

PVS will provide consulting regarding the design of other city owned venues (amphitheater and event center) in Grand Junction at no additional cost to the City.

After you've had a chance to review this letter, let me know if this letter of intent is agreeable. If so, please have the appropriate person sign and return a signed copy to me. I can be reached at 210-784-7189. I look forward to beginning this exciting new venture.

Regards,

Tom Paquette

Tom Paquette

Managing Partner

Pinnacle Venue Services

Agreed by:

Name:

Title:

Date:

J. Valentine
Jay Valentine
Internal Services Manager
1/3/17

MANAGEMENT AGREEMENT

between

THE CITY OF GRAND JUNCTION

and

PINNACLE VENUE SERVICES, LLC

Dated: February 17, 2017

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
ARTICLE 1 – DEFINITIONS	1
Section 1.1 <u>Definitions</u>	1
ARTICLE 2 – SCOPE OF SERVICES	5
Section 2.1 <u>Engagement</u>	5
Section 2.2 <u>Limitations on Manager's Duties</u>	5
ARTICLE 3 – COMPENSATION	6
Section 3.1 <u>Management Fee/Net Operating Distribution</u>	6
Section 3.2 <u>Excess Revenue Distribution</u>	6
ARTICLE 4 – TERM; TERMINATION	6
Section 4.1 <u>Term</u>	6
Section 4.2 <u>Termination</u>	6
Section 4.3 <u>Effect of Termination</u>	7
ARTICLE 5 – OWNERSHIP; USE OF THE VENUES	7
Section 5.1 <u>Ownership of Theater, Data, Equipment and Materials</u>	7
Section 5.2 <u>Right of Use by Manager</u>	8
Section 5.3 <u>Observance of Agreements</u>	8
ARTICLE 6 – PERSONNEL	8
Section 6.1 <u>Generally</u>	8
Section 6.2 <u>General Manager</u>	8
Section 6.3 <u>Non-Solicitation/Non-Hiring</u>	9
ARTICLE 7 – OPERATING BUDGET	9
Section 7.1 <u>Establishment of Operating Budget</u>	9
Section 7.2 <u>Approval of Operating Budget</u>	9
Section 7.3 <u>Operating Subsidy</u>	10
ARTICLE 8 – PROCEDURE FOR HANDLING INCOME	10
Section 8.1 <u>Event Account</u>	10
Section 8.2 <u>Operating Account</u>	10
ARTICLE 9 – FUNDING	10
Section 9.1 <u>Venue Funding</u>	10

Section 9.2 Transition Expenses.....	11
ARTICLE 10 – FISCAL RESPONSIBILITY; REPORTING.....	11
Section 10.1 <u>Records</u>	11
Section 10.2 <u>Monthly Financial Reports</u>	11
Section 10.3 <u>Audit</u>	11
ARTICLE 11 – CAPITAL IMPROVEMENTS.....	12
Section 11.1 <u>Schedule of Capital Expenditures</u>	12
Section 11.2 <u>Responsibility for Capital Expenditures</u>	12
ARTICLE 12 – VENUE MAINTENANCE.....	12
Section 12.1 <u>Responsibilities of the Manager</u>	12
ARTICLE 13 – CONTRIBUTIONS BY MANAGER.....	12
Section 13.1.....	12
ARTICLE 14 – VENUE CONTRACTS; TRANSACTIONS WITH AFFILIATES.....	12
Section 14.1 <u>Existing Contracts</u>	12
Section 14.2 <u>Execution of Contracts</u>	12
ARTICLE 15 – AGREEMENT MONITORING.....	13
Section 15.1 <u>Contract Administrator</u>	13
ARTICLE 16 – INDEMNIFICATION	13
Section 16.1 <u>Indemnification by Manager</u>	13
Section 16.2 <u>Indemnification by the City</u>	13
Section 16.3 <u>Conditions to Indemnification</u>	13
Section 16.4 <u>Survival</u>	14
ARTICLE 17 – INSURANCE.....	14
Section 17.1 <u>Types and Amount of Coverage</u>	14
Section 17.2 <u>Rating; Additional Insureds</u>	14
ARTICLE 18 – REPRESENTATIONS, WARRANTIES AND COVENANTS.....	15
Section 18.1 <u>Manager Representations and Warranties</u>	15
Section 18.2 <u>City Representations, Warranties and Covenants</u>	15
ARTICLE 19 – MISCELLANEOUS	15
Section 19.1 <u>No Discrimination</u>	15
Section 19.2 <u>Use of Venue Names and Logos</u>	15
Section 19.3 <u>Venue Advertisements</u>	16
Section 19.4 <u>Force Majeure; Casualty Loss</u>	16
Section 19.5 <u>Assignment</u>	16

Section 19.6	<u>Notices</u>	16
Section 19.7	<u>Severability</u>	17
Section 19.8	<u>Entire Agreements</u>	17
Section 19.9	<u>Governing Law; Venue</u>	17
Section 19.10	<u>Amendments</u>	17
Section 19.11	<u>Waiver; Remedies</u>	17
Section 19.12	<u>Relationship of Parties</u>	18
Section 19.13	<u>No Third Party Beneficiaries</u>	18
Section 19.14	<u>Limitation on Damages</u>	18
Section 19.15	<u>Counterparts; Facsimile and Electronic Signatures</u>	18
Section 19.16	<u>Manager’s Compliance with Florida Public Records Law</u>	18

EXHIBITS –

- Exhibit A Manager’s Duties
- Exhibit B Operations Manual
- Exhibit C Operating Budget
- Exhibit D Insurance

MANAGEMENT AGREEMENT

This Management Agreement is made as of the 17th day of February, 2017, by and between the City of Grand Junction, CO ("City"), and Pinnacle Venue Services, LLC, a Texas Limited Liability Company ("Manager").

RECITALS

The, City owns, the Two Rivers Convention Center, located at 159 Main Street, Grand Junction, CO 81501 (the "Convention Center") and the Avalon Theatre, located at 645 Main Street, Grand Junction, CO 81501; (the "Theatre") which collectively may be referred to as (the "Venues") and

On November 8, 2016, the City issued Request for Proposal No.RFP-4287-16-SH (the "RFP").

The, Manager submitted a proposal in response to the RFP (the "Proposal") and was deemed to be the most responsible responsive proposer under the RFP.

The City has the full legal right and authority to engage a third party to manage and operate the Venues, and the City desires to engage Manager to manage and operate the Venues on behalf and for the benefit of the City, and Manager desires to accept such engagement, pursuant to the terms and conditions contained herein.

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement, the following terms have the meanings referred to in this Section:

Agreement: this Management Agreement, together with all exhibits attached hereto as well as the RFP (each of which are incorporated herein as an integral part of this Agreement).

Building Components: Structural components of the Venues including the roof system, electrical system and HVAC system.

Capital Expenditures: All expenditures for building additions, alterations, repairs or improvements and for purchases of additional or replacement furniture, machinery, or equipment,

where the cost of such expenditure is greater than \$2,500 and the depreciable life of the applicable item is, according to generally accepted accounting principles, is in excess of five (5) years.

City: The term "City" shall have the meaning ascribed to such term in the Recitals to this Agreement.

City Events: Events hosted or presented by the City of Grand Junction.

City Expenses: Expenses incurred in the operation of the Venues for which the City will accept sole responsibility. City Expenses shall include the cost of Capital Expenditures, Property Insurance, and the costs of audits, for the Venues.

Commercial Rights: Pouring rights, advertising, sponsorships, the branding of food and beverage products for resale, premium seating (including suites, club seats and party suites) and memorial gifts at or with respect to the Venues and owned or controlled by the City.

CPI: The Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics or such other successor or similar index.

Effective Date: "Effective Date" shall be the first (1st) day of the first (1st) Operating Year of this Agreement.

Emergency Repair: The repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at the Venues threatening persons or property.

Event: The rental or booking of any component of the Venues by a person or entity other than the City.

Event Account: A separate interest-bearing account in the name of the Manager in a local qualified public depository, where advance ticket sale revenue is deposited by Manager.

Event Calendar: The schedule of events to be held at the Venues which shall include a list of the anticipated Events to be held during the Operating Year and the number of days during which any and all portions of the Venues will be used for the production of Non-City Events.

Event of Force Majeure: An act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, inability to obtain materials or supplies, accident to machinery or equipment, any law, ordinance, rule, regulation, or order of any public or military authority including but not limited to the City stemming from the existence of economic or energy controls, hostilities or war, affecting the Theater or services described in this Agreement, or any other cause or occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not be reasonably prevented or overcome.

FF&E: Furniture, fixtures and equipment to be procured for use at the Venues including lighting systems, audio visual equipment, a stage rigging system, furniture, computers and telephones.

Fixed Management Fee: The fixed fee the City shall pay to Manager under this Agreement, as more fully described in Section 3.1 of this Agreement.

General Manager: The employee of Manager acting as the full-time on-site person responsible for the Venues.

Laws: federal, state, local and municipal laws, statutes, rules, regulations and ordinances.

Management-Level Employees: The General Manager, Assistant General Manager, Business Manager (or employees with different titles performing similar functions), and any department head employed by Manager to perform services at the Venues (including employees performing the functions of the Director of Operations, Director of Sales and Marketing, Director of Security, Finance Director and Event Manager).

Manager: shall have the meaning ascribed to such term in the Recitals to this Agreement.

Marketing Plan: A plan for the advertising and promotion of the Venues and Venue events, which may contain but not be limited to the following elements: (i) market research, (ii) market position, (iii) marketing objectives, (iv) marketing strategies, (v) booking priorities, (vi) targeted events - local, regional, national and international, (vii) targeted meetings, conventions and trade shows, (viii) industry advertising campaign, (ix) internal and external support staff, (x) advertising opportunities at the local, regional and national level, (xi) attendance at various trade shows, conventions and seminars, (xii) incentive formulas for multiple event presenters, (xiii) suite and club seat sales, (xiv) merchandising and retail, (xv) food and beverage, (xvi) a plan for the sale of commercial rights, including without limitation naming rights, pouring rights, advertising signage, sponsorships (including event sponsorships), branding of food and beverage products for resale, premium seating (including but not limited to suites and club seats), and memorial gifts, (xvii) a plan regarding national, regional and local public relations and media relations, (xviii) development of an in-house advertising agency, and (xix) policies regarding the use of trade/barter.

Net Operating Revenue: All annual revenue generated by Manager's operation of the Venues; plus Operating Subsidy; less all related annual operating expenses.

Non-City Events: Events not hosted or presented by the City of Grand Junction.

Operating Account: A separate interest-bearing account in the name of the Manager in a local qualified public depository, where Revenue is deposited and from which Operating Expenses are paid.

Operating Budget: A line item budget for the Venues that includes a projection of Revenues and Operating Expenses and Event Calendar presented on a monthly and annual basis.

Operating Expenses: All expenses incurred by Manager in connection with its operation, promotion, maintenance and management of the Theatre, including but not limited to the following: (i) employee payroll, benefits, relocation costs, severance costs, bonus and related costs, (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) printing and stationary costs, (viii) postage and freight costs, (ix) equipment rental costs, (x) minor repairs, maintenance, and equipment servicing, not including expenses relating to performing capital improvements or repairs, (xi) security expenses, (xii) budgeted travel and entertainment expenses of Manager employees, (xiii) cost of employee uniforms and identification, (xiv) exterminator, trash removal and landscaping costs, if applicable (xvii) computer, software, hardware and training costs, (xv) parking expenses, (xvi) office expenses, (xvii) accounting fees, (xviii) all insurance costs, including but not limited to personal property, liability, and worker's compensation insurance, (xix) cost of City Events, (xx) cost of complying with any Laws, (xxi) costs incurred by Manager to settle or defend any claims asserted against Manager arising out of its operations at the Theatre on behalf of City; (xxii) costs incurred under Service Contracts and other agreements relating to Venue operations, and (xxiii) Taxes, excluding federal income taxes of the Manager. The term "Operating Expenses" does not include debt service on the Venues or City Expenses.

Operating Subsidy: The annual dollar amount to be contributed by the City to subsidize the costs of operating the Venues. The Operating Subsidy shall be set at Two-Hundred Twenty-Five Thousand Dollars (\$225,000) on an annual basis and shall be incorporated into the Operating Budget for each Operating Year during the Term and any Renewal Term.

Operating Year: Each twelve (12) month period during the Term, commencing on January 1, 2017 and ending on December 31.

Operations Manual: Document to be developed by Manager which shall contain terms regarding the management and operation of the Venues, including detailed policies and procedures to be implemented in operating the Venues, as agreed upon by both the City and the Manager.

Revenue: All revenues generated by Manager's operation of the Venues, including but not limited to event ticket proceeds income, rental and license fee income, merchandise income, gross food and beverage income, gross income from any sale of Commercial Rights, gross service income, equipment rental fees, box office income, and miscellaneous operating income, grants and donations, but shall not include event ticket proceeds held by Manager in trust for a third party and paid to such third party.

Revenue Generating Contracts: Vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements generating revenue for the Venues and entered into in the ordinary course of operating the Venues.

Service Contracts: Agreements for services to be provided in connection with the operation of the Venues, including without limitation agreements for ticketing, web development and maintenance, computer support services, FF&E purchasing services, engineering services, electricity, steam, gas, fuel, general maintenance, HVAC maintenance, telephone, staffing personnel including guards, ushers and ticket-takers, extermination, elevators, stage equipment, fire control panel and other safety equipment, landscaping and other services which are deemed by Manager to be either necessary or useful in operating the Venues.

Taxes: Any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the City at the Venues, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Venues, from any guests, or from any others using or occupying all or any part of the Venues.

Term: The term "Term" shall have the meaning ascribed to such term in Section 4.1 of this Agreement.

Transition Expenses: Expenses related to the transition of the management of the Venues from the City to the Manager and incurred in the first six months of the Agreement that would not normally be included in Venue operations in a typical operating year.

Venues: shall have the meaning ascribed to such term in the Recitals to this Agreement, and shall be deemed to include the entire Convention Center complex and the Theatre, including but not limited to premium seating areas, meeting rooms, box office, common areas, lobby areas, executive and other offices, storage, and the entrances, ground, sidewalks and parking areas immediately surrounding the Venues and adjacent thereto.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Engagement.

(a) City hereby engages Manager during the Term to act as the sole and exclusive manager and operator of the Venues, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described in Exhibit "A" attached hereto (collectively, the "Services").

(b) Manager hereby accepts such engagement, and shall perform the Services described herein, subject to the limitations expressly set forth in this Agreement and in the

Operations Manual, which Manager shall present to the City for its approval within one hundred and twenty (120) days of the Effective Date and once approved be attached hereto as Exhibit "B".

Section 2.2 Limitations on Manager's Duties. Manager's obligations under this Agreement are contingent upon and subject to the City making available, in a timely fashion, the Operating Subsidy during any Operating Year of the Term or Renewal Term. Manager shall not be considered to be in breach or default of this Agreement, and shall have no liability to the City or any other party, in the event Manager does not perform any of its obligations hereunder due to failure by the City to timely provide the Operating Subsidy.

ARTICLE 3 COMPENSATION

Section 3.1 Management Fee/Net Operating Revenue Distribution. During each Operating Year, Net Operating Revenue shall be distributed in accordance with the following schedule:

- (a) Net Operating Revenue between \$1.00 - \$100,000.00: Manager receives One Hundred (100%) as the Fixed Management Fee;
- (b) Net Operating Revenue above \$100,000: Manager receives Fifty percent (50%); City Receives Fifty percent (50%).

Manager shall make annual payments of the applicable Net Operating Revenue to the City within fourteen (14) days of the close of the City fiscal year in which the Net Operating Revenue is collected.

ARTICLE 4 TERM; TERMINATION

Section 4.1 Term. This Agreement shall begin on the Effective Date and shall continue on an annual basis, subject to the annual appropriation, for three (3) years unless sooner terminated in accordance with section 4.2. The City may at its discretion, elect to extend the Agreement for an additional two-year term under the same terms and conditions contained herein (the "Renewal Terms"). The City shall notify Manager of its intent to exercise its option to engage the Manager for the Renewal Term not less than ninety (90) days prior to the expiration of the Term.

Section 4.2 Termination. In addition to the termination right described in Section 4.1 above, this Agreement may be terminated:

- (a) subject to Section 4.3(a) below, by the City upon sixty (60) days written notice to Manager in the event that the City elects in its sole discretion to permanently close the Venues, the fact of which is certified by the City in writing to Manager; or

(b) by either party upon thirty (30) days written notice, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions hereof, and such failure is not cured during such thirty (30) day notification period, provided, however, if such failure cannot reasonably be cured within such thirty (30) day period, then a longer period of time shall be afforded to cure such breach, up to a total of ninety (90) days, provided that the party in default is diligently seeking a cure and the non-defaulting party is not irreparably harmed by the extension of the cure period.

(c) by either party immediately by written notice upon the other party being judged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of the other party shall be appointed and shall not be discharged within one hundred twenty (120) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition in bankruptcy or insolvency, or shall apply for bankruptcy under the bankruptcy or insolvency Laws now in force or hereinafter enacted, Federal, State or otherwise, or if such petition shall be filed against either party and shall not be dismissed within one hundred twenty (120) days after such filing; or

(d) by the City or the Manager upon the failure of the parties to agree on an Operating Budget including a non-appropriation by the City in any Operating Year.

Section 4.3 Effect of Termination

(a) In the event this Agreement is terminated by the City pursuant to Section 4.2(a) due to closure of the Venues, Manager shall, upon the issuance of a notice of termination by the City, relinquish control of the Operating Account to the City and provide the City with an up to date accounting of all accounts payable and receivable.

(b) Upon termination or expiration of this Agreement for any reason, (i) Manager shall promptly discontinue the performance of all services hereunder, (ii) the City shall promptly pay Manager all fixed Management Fees due Manager up to the date of termination or expiration (subject to proration if the Term ends other than at the end of the Operating Year), (iii) Manager shall make available to the City all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Venues as may have been accumulated by Manager in performing its obligations hereunder, whether completed or in process, (iv) Manager shall utilize available funds in the Operating Account to satisfy any obligations incurred by Manager prior to the date of termination or expiration. Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

ARTICLE 5 OWNERSHIP; USE OF THE VENUES

Section 5.1 Ownership of Theater, Data, Equipment and Materials.

(a) The City will at all times retain ownership of the Venues, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Venues. The City and Manager agree and acknowledge that this Agreement does not grant the Manager any leasehold or other property interest in the Venues and that the City Manager or his designee shall have the right and authority to enter the Venues at any time for any reason.

(b) Any data, equipment or materials furnished by the City to Manager or acquired by Manager as an Operating Expense shall remain the property of the City, and shall be returned to the City when no longer needed by Manager to perform under this Agreement.

Section 5.2 Right of Use by Manager. The City hereby gives Manager the right and license to use the Venues solely for the purposes authorized herein, and Manager accepts such right of use, for the purpose of performing the Services herein specified, including the operation and maintenance of all physical and mechanical components of the Venues necessary for, and related to, the operation, maintenance and management of the Venues. The City shall provide Manager with a sufficient amount of suitable office space in the Venues and with such office equipment as is reasonably necessary to enable Manager to perform its obligations under this Agreement. In addition, the City shall make available to Manager, at no cost, parking spaces adjacent to the Venues for all of Manager's full-time employees and for the Venue event staff.

Section 5.3 Observance of Agreements. The City agrees to pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any leases, bonds, debentures, loans and other financing and security agreements to which the City is bound in connection with its ownership or operating rights of or at the Venues.

ARTICLE 6 PERSONNEL

Section 6.1 Generally. Manager shall engage, as its own employees (and not employees of the City) staff necessary to provide the services of Manager described in this Agreement. Manager shall select, in its sole discretion but subject to City's right to approve within the Operating Budget, the number, function, qualifications, and compensation, including salary and benefits, of its employees at the Venues and shall control the terms and conditions of employment (including without limitation termination thereof, except as specifically provided herein) relating to such employees. Manager agrees to use reasonable and prudent judgment in the selection and supervision of such personnel. The City specifically agrees that Manager shall be entitled to pay its employees, as an Operating Expense, bonuses and benefits in accordance with Manager's then current employee manual, which may be modified by Manager from time to time in its sole discretion. A copy of Manager's current employee manual shall be provided to the City upon request.

Section 6.2 General Manager. Personnel engaged by Manager will include a person with managerial experience in similar Venues to serve as a full-time on-site General Manager of the

Venues. Hiring of the General Manager by Manager shall require the prior approval of the City Manager, which approval shall not be unreasonably withheld or delayed; provided, however, in the event of a vacancy in the General Manager position, Manager may, upon notice to the City, temporarily fill such position with an interim General Manager for up to ninety (90) days without the necessity of obtaining the City's approval. The General Manger will have general supervisory responsibility for Manager and will be responsible for day-to-day operations of the Venues, supervision of employees, and management and coordination of all activities associated with events taking place at the Venues. The City Manager may, at his/her discretion request that Manager remove and replace the General Manager. Manager shall, within 30 days of receiving a written request for the replacement of the General Manager present an alternative candidate for the role of General Manager Director to the City Manager for his/her approval.

Section 6.3 Non-Solicitation/Non-Hiring. During the Term and for a period of one (1) year after the end of the Term, neither City nor any of its affiliates shall solicit for employment, or hire, Manager's General Manager for work at the Venues. The City acknowledges that Manager will spend a considerable amount of time identifying, hiring and training the General Manager to work in such position, and that Manager will suffer substantial damages, the exact amount of which would be difficult to quantify, if the City were to breach the terms of this Section by hiring, or soliciting for employment, such individual. Accordingly, in the event of a breach or anticipated breach of this section by the City, Manager shall be entitled (in addition to any other rights and remedies which Manager may have at law or in equity, including money damages) to equitable relief, including an injunction to enjoin and restrain the City from continuing such breach, without the necessity of posting a bond.

ARTICLE 7 OPERATING BUDGET; EVENT CALENDAR

Section 7.1 Establishment of Operating Budget. Manager will develop an Operating Budget for the first operating year within ninety (90) days of the Effective Date. Manager will convert the City first (1st) year operating budget into financial reporting format used by Manager. Manager agrees that at least 60 days prior to the commencement of each subsequent Operating Year in respect of such year, it will prepare and submit to the City its proposed Operating Budget for such year. Each annual Operating Budget shall include Manager's good faith projection of Revenues, Operating Expenses and an Event Calendar, presented on a monthly and annual basis, for the upcoming Operating Year. The City agrees to provide Manager with all information in its possession necessary to enable Manager to prepare each Operating Budget.

Section 7.2 Approval of Operating Budget. Each annual Operating Budget shall be subject to the review and approval of the City, which approval shall not be unreasonably withheld or delayed. In order for the City to fully evaluate and analyze such budgets or any other request by Manager relating to income and expenses, Manager agrees to provide to the City such reasonable financial information relating to the Venues as may be requested by the City from time to time. If extraordinary events occur during any Operating Year that could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, Manager may submit an amendment to such budget for review and approval by the City (which approval shall not be unreasonably withheld

or delayed). If the City fails to approve any annual Operating Budget (or any proposed amendment thereto), the City shall promptly provide Manager the specific reasons therefor and its suggested modifications to Manager's proposed Operating Budget or amendment in order to make it acceptable. The parties shall then engage in good faith discussions and use reasonable commercial efforts to attempt to resolve the matter to the mutual satisfaction of the parties, including, if applicable, negotiation of a mutually acceptable modification to the economic terms of this Agreement to enable the Manager to achieve the compensation, and the City to achieve the level of Service contemplated in the proposed Operating Budget.

Section 7.3 Operating Subsidy. During each Operating Year, the City will provide an Operating Subsidy of Two Hundred and Twenty-Five Thousand Dollars (\$225,000) to the Manager which Manager shall use for the sole purpose of paying Operating Expenses. The Operating Subsidy shall represent the full financial contribution of the City for the operation of the Venues (excluding payment of the Management Fee/Net Operating Revenue) during each Operating Year. In the event that the funds available in the Operating Account are insufficient to pay for all outstanding Operating Expenses, Manager shall be solely responsible for the payment of all Operating Expenses.

ARTICLE 8 PROCEDURE FOR HANDLING INCOME

Section 8.1 Event Account. Manager shall deposit as soon as practicable following receipt, in the Event Account, all revenue received from ticket sales and event deposits and similar event-related revenues which Manager receives in contemplation of, or arising from, an event, pending completion of the event. Such monies will be held in escrow for the protection of ticket purchasers, the City and Manager, to provide a source of funds as required for payments to performers and for payments of direct incidental expenses in connection with the presentation of events that must be paid prior to or contemporaneously with such events. Promptly following completion of such events, Manager shall transfer all funds remaining in the Event Account, including any interest accrued thereon, into the Operating Account. Bank service charges, if any, on such account(s) shall be deducted from interest earned, if any. Operating Expenses shall not be paid from funds in the Event Account.

Section 8.2 Operating Account. Except as provided in Section 8.1, all Revenue derived from operation of the Venues shall be deposited by Manager into the Operating Account as soon as practicable upon receipt (but not less often than once each business day). The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth in the Operations Manual, but the parties specifically agree that the Manager shall have authority to sign checks and make withdrawals from such account, subject to the limitation contained in this Agreement.

ARTICLE 9 FUNDING

Section 9.1 Venue Funding. Source of Funding. Following the Effective Date, Manager shall pay all items of expense for the operation, maintenance, supervision and management of the

Venues from the funds in the Operating Account. The Operating Account shall be funded with amounts generated by operation of the Venues (as described in Article 8 above), or otherwise made available by the City. To ensure sufficient funds are available in the Operating Account, City will deposit in the Operating Account, on or before the Effective Date, the budgeted or otherwise approved expenses for the first two-month period following the Effective Date. The City shall thereafter, on or before the 1st day of each succeeding month (beginning with the 2nd month following the Effective Date), deposit (or allow to remain) in the Operating Account the budgeted or otherwise approved expenses for each such month, maintaining an additional one-month of expenses in such account at all times. Manager shall have no liability to the City or any third-party in the event Manager is unable to perform its obligations hereunder, or under any third-party contract entered into pursuant to the terms hereof, due to the fact that sufficient funds are not made available to Manager to pay such expenses in a timely manner.

Section 9.2 Transition Expenses. City agrees to pay for Transition Expenses during the first six months of the agreement including Manager's corporate support travel related expenses (transportation, lodging, meals, etc.), venue senior level staff recruiting and relocation expenses (if necessary), and costs related to securing any necessary IT and telecommunications equipment, software, etc.

ARTICLE 10 FISCAL RESPONSIBILITY; REPORTING

Section 10.1 Records. Manager agrees to keep and maintain, at its office in the Venues, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its operations in connection with its management of the Venues. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations of Manager under this Agreement. The City or its authorized agent shall have the right to audit and inspect such records from time to time during the Term, upon reasonable notice to Manager and during Manager's ordinary business hours.

Section 10.2 Monthly Financial Reports. Manager agrees to provide to the City, within thirty (30) days after the end of each month during the Term or Renewal Terms, financial reports for the Venues including a balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for such month and year to date in accordance with generally accepted accounting principles. In addition, Manager agrees to provide to the City a summary of bookings for each such month, and separate cash receipts and disbursements reports for each event held at the Venues during such month. Additionally, Manager shall submit to the City, or shall cause the applicable public depository utilized by Manager to submit to the City, on a monthly basis, copies of all bank statements concerning the Event Account and the Operating Account.

Section 10.3 Audit. City or its designee may audit the Manager's operation of the Venues at any time during the Term. The cost of any audit shall be borne by the City. Such audit shall be performed by an external auditor approved by the City, and shall be conducted in accordance with generally accepted auditing standards.

**ARTICLE 11
CAPITAL IMPROVEMENTS**

Section 11.1 Schedule of Capital Expenditures. Starting in the second operating year, Manager shall, at the time of submission of the annual Operating Budget to the City, provide to the City a schedule of proposed capital improvements to be made at the Venues, for the purpose of allowing the City to consider such projects and to prepare and update a Capital Expenditure budget.

Section 11.2 Responsibility for Capital Expenditures. The City shall be solely responsible for all Capital Expenditures at the Venues; provided, however, the City shall be under no obligation to make any Capital Expenditures proposed by Manager, and provided further that Manager shall have no liability for any claims, costs or damages arising out of a failure by the City to make any Capital Expenditures. Notwithstanding the foregoing, Manager shall have the right (but not the obligation), upon notice to and receipt of approval from the City, to make Capital Expenditures at the Venues for Emergency Repairs. In such event, the City shall promptly reimburse Manager for the reasonable cost of such Capital Expenditure.

**ARTICLE 12
VENUE MAINTENANCE**

Section 12.1 Responsibilities of the Manager. The Manager acknowledges that it is willing and able to provide the Services for the Venues as it has been designed. Manager is responsible for the purchase and maintenance of all FF&E not included in the Venues currently, the cost of which shall be deemed to be Operating Expenses. Further, Manager shall be responsible for the cost of repairs to any individual FF&E due to normal wear and tear up to Two Thousand Five Hundred Dollars (\$2,500.00).

**ARTICLE 13
CONTRIBUTIONS BY MANAGER**

Section 13.1 Manager shall engage in fundraising activities to offset Operating Costs; including the applying for available grant funding and engaging in a fundraising campaign to solicit donations for the Venues and its operation.

**ARTICLE 14
VENUE CONTRACTS; TRANSACTIONS WITH AFFILIATES**

Section 14.1 Existing Contracts. The City shall provide to Manager, on or before the Effective Date, copies of all existing Service Contracts.

Section 14.2 Execution of Contracts. Manager shall have the right to enter into Service Contracts, Revenue Generating Contracts and other contracts related to the operation of the Venues. Any such material agreements shall contain standard indemnification and insurance obligations on the part of each vendor, licensee or service provider, as is customary for the type of services or

obligations being provided or performed by such parties and shall identify the City as an Indemnitee of the contracting party as well as name the City as additional insured on all required insurance policies. Manager shall obtain the prior approval of the City (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term that expires after the Term of this Agreement, unless such contract, by its express terms, can be terminated by Manager or City following expiration of the Term without any penalty. Manager shall be solely responsible for the payment of all third-party vendors. Manager agreements with third parties shall contain language stating that the City shall not be liable for payment and that vendors expressly forgo any right both in law and equity to attempt to collect payment from the City.

ARTICLE 15 AGREEMENT MONITORING

Section 15.1 Contract Administrator. Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. Manager's contract administrator shall be its General Manager at the Venues, unless Manager notifies City of a substitute contract administrator in writing. City shall notify Manager of the name of its contract administrator within thirty (30) days of execution hereof. Any and all references in this Agreement requiring Manager or City participation or approval shall mean the participation or approval of such party's contract administrator.

ARTICLE 16 INDEMNIFICATION

Section 16.1 Indemnification by Manager. Manager agrees to defend, indemnify and hold harmless the City and its officials, directors, officers, employees, agents, successors and assigns against any and all liability, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions, including attorney's fees at both the trial and appellate level, and of any kind and nature arising from or in any way connected to the performance of this Agreement whether by act or omission of the Manager, its agents, servants, employees or other, or because of or due to the mere existence of the Agreement between the Parties; unless said claim for liability is caused solely by the negligence, misfeasance or malfeasance of the City or its employees.

Section 16.2 Indemnification by the City. To the extent authorized by law, City agrees to defend, indemnify and hold harmless Manager, its parent, subsidiary and affiliate companies, and each of their respective directors, officers, employees, agents, successors and assigns, against any losses suffered by such parties, arising out of or in connection with (a) any negligent act or omission, or intentional misconduct, on the part of City or any of its employees or agents in the performance of its obligations under this Agreement, (b) any environmental condition that results in injury, loss, or damages at the Venues or on or under the premises on which the Venues are located not caused by Manager, its employees or agents, (c) any structural defect with respect to the Venues.

Section 16.3 Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor") under this Article 15, the Indemnitor shall be responsible, at its sole cost and expense,

for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than twenty (20) days after any third party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

Section 16.4 Survival. The obligations of the parties contained in this Article 16 shall survive the termination or expiration of this Agreement.

ARTICLE 17 INSURANCE

Section 17.1 Types and Amount of Coverage. Manager agrees to obtain insurance coverage in the manner and amounts as set forth in Exhibit "D", attached hereto, and shall provide to the City promptly following the Effective Date certificates of insurance evidencing such coverage. Manager shall maintain such referenced insurance coverage at all times during the Term, and will not make any material modification or change from these specifications without the prior approval of the City. Each insurance policy shall include a requirement that the insurer provide Manager and the City at least thirty (30) days written notice of cancellation or material change in the terms and provisions of the applicable policy. The cost of all such insurance shall be an Operating Expense.

Section 17.2 Rating; Additional Insureds. All insurance policies shall be issued by insurance companies rated no less than A VIII in the most recent "Bests" insurance guide, and licensed in the State of Colorado or as otherwise agreed by the parties. All such policies shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved. The commercial general liability policy, automobile liability insurance policy and umbrella or excess liability policy to be obtained by Manager hereunder shall name City as an additional insured. The workers compensation policy to be obtained by Manager hereunder shall contain a waiver of all rights of subrogation against the City. Manager shall require that all third-party users of the Venues, including without limitation third-party licensees, ushers, security personnel and concessionaires, provide certificates of insurance evidencing insurance appropriate for the types of activities in which such user is engaged. If Manager subcontracts any of its obligations under this Agreement, Manager shall require each such subcontractor to secure insurance that will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, and name Manager and the City as additional insureds.

ARTICLE 18
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 18.1 Manager Representations and Warranties. Manager hereby represents, warrants and covenants to City as follows:

(a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of Manager herein, and that no third-party consent or approval is required to grant such rights or perform such obligations hereunder; and

(b) that this Agreement has been duly executed and delivered by Manager and constitutes a valid and binding obligation of Manager, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar Laws affecting creditors' rights generally or by general equitable principles.

Section 18.2 City Representations, Warranties and Covenants. City represents, warrants and covenants to Manager as follows:

(a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of City herein, and that no other third party consent or approval is required to grant such rights or perform such obligations hereunder.

(b) that this Agreement has been duly executed and delivered by City and constitutes a valid and binding obligation of City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(c) that to the best of the City's knowledge, the Venues are, as of the Effective Date, in compliance in all respects with all applicable Laws relating to the construction, use and operation of the Venues (including, without limitation, Title II of the American with Disabilities Act), and that there exist no structural defects or unsound operating conditions at the Venues.

ARTICLE 19
MISCELLANEOUS

Section 19.1 No Discrimination. Manager agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age, and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, religion, color, sex, sexual orientation, disability, national origin, ancestry, physical handicap, or age.

Section 19.2 Use of Venue Names and Logos. Manager shall have the right to use throughout the Term (and permit others to use in furtherance of Manager's obligations hereunder),

for no charge, the name and all logos of the Venues, on Manager's stationary, in its advertising of the Venues, and whenever conducting business of the Venues; provided, that Manager shall take all prudent and appropriate measures to protect the intellectual property rights of the City relating to such logos. All intellectual property rights in any Venue logos developed by the Manager or the City shall be and at all times remain the sole and exclusive property of the City. Manager agrees to execute any documentation requested by the City from time to time to establish, protect or convey any such intellectual property rights.

Section 19.3 Venue Advertisements. The City agrees that in all advertisements placed by the City for the Venues or events at the Venues, whether such advertisements are in print, on radio, television, the internet or otherwise, it shall include a statement that the Venue is "managed by Pinnacle Venue Services".

Section 19.4 Force Majeure; Casualty Loss.

(a) Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Agreement due to an Event of Force Majeure, provided that the party claiming failure or inability to perform provides written notice to the other party within thirty (30) days of the date on which such party gains actual knowledge of such Event of Force Majeure. Notwithstanding the foregoing, in no event shall a party's failure to make payments due hereunder be excusable due to an Event of Force Majeure. In the event that Manager is unable to perform due to Force Majeure, the City shall have the right to procure substitute services from a third party or to utilize City personnel to provide the Services.

(b) In the event of damage or destruction to a material portion of the Venues by reason of fire, storm or other casualty loss that renders the Venues (or a material portion thereof) untenable, the City shall use reasonable efforts to remedy such situation. If notwithstanding such efforts, such damage or destruction is expected to render the Venues (or a material portion thereof) untenable for a period estimated by an architect selected by the City at Manager's request, of at least one hundred twenty (120) days from the date of such fire, storm or other casualty loss, either party may terminate this Agreement upon written notice to the other.

Section 19.5 Assignment. Neither party may assign this Agreement or any obligation arising out of or under it without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, except that either party may, without the prior written consent of the other party but upon at least 30 days' written notice to the other party, assign this Agreement in connection with a sale of all or substantially all its assets or equity interests, and Manager may assign this Agreement to an affiliate, parent or subsidiary of Manager where such assignment is intended to accomplish an internal corporate purpose of Manager as opposed to materially and substantially altering the method of delivery of services to City. Any purported assignment in contravention of this Section shall be void.

Section 19.6 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address

and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

If to the City:
Greg Caton
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

If to Manager:
Pinnacle Venue Services
20770 US 281 North
San Antonio, TX 78258
Attn: Tom Paquette

The designation of the individuals to be so notified and the addresses of such parties set forth above may be changed from time to time by written notice to the other party in the manner set forth above.

Section 19.7 Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 19.8 Entire Agreement. This Agreement (including the exhibits attached hereto), in conjunction with the RFP, the terms of which are incorporated herein by reference, comprise the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written. In the event of a conflict between the terms of this Agreement and the terms of the RFP, the terms of this Agreement shall prevail.

Section 19.9 Governing Law; Venue. The Agreement is entered into in Mesa County, Colorado and under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Colorado, without regard to its conflict of laws principles. The exclusive venue for any litigation arising under this Agreement shall be Mesa County, Colorado.

Section 19.10 Amendments. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

Section 19.11 Waiver; Remedies. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then

existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 19.12 Relationship of Parties. Manager and City acknowledge and agree that they are not joint venturers, partners, or joint owners with respect to the Venues, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture or similar relationship between City and Manager. In operating the Venues, entering into contracts, accepting reservations for use of the Venues, and conducting financial transactions for the Venues, Manager acts on behalf of and as agent for City (but subject to the limitations on Manager's authority as set out in this Agreement), with the fiduciary duties required by law of a party acting in such capacity.

Section 19.13 No Third Party Beneficiaries. Other than the indemnitees listed in Sections 16.1 and 16.2 hereof (who are third party beneficiaries solely with respect to the indemnification provisions in such sections), there are no intended third party beneficiaries under this Agreement, and no third party shall have any rights or make any claims hereunder, it being intended that solely the parties hereto (and the aforementioned indemnitees with respect to the indemnification provisions hereof) shall have rights and may make claims hereunder.

Section 19.14 Limitation on Damages. In no event shall either party be liable or responsible for any consequential, indirect, incidental, punitive, or special damages (including, without limitation, lost profits) whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise, and each party's liability for damages or losses hereunder shall be strictly limited to direct damages that are actually incurred by the other party.

Section 19.15 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. This Agreement may be executed by the parties and transmitted by facsimile or electronic transmission, and if so executed and transmitted, shall be effective as if the parties had delivered an executed original of this Agreement.

Section 19.16 Manager's Compliance with Colorado Public Records Law.

To the extent that Manager is acting on behalf of the City, this Agreement shall be subject to Colorado Open Records Act.

As required pursuant to Colorado Law, Manager shall comply with Open Records Act specifically to:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided as otherwise provided by law.

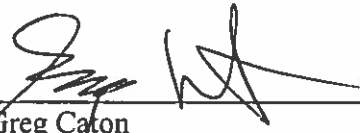
(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Manager upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

IN WITNESS WHEREOF, each party hereto has caused this Management Agreement to be executed on behalf of such party by an authorized representative as of the date first set forth above.

City of Grand Junction

By: Pinnacle Venues Services, LLC

By: 

Greg Caton
City Manager

By: 

Tom Paquette
Chief Administrative Officer

**EXHIBIT A
MANAGER DUTIES**

Manager's obligations under the Agreement shall consist of the following obligations, all of which are subject to the terms hereof and the controls and restrictions in the Operations Manual:

(a) Manage all aspects of the Venues in accordance with the Operations Manual and the terms of this Agreement, including but not limited to managing purchasing, payroll, fire prevention, security, crowd control, routine repairs, preventative maintenance, janitorial services, promotions, advertising, energy conservation, security, box office, admission procedures, parking, and general user services.

(b) Establish and adjust prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments. Manager may deviate from the established rate schedule when entering into any such agreements if determined by Manager, using its reasonable business judgment, to be necessary or appropriate with respect to the specific situation.

(c) Procure, negotiate, execute, administer and assure compliance with Service Contracts, Revenue Generating Contracts, and other contracts related to the operation of the Venues.

(d) Require that all material vendors and licensees of the Venues execute vendor/license agreements containing the same indemnification and insurance obligations imposed on Manager pursuant to this Agreement on the part of each such vendor/licensee.

(e) Provide standard form advertising and sponsorship contracts and user/rental agreements for use at or with respect to the Venues, including a Booking Policy (located in the Operations Manual) for the rental of Venues. Manager shall submit such form agreements and Booking Policy to the City for its review and comment, and the parties shall work together to finalize such forms and Booking Policy. Once finalized, Manager shall use such forms in furtherance of its duties hereunder. Manager's sole responsibility with regard to providing legal advice or assistance hereunder shall be to provide such standard form contracts.

(f) Operate and maintain the Venues, including the equipment utilized in connection with its operation and any improvements made during the term of this Agreement, in the condition received, normal wear and tear excepted. Manager shall be responsible for repairing all Venue equipment damaged by Manager and Manager's employees.

(g) Arrange for and otherwise book Events at the Venues in accordance with an Event Calendar to be developed by Manager.

(h) Hire or otherwise engage, pay, supervise, and direct all personnel Manager deems necessary for the operation of the Venues in accordance with Article 6 of the Agreement, and conduct staff planning, retention and training programs as determined to be necessary by Manager in its sole discretion.

(i) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles, which records shall be made available to the City upon request, in accordance with Section 10.1 of the Agreement.

(j) Submit to the City in a timely manner financial and other reports detailing Manager's activities in connection with the Venues, as set forth in Section 10.2 of the Agreement.

(k) Prepare a proposed annual Operating Budget and submit such proposed budget to the City, both in accordance with Article 7 of the Agreement.

(l) Pay all Operating Expenses and other expenses incurred in connection with the operation, maintenance, supervision and management of the Venues from the Operating Account. At the end of the calendar year, in the event that the funds available in the Operating Account are insufficient to pay for Operating Expenses, Manager shall be solely responsible for the payment of outstanding Operating Expenses.

(m) Secure, or assist the City (or any other third party, as applicable) to secure, all licenses and permits necessary for the operation and use of the Venues for the specific events to be held therein, and for the general occupancy of the Venues, including without limitation all necessary food and liquor licenses, and renewals thereof. The City shall cooperate in this process to the extent reasonably required. All costs associated with this process shall be Operating Expenses.

(n) Collect, deposit and hold in escrow in the Event Account any ticket sale revenues which it receives in the contemplation of or arising from an event pending the completion of the event, as more fully described in Section 8.1 of the Agreement.

(o) Collect in a timely manner and deposit in the Operating Account all Revenue, as more fully described in Section 8.2 of the Agreement.

(p) Pay all applicable Taxes.

(q) Plan, prepare, implement, coordinate and supervise all public relations and other promotional programs for the Venues.

(r) Prepare, maintain and implement on a regular basis, subject to the City's approval, a Marketing Plan for the Venues.

(s) Manage and oversee the sale of Commercial Rights at or in connection with the Venues. Manager must obtain City approval prior to the sale of naming rights for the Venues or any portion thereof.

(t) On an annual basis, cause a written inventory to be taken of all furniture, fixtures, office equipment, supplies, tools and vehicles at the Venues, and deliver a written report of the

foregoing to City. Manager shall document all major damage to, or loss in, such inventory during the Term as soon as such damage or loss is discovered by Manager, and Manager shall promptly notify City of any such damage or loss.

(u) Purchase, with funds from the Operating Account, and maintain during the Term, all materials, tools, machinery, equipment and supplies necessary for the operation of the Venues.

(v) As agent for the City, manage risk management and Venue insurance needs (not including property insurance, which shall be maintained by the City), as more fully described in Article 16 of the Agreement.

(w) Make and be responsible for all routine and minor repairs, maintenance, preventative maintenance, and equipment servicing. Manager shall be responsible for ensuring that all repairs, replacements, and maintenance shall be of a quality and class at least equal to that of the item being repaired, replaced or maintained. In the event that any malfunctioning or inoperative component of the Venues or equipment utilized therein owned by the City is covered by manufacturer warranty, Manager shall assist the City in facilitating the repair or replacement of the malfunctioning or inoperative component or piece of equipment under the terms of the existing manufacturer warranty. Any replacement of an item in inventory, or any new item added to the inventory, which is paid for by the City, shall be deemed the property of the City.

(x) Cause such other acts and things to be done with respect to the Venues, as determined by Manager in its reasonable discretion to be necessary for the management and operation of the Venues following the Effective Date.

(y) Engage in fundraising activity to raise operating and capital funds from the community for the Venues.

**EXHIBIT B
OPERATIONS MANUAL**

[TO BE ATTACHED]

**EXHIBIT C
OPERATING BUDGET (1ST OPERATING YEAR)**

[TO BE ATTACHED]

EXHIBIT D INSURANCE

The Manager shall be required to furnish insurance certificates, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Colorado. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

Policies shall be endorsed to provide the City thirty (30) days' written notice of cancellation, material change or non-renewal of policies required under the contract. If the carrier will not agree to this notification, the Manager or its insurance broker shall notify the City of any cancellation or reduction in coverage within seven days of receipt of insurer's notification of cancellation or reduction in coverage.

Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the City. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the Manager shall furnish, at least fifteen (15) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The Manager shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. Manager shall be liable to City for any lapses in service resulting from a gap in insurance coverage.

The insurance requirements specified in this Agreement are minimum requirements and in no way, reduce any liability the Manager has assumed in the indemnification/hold harmless section(s) of this Agreement.

REQUIRED INSURANCE

A. COMMERCIAL GENERAL LIABILITY INSURANCE including, but not limited to: coverage for premises & operations, personal & advertising injury, products & completed operations, liability assumed under an Insured Contract (including tort liability of another assumed in a business contract), and independent Operators. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$1,000,000

3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000

The City of Homestead must be shown as an additional insured with respect to this coverage. City's Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

B. WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE covering all employees, and/or volunteers of the Manager engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the Manager shall require the Sub-operators similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the Manager. Coverage for the Manager and his Sub-operators shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident

\$500,000 Disease – Policy Limit

\$500,000 Disease – Each Employee

If OPERATOR claims to be exempt from this requirement, Manager shall provide City proof of such exemption along with a written request for City to exempt Manager, written on Manager letterhead.

C. AUTO LIABILITY INSURANCE covering all owned, leased, hired, non-owned and employee non-owned vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos
Combined Single Limit (Each Accident) - \$1,000,000

- D. PROFESSIONAL LIABILITY/ERRORS & OMISSIONS INSURANCE**, when applicable, with a limit of liability no less than \$1,000,000 per wrongful act. This coverage shall be maintained for a period of no less than three (3) years after final payment of the contract. (Increase to 10 years for construction projects).
- E. CRIME COVERAGE** when applicable, shall include employee dishonesty, forgery or alteration, and computer fraud in an amount of no less than \$1,000,000 per loss. If Operator is physically located on the City's premises, a third-party fidelity coverage extension shall apply for the **City of Grand Junction**.

REQUIRED ENDORSEMENTS

1. The City of Grand Junction shall be named as an Additional Insured on each of the General Liability policies required herein
2. Waiver of all Rights of Subrogation against the City
3. 30 Day Notice of Cancellation or Non-Renewal to the City
4. Managers' policies shall be Primary & Non-Contributory
5. All policies shall contain a "severability of interest" or "cross liability" liability clause without obligation for premium payment of the City
6. The City of Grand Junction shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear. (If applicable).
7. All policies shall contain a deductible of no more than \$25,000.
8. The City may require higher limits of insurance if deemed necessary.

Manager shall name the City, as an additional insured on each of the General Liability policies required herein and shall hold the City, its agents, officers and employees harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder. Any insurance required of the Manager pursuant to this Agreement must also be required by any Sub-operator in the same limits and with all requirements as provided herein, including naming the City as an additional insured, in any work is subcontracted unless such Sub-operator is covered by the protection afforded by the Manager and provided proof of such coverage is provided to City. The Manager and any Sub-operators shall maintain such policies during the term of this Agreement.

The City reserves the right to require any other additional types of insurance coverage

and/or higher limits of liability it deems necessary based on the nature of work being performed under this Contract.

Addendum

Las Colonias Park Amphitheater

The City of Grand Junction, CO, (the “City”) owner of the Las Colonias Park Amphitheater (the “Amphitheater”) hereby grants **Pinnacle Venue Services, LLC (“PVS”)** the following exclusive rights related to events at the Amphitheater:

- (1) Schedule and manage all ticketed live entertainment events at the Amphitheater during the term of this Agreement. (Annual festivals and scheduled events existing on the effective date and produced by the City of Grand Junction Parks and Recreation Department are not included in the exclusive rights of PVS.)
- (2) Negotiate and communicate with event promoters, agents, and artist representatives for ticketed live entertainment events.
- (3) Procure, negotiate, execute, administer a ticketing services agreement that will exclusively provide ticketing services for all ticketed live entertainment events at the Amphitheater.
- (4) Procure and negotiate vendor agreements for ticketed live entertainment events.
- (5) Manage and oversee the sale of commercial rights, sponsorships, pouring rights, and naming rights at or in connection with the Amphitheater. (PVS must obtain City approval prior to the sale of sponsorships and commercial or pouring or naming rights for the Amphitheater.)

Term

The term of this addendum will match the term of the Agreement.

Fees Paid to the City

In exchange for the exclusive rights listed above, PVS will pay the City the following:

- (1) For each sold ticket to events at the Amphitheater hosted by PVS:
 - Tickets priced at \$20 or higher - \$2.00 paid to the City
 - Tickets priced from \$10 to \$19.99 - \$1.00 paid to the City
- (2) Twenty-five percent (25%) of net revenue from sales of sponsorships and commercial or pouring or naming rights.

PVS Services

PVS will also perform the following services:

- (a) Manage all aspects of ticketed live entertainment events at the Amphitheater including but not limited to managing event promoter relations, production coordination, event related staffing, security, box office and ticketing services, concessions, admission procedures, parking, and general user services.
- (b) Establish an event Booking Policy that will include event scheduling priorities and procedures for securing events. PVS will also establish and adjust prices, rates and rate schedules for users for ticketed live entertainment events. PVS may deviate from the established rate schedule when entering any such agreements if determined by PVS, using its reasonable business judgment, to be necessary or appropriate with respect to the specific situation. PVS shall submit Booking Policy to the City for its review and comment, and the parties shall work together to finalize the Booking Policy.

- (c) Require that all ticketed live entertainment licensees of the Amphitheater execute an event license agreement containing the same indemnification imposed on PVS pursuant to this Agreement.
- (d) Hire or otherwise engage, pay, supervise, and direct all personnel PVS deems necessary for the operation of PVS events at the Amphitheater and conduct staff planning, retention and training programs as determined to be necessary by PVS in its sole discretion.
- (e) Maintain detailed, accurate and complete financial and other records of all PVS activities at the Amphitheater in accordance with generally accepted accounting principles.
- (f) Pay all event operating expenses related to PVS scheduled events.
- (g) Pay all applicable Taxes.

City Responsibilities and Services


The City of Grand Junction will provide or be responsible for the following:

- a) Maintaining property insurance for the Amphitheater
- b) All repairs, maintenance, preventative maintenance, equipment servicing, landscaping services, and non-event cleaning and waste services.
- c) All costs for utility services.
- d) Maintaining a liquor license and all required permits for the presentation of events at the Amphitheater.
- e) Providing PVS with all City-owned equipment necessary for the presentation of events including, chairs, trash cans, tables, and other items purchased for use at the Amphitheater.
- f) Providing PVS will all venue specifications and capabilities related to the hosting of events including but not limited to rigging and electrical capacities and restrictions, staging information, equipment specifications, etc.

City of Grand Junction

By: 
Greg Caton
City Manager

Pinnacle Venues Services, LLC

By: 
Tom Paquette
Chief Administrative Officer

3/30/17