

CITY HOUSE
MANAGEMENT AGREEMENT

This management agreement (“Agreement”) is entered into this ___ day of April, 2018 by and between the City of Saint Paul, Minnesota, (“City”), and Red River Kitchen Woodbury, LLC (“RRK”).

WHEREAS, the Saint Paul Housing and Redevelopment Authority (“HRA”) is the owner of City House, a restored grain terminal, located at 258 Mill Street which the Department of Parks and Recreation is authorized to operate and maintain pursuant to a Memorandum of Understanding dated December 2008; and

WHEREAS, the Department of Parks and Recreation is the owner of the plaza area adjacent to the building; and

WHEREAS, Red River Kitchen Woodbury, LLC, has operated City House during the 2016 and 2017 seasons, and the City believes this is an appropriate use which provides an amenity to neighbors and visitors to the area; and

WHEREAS, both parties wish to enter into a management agreement for City House;

Now, therefore, parties agree as follows:

1. Term and Renewal.

- A. Initial Term. The term of this Agreement shall begin upon the date of execution of this Agreement and end on October 31, 2022, unless earlier terminated pursuant to paragraph 17 of this Agreement.
- B. Renewal Term. This Agreement may be renewed on the same terms for a five-year term beginning on November 1, 2022 and ending on October 31, 2027.
 - i. City’s determination whether to agree to a Renewal Term will be based on its analysis of the Performance Metrics, which will be conducted as described in Exhibit A, and compliance with Section 5.b.

2. Grant of License. City grants RRK an exclusive license to operate and manage City House on the terms contained in this Agreement. The City is not granting a leasehold interest in City House.

3. Use of Site.

- A. Premises. The premises subject to this Agreement include only the main level of City House building. All other use of the surrounding parkland will be subject to permission of the City, which shall not be unreasonably withheld.

- B. Use of Premises. RRK may use the premises for the service of food, and beverages. Food preparation will be done through a food truck parked next to City House Facility. Use of City House will conform with Minnesota Department of Health rules, Saint Paul Department of Safety and Inspection requirements and any conditions placed upon the non-conforming use permit by the Planning Commission. Seasonal operation of City House is April 1 to October 31 annually.
- C. Catering; Catered Events. RRK may provide banquet catering services to be provided in conjunction with events such as weddings and other receptions. RRK may contract with a third party vendor approved by City to provide catering services.
- D. Liquor Sales. RRK may, with the appropriate licenses, sell alcoholic beverages (wine, malt beverages, and other intoxicating liquor) to the public for consumption within City House and on the outdoor riverside deck, providing that such alcoholic beverages may be offered to the public only during hours in which food service offerings are also available and any service on the outdoor riverside deck must end no later than sunset daily.
- a) RRK may use the City's liquor licenses, with the consent of the City Council, but must reimburse City for the cost of the license(s).
 - b) For any private or ticketed event at which liquor will be served, RRK will hire or cause to be hired an off-duty Saint Paul police officer to provide security during the period that liquor is being served. If City and RRK mutually agree, private security may be used in lieu of a Saint Paul police officer. Events with fewer than 75 attendees are exempt from this requirement, provided, however, the City reserves the right to require Saint Paul police security for any event, of any size, at which liquor will be served, if City determines that the individual circumstance of the event justify such a requirement.
 - c) RRK will annually submit to City for its approval, which may not be unreasonably withheld, a description of RRK's intended liquor offering and service areas for the coming year. RRK's liquor offerings will include at least one Minnesota-brewed malt beverage.
- E. Hours of Operation. Hours of operation for food and beverage service shall be from 11:00 a.m. to 9:00 p.m., every day of the week. No more than three private events may be scheduled each month, which may not be on consecutive days, and for all private events which will have 200 or more attendees, a parking plan must be submitted to the Department of Parks and Recreation at least two weeks prior. Events must end by 10:00 p.m.

- F. Farmers Markets. With City’s advance written approval, RRK may operate farmers markets and similar events at City House.
- G. Other Activities. RRK may propose other services to be provided within the Site not specifically prohibited by this Agreement. No other services may be provided without the City’s advance written consent, which may be withheld or subject to reasonable conditions.

- 4. **Payment.** RRK will pay the City through both commissions and deposits to a Capital Investment Fund (“CIF”). Payments will be calculated as percentages of RRK’s monthly gross revenue, (“MGR”) defined as all revenue generated in a given month by RRK's and its subcontractors' activities under this Agreement, less sales tax. If RRK offers its employees staff discounts on products or services offered by it under this Agreement, revenues from sales of such discounted products and services will not be included in monthly gross revenue.

RRK will pay the following percentages, separated into commission payments and deposits to the CIF to the City from its MGR generated from food and beverage service, events and rentals.

- Less than \$200,000 MGR – 11% (8% Commission and 3% into CIF)
- Less than \$240,000 MGR – 12% (9% Commission and 3% into CIF)
- Less than \$280,000 MGR – 13% (10% Commission and 3% into CIF)
- Over \$280,000 MGR – 14% (11% Commission and 3% into CIF)

The CIF will be managed by the City. RRK and City will annually confer and agree on reasonable uses of the Capital Investment Fund to improve the Site. Improvements paid for out of the Capital Investment Fund will remain with the Site and property of City after this Agreement terminates, unless otherwise agreed by City and Manager.

Payments are due on or before the twentieth day of the month immediately following the month for which the payment obligation was incurred. For example, the payment for May of a given year is due on or before June 20 of that year.

Along with each month's payment, RRK must provide a financial statement (in Microsoft Excel or compatible format) showing its gross receipts and expenses for the month. RRK must maintain orderly records of its cash register receipts, invoices and all other sales records, which must be made available for City review upon its request.

5. Improvement to City House.

- A. City Approval Required. RRK will not make any improvements or alterations to the City House facility without City’s written approval. RRK will supply City

with any information it reasonably requires in order to determine whether to consent to proposed improvements or alterations. Any structural improvements or alterations will require a separate agreement setting forth the City's requirement of construction projects.

- B. RRK's Initial Investment. By October 31, 2020, RRK will complete \$60,000.00 of investments into the City House facility. RRK will provide the City with proof of its spending on those improvements. Improvements will stay with the City House facility and remain property of City after this Agreement terminates.

6. Books and records.

- A. Annual Audit. RRK shall retain an external-auditing firm to perform an annual audit of its financial operations. The audit shall be performed in accordance with generally accepted accounting principles and shall show all revenues received and expenses paid for RRK's operations for the previous year. RRK shall provide the City with a copy of its annual audit no later than April 15 of the next year following the audit.
- B. City Inspection of Books and Records. Pursuant to Minnesota Statutes section 16C.05, subdivision 5, City has the right to inspect all books and records pertaining to RRK's operation of City House and Licensed Area, and RRK has the obligation to maintain such books and records for a minimum of six years and to produce such books and records within 15 days of City's written request. RRK will ensure that the books and records of the third party equipment rental service and any other subcontractors are made available for City inspection as if they were RRK's own books and records. Accounting records for the City House must be complete and accurate using standard and Generally Accepted Accounting Procedures.

7. Maintenance and Repairs.

Interior and Riverside Deck. RRK shall be responsible for all interior maintenance, housekeeping, and minor repairs for the building at its own cost. Bathrooms will be cleaned daily and will remain available to the public during RRK's hours of operation. RRK must use licensed vendors with the appropriate permits for such maintenance or repairs.

City Maintenance or Repair. If RRK fails to maintain or repair the premises, City may elect to perform such maintenance and repair and bill RRK for the costs.

Damages. Any damages caused by the action of RRK, its employees, agents, or invitees will be the sole responsibility of RRK to pay for.

Trash, Recycling and Litter. RRK shall be responsible for daily pick up of trash and litter and for placing all trash in the trash carts provided by the City. The carts will be located in City House, except for trash pick-up days. Recycling dumpsters are located in City House Garage. RRK must arrange for recycling at its own expense. City House trash and recycling may not sit outside overnight.

Mechanical and Personal Property. The mechanical and personal property of the City set forth on the schedule attached to this Agreement, as Exhibit C are part of the premises managed by RRK, will be accepted “as-is” and at the termination of the agreement, must be returned to the City in substantially the same condition as set forth in Exhibit B, absent normal wear and tear, and alterations occasioned by routine maintenance and/or repair.

Grounds Maintenance. The City will perform all grounds maintenance around the building.

8. RRK Responsibilities.

- A. On-site Manager. RRK will provide a full-time on-site manager of City House. Such manager shall be made know to City. RRK shall notify City of any changes in staffing of the position.
- B. Price Approval. RRK agrees to meet with the City prior to preparing the annual product and price list and periodically thereafter in an effort to mutually develop products and pricing that will best meet the interests of both parties.
- C. Prices Displayed. RRK shall at all times have in plain view in City House and the Food Truck a price list or printed schedule of prices of all available commodities and services. RRK shall make an attractive menu including prices to groups or organizations for parties or other events. All prices shall be competitively priced with establishments within the service area that have similar functions.
- D. Public Grounds. RRK understands that City House and surrounding grounds are publicly owned and shall conduct the operation of City House in the best interests of the City and to maximize opportunities for its use and enjoyment by the public.
- E. RRK’s Employees. Employees of RRK shall be identifiable, and such employees and their activities shall conform to all applicable laws and regulations, including Minnesota Rules parts 4626.0065 through 4626.0115.
- F. RRK’s Agreements. RRK shall provide City with a copy of all agreements or contracts between RRK and any party who will assist RRK in carrying out the terms of this Agreement.
- G. Accident and Incident Reports. RRK shall provide the City with electronic participant accident and incident report forms in any instance where accidents or

incidents on or near the facility are reported to or witnessed by RRK representatives. Completed reports must be provided to the City within two working (2) days following an accident or incident on or near the facility property, by U.S. mail, fax or a PDF scan attached to an e-mail.

H. Facility Upgrades. RRK shall reimburse the City for costs of upgrades such as electrical work or any other utility work needed to operate at City House.

9. Covenants and Undertakings.

A. City Inspections. Annually, by December 31, City shall conduct a management contract compliance assessment and inspect City House and inform RRK in writing of any conditions requiring attention as may be required to comply with the obligations under this Agreement. City's annual assessment of the Performance Metrics will be performed along with this compliance assessment.

B. Park Rules and Regulations. RRK will comply with, and use its best efforts to cause its customers to comply with, all park rules and regulations except as may be provided elsewhere in this Agreement.

C. Use of City Equipment. RRK may use any City equipment and materials currently located at City House, and may make any necessary repairs to such equipment and materials. At the expiration of this Agreement, any City equipment and materials used by RRK will remain the property of City and must be returned in good condition, allowing for normal use-related wear and tear. An inventory of City equipment and materials at City House is attached as Exhibit D to this Agreement. Annually, RRK will update Exhibit D to reflect changes in City equipment and materials located at City House.

D. Seasonal Startup and Shutdown. Annually, on or about April 1, RRK will work collaboratively with City to startup City House including turn on of water and change exterior door keys. Annually, on or about October 31, City will shut down City House including winterize plumbing and re-key exterior doors for off-season.

E. City's Use of City House . The City is entitled to use City House for City functions, providing such functions do not create a scheduling conflict with other banquets or events. When such functions involve service of food or beverages for purchase, City will use RRK to provide it. City will contact RRK in advance of its proposed use of the Licensed Area to confirm that no scheduling conflicts exist. City will not request or cause the cancellation of any events already booked by RRK.

F. Inclement Weather; Emergency Closings. In the event of inclement weather or other emergency, only with advance consent of City's Director of Parks and

Recreation, or designee, RRK may close down City House and remain closed until favorable weather conditions prevail or the emergency passes.

- G. Flood. That in cases of emergency or disaster such as flood or other natural acts, RRK will vacate City House if required and otherwise cooperate with directives from the City's Director of Parks and Recreation, Fire Chief, Police Chief or other City official delegated such power due to the emergency. RRK will make no claim against the City for lost revenues or added expenses due to such event.
- H. Signage. RRK will not place signage within or around City House without City's written approval. Signage must meet applicable code requirements.
- I. Smoking. RRK will not permit smoking in City House or on riverside deck.
- J. Reciprocal Notification of Events. City will notify RRK, and RRK will notify City, each as soon as practicable after scheduling of an events that may reasonably be thought to affect City House and the surrounding areas.

10. Compliance with Laws. RRK shall apply for, pay for and obtain all licenses, permits or other approvals, including but not limited to food licenses, alcohol licenses, or noise variances, needed to operate at City House, with the exception of the non-conforming use permit or other permits needed for zoning, which shall be the City's responsibility to obtain.

11. Notices. The City's representative for this agreement will be the Special Services Manager or his/her designee. RRK representative for the purposes of this agreement will be Matty O'Reilly. Any notices or correspondence on this agreement shall be sent to:

Saint Paul Parks and Recreation
400 City Hall Annex
25 W. 4th Street
Saint Paul, MN 55102
Attn: Special Services Manager

Red River Kitchen Woodbury LLC
C/O Spring Café
Como Lakeside Pavilion
1360 N. Lexington Parkway
Saint Paul, MN 55103

All notices shall be deemed to have been given when served personally on City or RRK or by mail upon deposit in a United States mail box, postage pre-paid, addressed to Saint Paul Parks and Recreation or to RRK at the above address.

12. **Indemnification.** RRK agrees to defend and indemnify the City and all its agents, officers and employees thereof from all claims, demands, actions, judgments, suits or cause of action of any nature or character, arising out of RRK's use of the premises.
13. **Insurance.**
- A. The City will insure City House building for fire and comprehensive property damage coverage. RRK will provide the following insurance during the term of the agreement:
1. RRK shall be responsible for the self-insurance of, or for the acquisition of Commercial Property insurance on its own personal property and the property of anyone using the facility.
 2. Comprehensive general liability insurance including blanket contractual liability coverage and personal injury liability coverage with a combined single limit of not less than \$1,500,000 per occurrence, or \$2,000,000 per occurrence shall be purchased by RRK. Such insurance must: i) name the City of Saint Paul as "additional insured"; ii) be primary with respect to the city's liability insurance or self-insurance; and iii) not exclude explosion, collapse, or underground property damage.
 3. Worker's Compensation insurance with not less than the statutory minimum limits, and employer's liability insurance with minimum limits of at least \$100,000 per accident.
 4. RRK shall supply to the City current insurance certificates for policies required in this agreement. The certificates shall certify whether or not RRK has errors and omissions insurance coverage.
 5. Nothing in this agreement shall constitute a waiver by the City of any statutory limits or immunities.
 6. **Waiver of Subrogation.** The City waives its right of subrogation for damage to the premises, contents therein, loss of income, up to the amount of insurance proceeds collected. RRK waives its right of subrogation for damage to the premises, contents therein, loss of income, up to the amount of respective insurance proceeds collected.
 7. The parties shall notify their respective insurance companies, in writing, of the provisions of this paragraph, and if either cannot waive its subrogation rights, shall immediately notify the other party, in writing.
14. **Non-Discrimination.** RRK will not discriminate against any participant or customer in the use or access to City House because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability,

marital status, or status with regard to public assistance and will take affirmative steps to ensure that participants are treated without the same during their participation in programs or use of the facility. RRK shall ensure that all applicants are hired and all employees treated during employment without regard the same.

15. Right of Entry. At all times during the tem of this agreement, the City retains ownership of the premises and shall have the right, by itself, its agents and employees, to enter into and upon the Premises during reasonable business hours or, in the event of an emergency, at any time for legitimate purpose.

16. Termination; Remedies.

A. Parties may mutually agree to terminate this Agreement at any time.

B. If a party is claiming a material breach by the other party it may elect to terminate this Agreement by providing notice of such intent to terminate to the other party, stating the basis for the breach, and the amount of time the party has to cure. Failure to cure within the stated time will result in termination the day following the final cure date.

C. Any of the following listed events will be considered a material breach by RRK for the purposes of termination:

- 1) Failure to Obtain or Maintain License. In the event RRK fails to obtain any permit or license required to perform under this Agreement, or such permit or licenses are suspended or revoked, or allowed to expire.
- 2) Failure to Pay. In the event RRK fails to make any payment due to City as required under this Agreement and the failure continues for a period of more than 15 days after written notice of such non-payment.
- 3) Lapse in Insurance. In the event RRK fails to continuously maintain proper insurance as required by the Agreement and the lapse continues for a period of five days after receipt of written notice of such failure by the insurer.
- 4) Bankruptcy. In the event that RRK files a voluntary petition in bankruptcy, insolvency or a petition for reorganization, or a receiver is appointed for a substantial portion of RRK's property, or an order or decree of bankruptcy, insolvency, or reorganization is issued.
- 5) Breach Without Cure. RRK breaches any obligation under this Agreement and such breach continues for a period of 15 days or more after receipt of written notice off such breach.
- 6) Persistent or Repeated Breaches. RRK has a pattern of persistent and repeated breaches, whether or not such breaches have been cured.

- D. No Waiver Implied. In the event any provision contained in this Agreement should be breached by either party and said breach thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- E. Remedies Cumulative. No remedy herein conferred upon or reserved to either party under this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time an as often as may be deemed expedient.
- F. Peaceful Surrender. At the termination of this agreement the premises shall be surrendered peacefully and returned to the City in the same condition as received, reasonable wear and tear notwithstanding.

- 17. Amendments.** No amendments to this Agreement shall be effective without being reduced to writing and executed by both parties.
- 18. Captions and Headings.** The captions and headings used herein are intended only for the convenience of the reader and are not to be used in construing this Agreement.
- 19. Assignment.** This Agreement may not be assigned without the written consent of the other party, and any attempt to assign without such approval will render the Agreement void.
- 20. Entire Agreement.** It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

IN WITNESS WHEREOF, the parties have set their hands the date first written above.

CITY OF SAINT PAUL

Red River Kitchen Woodbury, LLC

Director of Parks and Recreation

Director of Financial Services

Approved as to form:

Assistant City Attorney

EXHIBIT A – Performance Metrics

Performance Metrics for Agreement Renewal. The performance metrics listed in this exhibit will be used to determine whether City will agree to renew its agreement with RRK under section 2.B. “Renewal Term” of the Agreement.

Timing and Manner of Review of Performance Metrics. The performance metrics listed on this exhibit will be reviewed and analyzed in conjunction with City’s annual review conducted under section 10.A. of the Agreement. Each review will examine the one-year period ending on the October 31 immediately preceding the review.

Annually, the City will use performance measures listed in this exhibit to assess the performance of RRK, as set forth in Agreement item 2.B.i.

Category 1: Customer Satisfaction

Manager will facilitate collection and tabulation of randomly conducted online customer satisfaction surveys with at least 100 customers.

City and RRK will jointly develop a customer satisfaction survey by April 1, 2019, and update annually, as appropriate. RRK will facilitate customer satisfaction surveys annually throughout Term and Renewal Term. The customer satisfaction survey will use the following measures to determine whether to renew the Agreement for a second five-year term:

- **Exceeds customer satisfaction expectations**
- **Meets customer satisfaction expectations**
- **Does not meet customer satisfaction expectations**

Category 2: Payments and Financial Performance

RRK financial reports and payments shall be made to the City by the 20th of each month, as set forth in Agreement item 5.

- **Meets expectations** - All reports and payments made on time.
- **Does not meet expectations** - fewer than 100% of reports and payments made on time.

Category 3: Operational Assessment

City’s will assess RRK’s compliance with operational terms of the agreement in regards to scope of services, innovative services, commitment to community engagement, and investments into facility. An assessment tool will be jointly developed by April 1, 2019 and updated annually, as appropriate.

- **Meets expectations** – RRK demonstrates compliance with more than 80% of all operational assessment items.
- **Does not meet expectations** – RRK demonstrates compliance with less than 80% of all operational assessment items.

Category 4: Annual Management Contract Compliance Assessment and Site Review by City shall conduct a management contract compliance assessment and site review of City House and City House Garage, and inform RRK in writing of any conditions requiring attention as may be required to comply with the obligations under this Agreement. (Agreement item 9.A.)

- **Meets expectations** – RRK demonstrates compliance with all management agreement and site review items.
- **Does not meet expectations** – RRK demonstrates compliance with less than 80% of all management agreement and site review items.

EXHIBIT B – Licensed Area



 = Licensed Area