

FIRST AMENDMENT TO MANAGEMENT AGREEMENT BETWEEN  
CITY OF SAINT PAUL AND BE GRACEFUL BAKERY AND CATERING, LLC

This FIRST AMENDMENT to the September 4, 2020 Agreement between the City of Saint Paul, through its Department of Parks and Recreation (“City”) and Be Graceful Bakery and Catering, LLC (“Manager”) is entered into this \_\_\_ day of October 2022.

WHEREAS, the City and Manager entered into an Agreement on September 4, 2020 for the management of food and beverage concessions at multiple parks facilities which terminates on September 6, 2023; and

WHEREAS, that agreement requires Manager to make commission payments to the City based on monthly gross revenue generated; and

WHEREAS, the City desires to have concessions available for the public during the winter sports season at Battle Creek Recreation Center; and

WHEREAS, Manager has successfully met all contractual terms and has the ability to provide concessions out of the Battle Creek Recreation Center during the winter sports season; and

Now, therefore, Manager and City agree to amend as follows:

1. Section 1. **Managed Area.** City grants Manager the exclusive right to operate and manage food and beverage concessions at the Como Regional Park Pool, Highland Parks Aquatic Center, Oxford Community Center, ~~and Phalen Beach,~~ and Battle Creek Recreation Center on the terms contained in this Agreement. The area subject to this Agreement ("Managed Area") is shown on the attached Exhibit A. The City is not granting a leasehold interest in the Managed Area.

Manager would have the ability to operate within the footprint of each facility, including the use of a snack cart with written approval from City. The area subject to this Agreement ("Operational Area") is shown on the attached Exhibit A.

Manager understands that the Jimmy Lee Booster Club, a non-profit organization, will continue to sell concessions at Oxford Community Center during certain sporting events that will be made known to Manager at least 14 days in advance. Manager may choose to operate or not operate at the same time as the booster club.

2. Section 3. **Use of Site. B. Seasons.** Como Regional Park Pool and Highland Park Aquatic Center are generally operational from beginning of June through Labor Day weekend, with Phalen Beach closing one week earlier. City will establish season dates by March 1 annually and share with Manager.

Oxford Community Center is open year-round with the exception of some holidays and maintenance periods.

Battle Creek Recreation Center will be open for winter sports programming from December 1 through March 31 annually. Manager will operate concessions during this season each weekend (Friday, Saturday, Sunday, and holidays that are observed on Mondays) within hours agreed to by both parties.

Manager will operate concessions at these locations only when facilities are operational unless approved otherwise by City in writing.

3. Section 4. **Payments. A. Commission.** Manager will pay the City 15% of all of its monthly gross revenues for Como Regional Park Pool and Highland Park Aquatic Center and 10% of its monthly gross revenues for Phalen Beach and Battle Creek Recreation Center. Manager will pay 10% of its monthly gross revenue for Oxford Community Center and Battle Creek Recreation Center once it surpasses \$2,000 per location. Monthly gross revenues are defined as "all revenue generated in a given month by Manager under this Agreement, less sales tax." If Manager offers its employees staff discounts on products or services offered by Manager under this Agreement, revenues from sales of such discounted products and services will not be included in Monthly Gross Revenue.
4. Section 8. **Manager Responsibilities. D. Public Grounds.** Manager understands that Como Regional Park Pool, Highland Park Aquatic Center, Oxford Community Center, Phalen Beach, Battle Creek Recreation Center and surrounding grounds are publicly owned and shall conduct the operation of food and beverage concession in the best interests of the City and to maximize opportunities for its use and enjoyment by the public.
5. Exhibit B – Managed and Operational Areas.

Battle Creek Recreation Center

Managed Area – in BLUE



6. All other terms and conditions of the original Agreement shall remain in full force and effect.
7. COUNTERPARTS: The parties may sign this Amendment in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
8. ELECTRONIC SIGNATURES: The parties agree that the electronic signatures of a party to this Amendment shall be valid as an original signature of such party and shall be effective to bind such party to this Amendment. The parties further agree that any document (including this Amendment and any attachments or exhibits to this Amendment) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written when printed from electronic files. For purposes hereof, “electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g. via PDF) of an original signature. Any party’s failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Amendment.

IN WITNESS WHEREOF, the parties hereto are authorized signatories and have executed this Agreement, the day and year first above written.

City of Saint Paul:

Be Graceful Bakery and Catering

\_\_\_\_\_  
Mayor's Office

By \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_  
Director, Parks and Recreation

\_\_\_\_\_  
Director, Finance

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney