

FIRST AMENDMENT TO THE COMO AMUSEMENT PARK MANAGEMENT AND FOOD SERVICE AGREEMENT

This FIRST AMENDMENT to the November 28, 2018 Agreement between the City of Saint Paul, through its Department of Parks and Recreation (“City”) and Lancer Food Holdings, LLC (“Operator”) is entered into this ___ day of September 2020.

WHEREAS, the City and Lancer Food’s, d/b/a Zooper Food, LLC and Como Amusement, LLC entered into an Agreement on November 28, 2018 for amusement and food service operations at the Como Park Zoo and Conservatory which terminates on December 31, 2036; and

WHEREAS, the Agreement references the managing entity as Lancer Food’s, d/b/a Zooper Food, LLC and Como Amusement, LLC; and

WHEREAS, Operator is now known as Lancer Food Holdings, LLC; and

WHEREAS, that agreement requires Operator pay the City an annual licensing fee of \$170,000 as well as a commission percentage on food and beverage sales; and

WHEREAS, Minnesota’s Emergency Executive Order 20-01 Declaring a Peacetime Emergency and Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19 severely impacted Operator’s operations; and

WHEREAS, Operator wishes to amend the Agreement to allow for a one-year reduction in payments to City; and

WHEREAS, the City believes that there is a benefit to the public of supporting this important Saint Paul business during the challenge of the COVID-19 pandemic by amending the Agreement to help ensure that it can continue to serve the Saint Paul community into the future.

Now, therefore, Operator and City agree to amend the November 28, 2018 Agreement as follows:

1. Paragraph 8 A (1) is amended to read:
8. FEES TO CITY; ACCOUNTING.
 - A. VC Café
 - (i) Food Revenue Commission. In consideration of the License granted herein, Operator shall pay the following commissions to City in each year during the Term based on the Net Receipts of Food and Beverage Services provided by

Operator in the VC Cafe and within the VC ("**Food Commissions**"): For commission on food sales in the VC Cafe from \$ 0- \$700,000

Years	Summer	Off-Season
2015-23*	13%	10%
2024-36	14%	10%

Notwithstanding the foregoing, for the period from July 31, 2020 to March 31, 2021 commissions on food sales will be 8% for the summer months and 5% for off-season.

Summer months are considered to be May 1st - August 31st and off-season months are September 1st - April 30th.

In any year that net receipts exceed \$700,000, the commissions on food sales in excess of \$400,000 for the summer months shall increase to 16% and the commissions on food sales in excess of \$300,000 in the off-season months shall increase to 13%.

Net Receipts shall be determined for every year during the Term of this Agreement individually and shall not cumulate to any previous determinations of prior years. Food Commissions due to City from Operator shall be made monthly upon Operator's determination of Net Receipts for the month provided that such calculation shall occur within twenty (20) business days following the end of each calendar month. A statement of Net Receipts shall be provided to City with each payment. Total net receipts shall be reconciled at the end of the year, and any payments necessary to make up the deficiency in fees paid to the City pursuant to the formula listed above shall be payable within thirty (30) calendar days of the end of the year. Net receipts shall include any coupon or otherwise discounted sales excluding Operator employee sales under Section 8.3, provided however, that such discounted sales shall only be applicable to the calculation of Net Receipts to the extent of cash actually received by Operator.

2. Paragraph 8 B (i) is amended to read:

(i) Annual Payment. As consideration for the operation and management of the Amusement Park Operator is entitled to any profits over and above the payment of the annual payment and designated commissions due to the City, as set forth herein. Operator shall pay City an annual payment, during the term of this Agreement, in accordance with the following table ("**Annual Payment**"):

Years 2011-23:	\$170,000.00
Years 2024-36	\$175,000.00

The amount will be paid to City in four equal installments of 25% due on or before May 1, July 1, September 1 and November 1 of each year.

Notwithstanding the foregoing payments made to the City on September 1, 2020; November 1, 2020; May 1, 2021; and July 1, 2021 will be reduced by 50% to \$21,250.

3. Paragraph 8 B (iii) is amended to read:

(iii) Food Revenue Commission. Operator shall pay the following commissions to City in each year during the Term based on the Net Receipts of Food and Beverage Services provided by Operation in the Amusement Park and Zoo (“Food Commissions”)

<u>Month Net Receipt is earned</u>	<u>% of Net Receipts</u>
May –August*	20%
September – April**	15%

Notwithstanding the foregoing, commissions from July 1, 2020 through August 31, 2020 will be calculated at 15% of net receipts, and from September 1 through March 31, 2021 will be calculated at 10 % of net receipts.

Net receipts will be determined for each year and are not cumulative. Food Commissions owed to the City will be paid monthly and are based upon Operator’s determination of Net Receipts for the previous month, which must be calculated within 20 business days following the end of each calendar month. A statement of Net Receipts must be provided with each payment.

Example: If Operator’s Net Receipts received from food and beverages in the Amusement Park and Zoo are \$2,000,000, of which \$1,500,000 was earned during May- August and \$500,000 was earned during September – April, City is owed \$375,000 in Food Commissions. [$\$1,500,000 \times .02 = \$300,000$.
 $\$500,000 \times .015 = \$75,000$. $\$300,000 + \$75,000 = \$375,000$.]

4. All other terms and conditions of the Agreement will remain in full force and effect.

Counterparts. The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement shall be valid as an original signature of such party and shall be effective to bind such party to this Agreement.

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

For the City of Saint Paul:

For Lancer Food Holdings, LLC

Mayor's Office

By _____

Its _____

Director, Parks and Recreation

Director, Finance

Approved as to Form:

Assistant City Attorney