

CONCESSION STAND OPERATION AGREEMENT

THIS AGREEMENT is made effective this ____ day of _____, 2020, by and between the CITY OF MANITOWOC, Wisconsin, a municipal corporation, with its principal offices located at 900 Quay Street, Manitowoc, Wisconsin 54220 (“CITY”), and THE KONOP COMPANIES, INC., a corporation, with its principal offices located at 1725 Industrial Dr., Green Bay, WI 54302 (“KONOP”).

WITNESSETH

WHEREAS, the CITY owns several concession stands in various parks, the Lincoln Park Zoo, and the Manitowoc Family Aquatic Center, which require a Concessionaire to provide goods to the public.

WHEREAS, KONOP offers Concessionaire services for hire.

NOW THEREFORE, the parties agree as follows:

1. Scope of Work. KONOP agrees to provide staffing, concession food, snacks, and beverages during the Summer Operational Season of 2020 for regular hours and special events.
 - a. Customer Satisfaction: KONOP is responsible for providing excellent customer service and satisfaction at the concession stands. CITY has the right to conduct a service audit of customers at any time and require KONOP to adjust procedures to meet CITY expectations for quality customer service.
 - b. Complaints: KONOP is responsible for making reasonable adjustments in an effort to resolve customer complaints. KONOP will also report all customer complaints and compliments at the close of each day to the Parks Division Manager
 - c. Employees and Uniform: KONOP is responsible for the conduct of their employees and agrees that their employees will wear clean, presentable uniforms. The KONOP will be responsible for providing a uniform to their staff. KONOP further agrees that their employees may not use profanity while at work, and cannot drink alcoholic beverages or use drugs while on the job.
Injuries and Accidents: KONOP must report all staff and customer injuries and/or accidents to Aquatic Managers IMMEDIATELY. KONOP will work with Aquatic Managers to file the correct reports for injury or accidents.
 - d. Property: CITY does not warrant or guarantee the operation or performance of equipment in the concession stands and provides it to KONOP in an as-is condition. If KONOP chooses to introduce new food items that require additional equipment then KONOP will be responsible for purchase and maintenance of new equipment. KONOP is responsible for maintenance of all equipment. KONOP agrees that CITY shall have no

liability for any damages or injuries incurred due to use of any equipment in the concession stands. KONOP shall not remove any CITY equipment unless given express written consent to do so by CITY. CITY holds the right to enter the concession stand at any time to ensure the details in this agreement are being upheld.

- i. Trespass: KONOP will take reasonable action to guard against trespass and to keep any room or building used for concessions secure.
 - ii. Damage: KONOP must report any damage to the facility or equipment immediately to Aquatic Managers. CITY will be responsible to correct any damage to the facility caused by CITY employees, water, fire, or other natural causes. KONOP will be responsible to correct any damage caused by KONOP employees, outside equipment, and/or vendors brought in by KONOP.
2. Labor and Materials. KONOP shall furnish all labor, materials, and daily clean up necessary to perform the obligations of this Agreement. CITY is responsible for providing the facility. KONOP shall clean the facility daily.
3. Service Charges. Service charges will be based on actual service charge from CITY point of sale provider.
4. Payments. CITY shall deposit sales on a nightly basis and print a report of sales for KONOP to be signed by KONOP employees that the total sales is correct. On a weekly basis CITY shall send a check to KONOP for net concession sales for the prior week. Net sales will be concession sales minus commission rate of 7% and service charges.
5. Assignment and Subcontracting. KONOP shall not assign or subcontract any part of said work unless it has obtained the written approval of the CITY. The CITY shall have complete discretion in withholding or granting said approval.
6. Term and Termination. This Agreement shall extend from May 2020 to September 2020 during Aquatic Center regular hours and Special Events at the Aquatic Center and other Concession Stands. Either party may terminate this Agreement with 30 days written notice to the other party. CITY shall pay KONOP their final net concession sales within 10 days of the contract being terminated. All items being stored at time of notice of termination shall be removed within thirty (30) days and no new items may be stored once KONOP receives notice of intent to terminate from the CITY.
7. Notice and Demands. A notice, demand, or other communication under this Agreement by any party to the other party shall be sufficiently given or delivered and deemed delivered as of the date such notice is delivered to the party intended,

if it is dispatched by registered or certified mail, postage prepaid, it is delivered by electronic mail, or it is delivered personally and addressed to or personally delivered to:

CITY: Manitowoc Family Aquatic Center	KONOP: The Konop Companies, Inc
3330 Custer St.	Attn: David Herrera
Manitowoc, WI 54220	1725 Industrial Dr.
chall@manitowoc.org	Green Bay, WI 54302

8. Integration. This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to matters covered hereunder, unless documented in writing and signed by the parties involved.
9. Amendments. This Agreement may only be amended or modified in writing and signed by the parties involved.
10. Applicable Statutes. Any provisions of the Wisconsin Statutes, Federal Law or local ordinances applicable to the work performed hereunder are deemed to be incorporated by reference and made a part of this contract.
11. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. All sections or proceedings relating directly or indirectly to this Agreement, whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All parties to this Agreement hereby subject themselves to the jurisdiction of the Manitowoc County Circuit Court.
12. Heading. The section titles have been inserted in this Agreement primarily for convenience and do not define, limit, or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.
13. Remedies Cumulative. All rights and remedies hereunder are cumulative and not exclusive, and shall be in addition to all other rights and remedies provided by applicable law. Failure to exercise or delay in exercising any right or remedy hereunder shall not operate as a waiver thereof, nor excuse future performance. No waiver, discharge, or renunciation of any claim or right arising out of a breach of these terms and conditions shall be effective unless in writing signed by the party so waiving. Any waiver of any breach shall be a waiver of that breach only and not of any other breach, whether prior to, or subsequent thereto.
14. Construction. All parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, integration, validity or enforcement of this document or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against any party

whatsoever by virtue of that party having drafting the document or any portion thereof.

15. Relationship of Parties. Nothing in this Agreement nor any act of the parties shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent of limited or general partners, of joint venture, or of any association whatsoever between the parties hereto.
16. Insurance. KONOP shall maintain at its own expense, insurance as specified below with a company or companies authorized to do business in the State of Wisconsin. Each policy and certificate shall require a 30-calendar day advance written notice of cancellation, non-renewal or material change in the policy. All coverage required shall apply as primary with the City, its employees and agents named as additional insured as their interests may appear. A certificate of insurance for all required insurance shall be filed with the City when KONOP signs this Agreement.

INSURANCE

Worker's Compensation
Worker's Occupational Diseases
Employer's Liability
Comprehensive General Liability
 Incl. Contractual Liability
BI & PD Combined
Personal Injury
Products & Completed Operations
Automotive Liability BI & PD
Excess Liability Umbrella

LIMITS

Statutory limit
Statutory limit
Statutory limit
\$1,000,000/ Occ.
\$2,000,00 Gen. Agg.
\$1,000,000/Occ.
\$1,000,000 Gen. Agg.
\$2,000,000 Gen. Agg.
\$1,000,000
\$5,000,000/ Occ.

17. Indemnification. KONOP hereby agrees to hold the CITY, its employees, officials, officers and agents harmless and to indemnify and defend the CITY, its employees, officials and agents against all claims, demands, liabilities, losses, damages and expenses of any kind or nature, on account of any injury, damage to, or death of any person or on account of any damage to any property of any nature arising from, in connection with, caused by or resulting from work performed pursuant to this Contract. KONOP shall be strictly liable to the CITY for any breach of this covenant by any of its agents, employees, officers and assigns. All indemnification and hold harmless obligations shall survive the expiration of this Agreement.
18. Default. A material breach or default shall include, but not be limited to, the failure of a party to comply with any or all terms, provisions, requirements or covenants under this Agreement. The breaching or defaulting party shall have ten (10) days in which to cure such material breach or default. Failure to cure may result in the non-breaching party or non-defaulting party to choose to terminate

this Agreement immediately if they so desire. The parties may agree to a different time period to cure if curing cannot be completed within ten days. The materials breaching party or defaulting party shall be responsible to the other party for any costs and expenses incurred relating to or arising from a material breach or default under this Agreement.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by duly authorized representatives as of the date and year first written above.

CITY OF MANITWOC

BY: _____ BY: _____
Justin Nickels, Mayor Deborah Neuser, City Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF MANITOWOC)

Personally came before me on this ____ day of _____, 2020, the above signed Justin Nickels, Mayor, and Deborah Neuser, City Clerk, of the City of Manitowoc, Wisconsin and acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

Notary Public
Manitowoc County, Wisconsin
My commission (expires) (is):

THE KONOP COMPANIES, Inc

BY: _____
David Herrera, Food Service Director

STATE OF WISCONSIN)
) ss.
COUNTY OF MANITOWOC)

Personally came before me on this ____ day of _____, 2020, the above signed David Herrera of The KONOP Companies, Inc, and acknowledged that he executed the foregoing instrument as an Officers of The Konop Companies, Inc, by its authority.

Notary Public
Manitowoc County, Wisconsin
My commission (expires) (is):
