

PARK AND RECREATION FOOD AND BEVERAGE CONCESSION AGREEMENT BETWEEN
THE CITY OF SAINT PAUL
AND
BE GRACEFUL BAKERY AND CATERING

This management agreement ("Agreement") is entered into this__ day of September 2020, by and between the City of Saint Paul, Minnesota ("City"), and Be Graceful Bakery and Catering, LLC ("Manager").

WHEREAS:

- A. City is the owner of public park lands commonly known as Como Regional Park Pool, Highland Parks Aquatic Center, Oxford Community Center and Phalen Beach at which City intends to offer food and beverage concessions to the public; and
- B. City issued a request for proposals dated February 12, 2020 to seek a qualified managing partner to provide those concessions on its behalf and Manager was selected as the successful proposer; and

Now, therefore, City and Manager agree as follows:

- 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, 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. **Term and Renewal.**

- A. **Initial Term.** The term of this Agreement shall begin upon the date of execution of this Agreement and end on September 6, 2021, unless earlier terminated pursuant to paragraph 18 of this Agreement.
- B. **Renewal Term.** This Agreement may be renewed by mutual consent of the parties on the same terms for one additional two-year term, provided that Manager has made the required investments made in 5.B has met or exceeded the Performance Metrics, attached as Exhibit A.

- 3. **Use of Site.**

- A. **Permitted Use.** The Manger may provide only food and beverages in Managed Area. Any other uses are not permitted without advanced written consent of City.
- 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.

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

- C. **Hours of Operation.** Hours of operation are to be no earlier than 8:00 a.m. to no later than 9:00 p.m., every day of the week and only when facilities are being operated by City.
- i) At minimum, hours of operation at Como Regional Park Pool, Highland Park Aquatic Center, and Phalen Beach will correspond with “Open Swim Times”, unless approved by City in writing. Manager may choose to operate during other program times. Manager and City will coordinate closures due to weather.
 - ii) At minimum, hours of operation at Oxford Community Center during the school year will be Monday, Wednesday and Friday 4:00 p.m. to 8:00 p.m.; Saturday 12:00 p.m. to 6:30 p.m.; Sunday 12:00 p.m. to 4:30 p.m. During the summer minimum hours of operation will be Weekdays 12:00 p.m. to 8:00 p.m.; Saturdays 12:00 p.m. to 6:30 p.m.; Sunday 12:00 p.m. to 4:30 p.m. Manager may operate outside of these minimums with written approval from City. Manager may choose to not operate during Jimmy Lee Booster Club sponsored events, as detailed in Agreement item 1.
 - iii) Special events organized by City outside of minimum hours of operation will be communicated to Manager no less than 14 days in advance. When advantageous to the event, Manager will operate concessions during the event if Manager can, at minimum, cover their costs to operate.
- D. **Compliance with law.** Manager shall comply with all laws, rules and regulations related to its operation of the Managed Area and is responsible for obtaining any licenses or permits required to operate.
- E. **Key Access.** Manager shall have separate keys for the Managed Area. A \$25.00 deposit for each key issued will be paid by the Manager to City.
- Manager will maintain a list of key staff who have access to the premises through the coded keypad. Manager will provide list of names and unique codes to City at least once annually and when changes need to be programmed.
- F. **Shared Spaces.** Manager and City agree that within each facility there are shared spaces that will be used for both Manager’s operations and City’s operations. These shared spaces include but are not limited to seating areas, employee break areas, and bathrooms. Each party will maintain these areas in a clean and tidy way and coordinate their use.

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. Manager will pay 10% of its monthly gross revenue for Oxford Community Center

once it surpasses \$2,000. 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.

- B. **Annual Minimum Payment.** The Manager will guarantee the City an annual minimum payment of \$10,000 each year, regardless of total gross revenues. If Manager's aggregate payments have not totaled at least \$10,000 by December 31 annually, Manager must add the full amount of the shortfall to its December payment obligation, (due January 20).
- C. **Payment Due Dates.** 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.
- D. **Financial Records.** Along with each month's payment, Manager must provide a financial statement (in Microsoft Excel or compatible format) showing its gross receipts and expenses for the month. Manager must maintain orderly records of its cash register receipts, invoices and all other sales records, which must be made available for City review upon request.

Annually, by February 15, Manager will provide full yearly (January 1 to December 31) Profit and Loss Statement to City.

5. **Improvement to Managed Area.**

- A. **City approval required.** Manager will not make any improvements or alterations to the Managed Area without City's written approval. Manager will supply City with any information it reasonably requires in order to determine whether to consent to proposed improvements or alterations. All work done must be performed by licensed and bonded contractors, and with the appropriate permits and inspections required.
- B. **Investments.** Manager will directly invest \$20,000.00 into the Managed Area no later than June 1, 2021. Managed Area renovations and improvements may include, but are not limited to, signage and menus, point-of-sale and ordering equipment, food and drink storage and preparation equipment, and cooking and serving utensils.
- C. City and Manager will cooperate in determining a plan for any investments into Managed Area. The City reserves the right to approve or reject Manager proposed expenditures for investments.
- D. Annually, Manager will provide to the City an updated inventory of investment funded items.

- 6. **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 Manager's operation of the Managed Area, and Manager have the obligation to maintain such books and records for a minimum of six years from the termination of this Agreement. Accounting records for concession operations must be complete and accurate using standard and Generally Accepted Accounting Procedures.

7. **Maintenance and Repairs.**

- A. **Managed Area.** Manager shall be responsible for keeping the premises within the Managed Area in neat and clean condition at all times. Manager is responsible for providing and maintaining necessary equipment not provided by City in Exhibit C.

Twice annually, Manager will schedule with the City, a walk-through inspection of the Managed Area to ensure neat and clean conditions. One of these inspections shall be before the facility opens for the year to establish the condition of the facility and one inspection shall be mid-year or near the end of the season to establish anything that needs repairs or maintenance.

Manager must use licensed vendors with the appropriate permits for any required maintenance or repairs.

Failure to maintain the Managed Area and equipment may result in closure by City. The City will accept no responsibility for claims for loss of profits or other damages if Manager fails to maintain the Managed Area and equipment.

- B. **City Maintenance or Repair.** If Manager fails to maintain the premises within the Managed Area, City may elect to perform such maintenance and repair and bill Manager for the costs.
- C. **Damages.** Any damages to the Managed Area caused by the action of Manager, its employees, agents, or invitees will be the sole responsibility of Manager.
- D. **Trash, Recycling and Compostable Material.** Manager will use trash, recycling, and compostable material containers and dumpsters provided by City. Manager shall empty and otherwise maintain containers within Managed Area and adjacent customer seating areas. Manager will secure all containers and dumpsters within facilities.
- E. **Grounds Maintenance.** The City will perform all grounds maintenance around the Managed Area.

8. Manager Responsibilities.

- A. **On-site Manager.** Manager will provide an on-site manager at each Managed Area. Such manager shall be made known to City and will be on-site at the Managed Area for a minimum average of forty hours weekly during the summer season. On-site manager at Como Regional Park Pool and Highland Park Aquatic Center will hold a current ServSafe, or higher level, certification. Manager shall notify City of any changes in staffing of the position.
- B. **Price Approval.** Manager agrees to meet with the City prior to preparing the annual products, services, and price list, and periodically thereafter in an effort to mutually develop products, services, and pricing that will best meet the interests of both parties.
- C. **Prices Displayed.** Manager shall at all times have in plain view at the Managed Area a price list or printed schedule of prices of all available commodities and services. All prices shall be competitively priced with establishments within the service area that have similar functions.
- D. **Public Grounds.** Manager understands that Como Regional Park Pool, Highland Park Aquatic Center, Oxford Community Center, Phalen Beach 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.

- E. **Equipment and Supplies.** Manager shall provide, at its own expense, an adequate amount of equipment and supplies for food and beverage concession at all times.
- F. **Sufficient Staffing.** Manager shall, at its sole expense, be responsible for staffing the Managed Area. Staff must be trained in customer service and safe food handling by Manager before commencing work. Manager will participate in the City's youth employment program, Right Track.
- G. **Manager's Employees.** Employees of Manager 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.
- H. **Manager's Agreements.** Manager shall provide City with a copy of all agreements or contracts between Manager and any party who will assist Manager in carrying out the terms of this Agreement.
- I. **Accident and Incident Reports.** Manager shall provide the City with electronic participant accident and incident report forms in any instance where accidents or incidents on or near the Managed Area are reported to or witnessed by Manager 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.

9. **Covenants and Undertakings.**

- A. **City Inspections.** Annually, by December 31, City shall conduct a management contract compliance assessment and inspect the Managed Area, and inform Manager 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.** Manager will comply with and use its best efforts to cause its customers to comply with, all park rules and regulations.
- C. **Use of City Equipment.** Manager may use any City equipment and materials currently located at Managed Area, and may make any necessary repairs to such equipment and materials. At the expiration of this Agreement, any City equipment (Exhibit C) and materials used by Manager will remain the property of City and must be returned in good condition, allowing for normal use-related wear and tear.
- D. **Seasonal Startup and Shutdown.** Annually, on or about April 1, City will startup seasonally operated Managed Area, including turning on of water. Annually, on or about September 15, City will shut down seasonal amenities and winterize plumbing for off-season.
- E. **Inclement Weather; Emergency Closings.** In cases of emergency or disaster or other natural acts, Manager will vacate Managed Area 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. Manager will make no claim against the City for lost revenues or added expenses due to such event.

F. **Signage.** Manager will not place signage within or around the Managed Area without City's written approval. Signage must meet applicable code requirements.

G. **Smoking.** Manager will not permit smoking within the Managed Area.

10. **Compliance with Laws.** Manager shall apply for, pay for, and obtain all licenses, permits or other approvals, including but not limited to food licenses, or noise variances, needed to operate Managed Area.

11. **Notices.** The City's representative for this agreement will be the Special Services Manager or his/her designee. Manager's representative for the purposes of this agreement will be Robert Grace. 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

Be Graceful Bakery and Catering
8009 West 97th
Bloomington MN 55438
Attn: Robert Grace, CEO and Founder
612-419-7252
begracefulbakery@gmail.com

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

12. **Independent Contractor.** It is agreed by the parties that, at all times and for all purposes within the scope of this Agreement, the relationship of the Manager to the City is that of independent contractor and not that of employee. No statement contained in the Agreement shall be construed so as to find such an employer-employee relationship between the parties, nor are they joint partners. No employee of the Manager is entitled to any benefits of that of a City employee nor shall any employee of the Manager be construed as taking specific direction from a City staff member.

13. **Indemnification.** Manager 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 Manager's use of the premises.

14. Insurance.

A. Manager will provide the following insurance during the term of the agreement:

i) Manager 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.

- ii) 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 Manager. Such insurance must: 1) name the City of Saint Paul as "additional insured"; 2) be primary with respect to the city's liability insurance or self-insurance; and 3) not exclude explosion, collapse, or underground property damage.
- iii) 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.
- iv) Manager shall supply to the City current insurance certificates for policies required in this agreement. The certificates shall certify whether or not Manager has errors and omissions insurance coverage.
- v) Nothing in this agreement shall constitute a waiver by the City of any statutory limits or immunities.

B. **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. Manager waives its right of subrogation for damage to the premises, contents therein, loss of income, up to the amount of respective insurance proceeds collected.

C. 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.

15. **Non-Discrimination.** Manager will not discriminate against any participant or customer in the use or access to Managed Area 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.

16. **Right of Entry.** At all times during the term of this agreement, the City retains ownership of the Managed Area 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.

17. Casualty Loss to Managed Area.

A. **Limited Damage to Managed Area.** If all or part of Managed Area is rendered unsuitable for its anticipated use by damage from fire or other casualty which in the reasonable opinion of an architect selected by City and approved by Manager, can be substantially repaired under applicable laws and governmental regulations within 120 days from the date of such casualty (employing normal construction methods without overtime or other premium) City shall at its own expense, repair such

damage.

- B. **Major Damage to Managed Area.** If all or a substantial part of Managed Area is rendered unsuitable for its anticipated use by damage from fire or other casualty to such a material extent that in the reasonable opinion of an architect acceptable to City and Manager, Managed Area cannot be substantially repaired under applicable laws and governmental regulations within 120 days from the date of such casualty (employing normal construction methods without overtime or other premium), then City may elect to terminate this Agreement as of the date of such casualty by written notice delivered to Manager not more than 60 days after the date of such casualty.
- C. **Abatement of Manager's Payments.** In the event of damage to Managed Area rendering it unusable, the fees payable by Manager to City hereunder shall abate as of the date of the occurrence. In the case of damage which does not render the entire Managed Area untenable, the above payments shall be equitably apportioned.
- D. **Damage Due to Manager's Negligence.** Notwithstanding the foregoing, if the damage is due to negligent actions or omissions of Manager or its agents, it will be solely City's determination as to whether to repair or restore Managed Area and whether to terminate this Agreement.

18. 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 Manager for the purposes of termination:
 - i) **Failure to Obtain or Maintain License.** In the event Manager 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 and such failure continues for a period of 15 days after receipt of written notice of such failure.
 - ii) **Failure to Pay.** In the event Manager 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.
 - iii) **Lapse in Insurance.** In the event Manager 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.
 - iv) **Bankruptcy.** In the event that Manager files a voluntary petition in bankruptcy, insolvency or a petition for reorganization, or a receiver is appointed for a substantial portion of Manager's property, or an order or decree of bankruptcy, insolvency, or reorganization is issued.

- v) **Breach Without Cure.** Manager breaches any obligation under this Agreement and such breach continues for a period of 45 days or more after receipt of written notice of such breach.
 - vi) **Persistent or Repeated Breaches.** Manager has a pattern of persistent and repeated breaches, whether or not such breaches have been cured
- D. 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.
- E. **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.
- F. **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 as often as may be deemed expedient.
19. **Amendments.** No amendments to this Agreement shall be effective without being reduced to writing and executed by both parties.
20. **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.
21. **Minnesota Law; Severability; Venue.** This Agreement shall be construed under the laws of the State of Minnesota; and if any provision or portion thereof, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent provided by law. Any litigation arising out of or relating to this Agreement will be venued in the State of Minnesota Second Judicial District Court, Ramsey County.
22. **Counterparts.** The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
23. **Electronic Signatures.** The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) 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 record 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

Agreement.

24. **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

Be Graceful Bakery and Catering, LLC

Director of Parks and Recreation

Director of Financial Services

Approved as to form:

Assistant City Attorney

EXHIBIT A - Annual Performance Measures

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

Category 1: Customer Satisfaction

Manager will facilitate collection and tabulation of randomly conducted customer satisfaction surveys with at least 100 patrons from each Managed Area.

City and Manager will jointly develop a customer satisfaction survey by September 8, 2020, and update annually, as appropriate.

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

Category 2: Payments and Financial Performance

Manager financial reports and payments shall be made to the City by the 20th of each month, as set forth in Agreement item 4.

- 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 Manager's compliance with operational terms of the agreement in regard to scope of services, innovative practices, investment strategies, and commitment to continuous improvement in customer service. An assessment tool will be jointly developed by September 8, 2020 and updated annually, as appropriate.

- Meets expectations - Manager demonstrates compliance with all operational assessment items.
- Does not meet expectations - Manager 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 Managed Areas and inform Manager in writing of any conditions requiring attention as may be required to comply with the obligations under this Agreement. (Agreement item 9.A.)

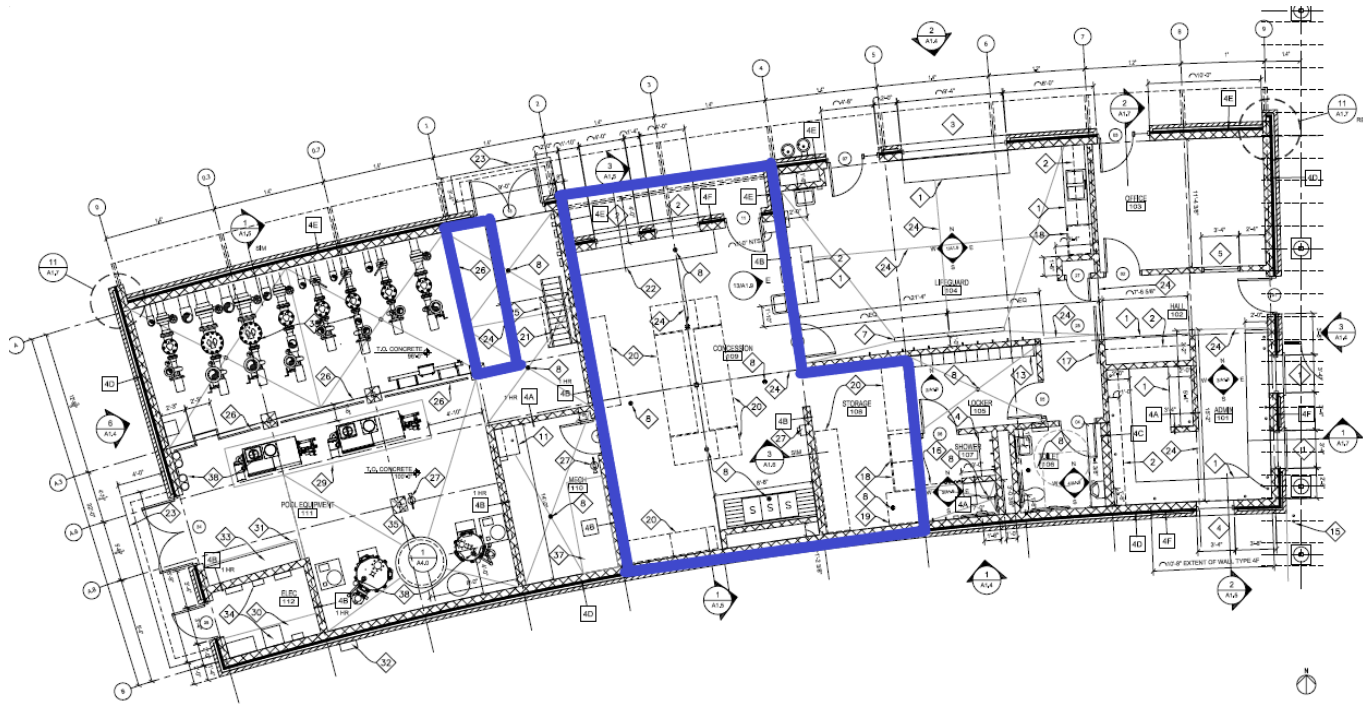
- Meets expectations - Manager demonstrates compliance with all management agreement and site review items.

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

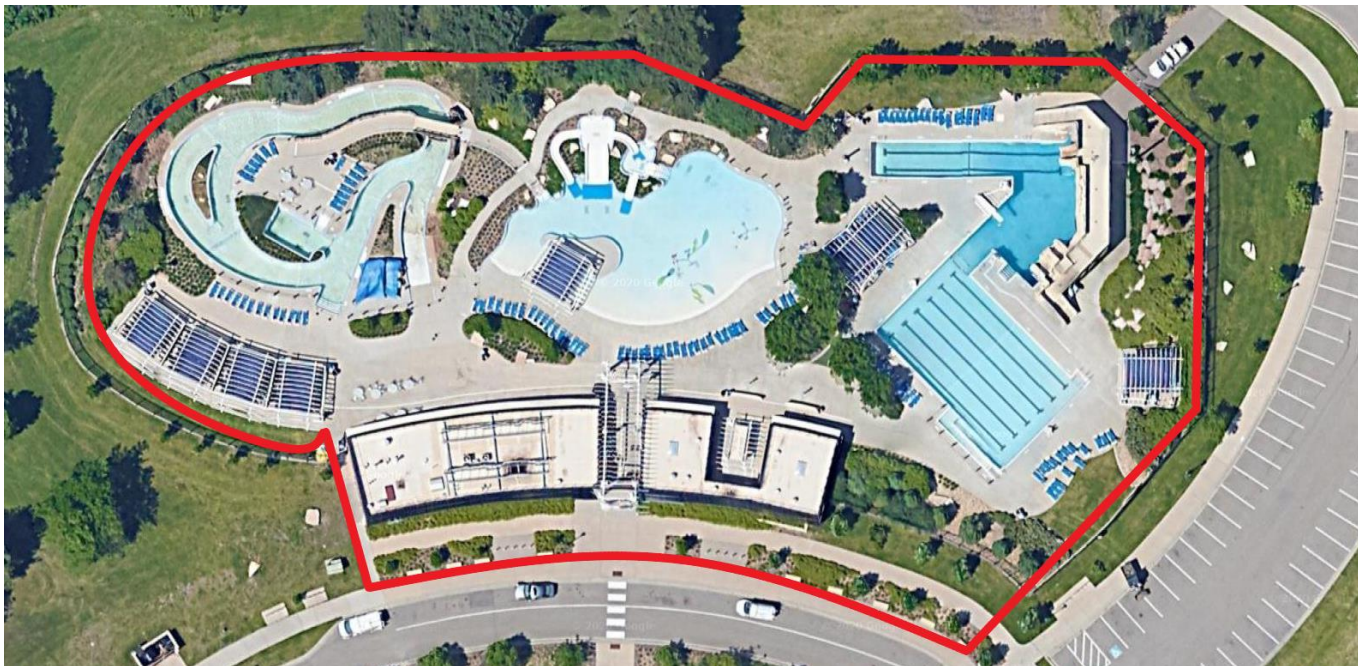
EXHIBIT B - Managed and Operational Areas

Como Regional Park Pool

Managed Area – in BLUE

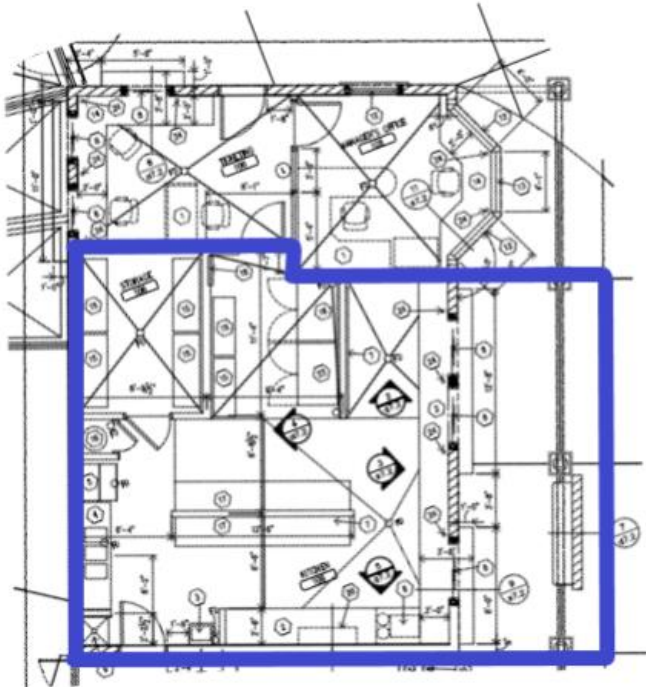


Operational Area – in RED



Highland Park Aquatic Center

Managed Area - in BLUE

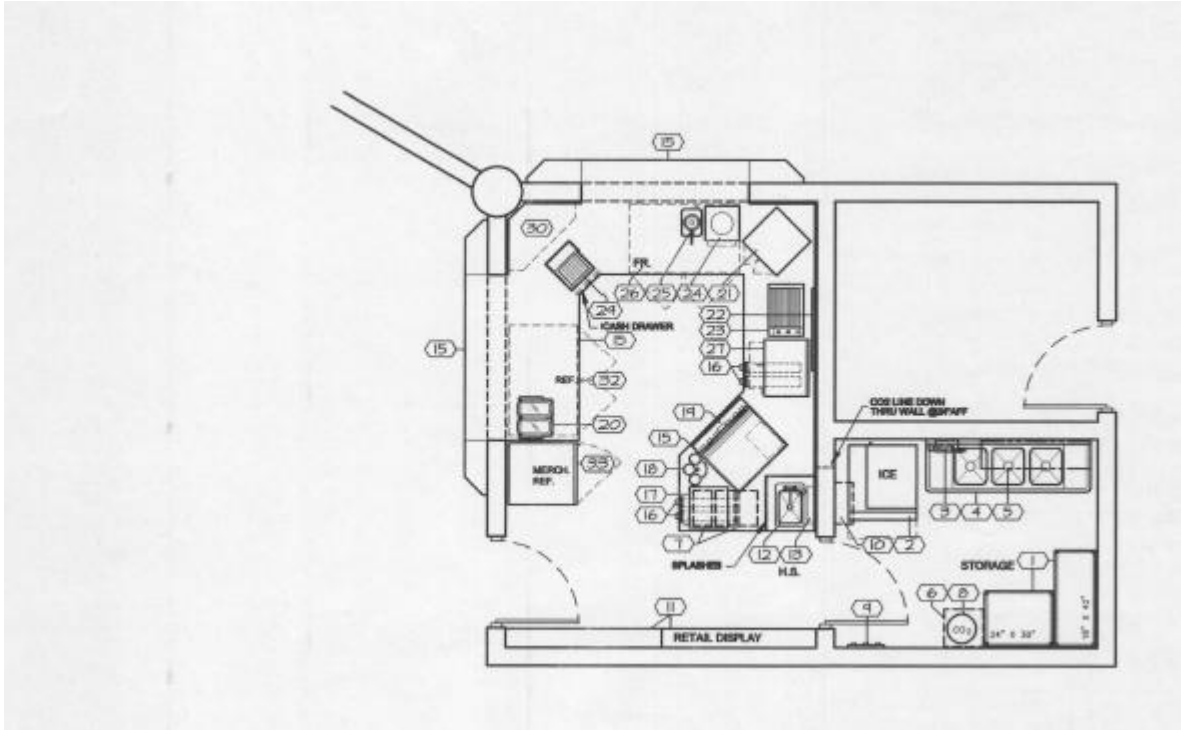


Operational Area – in RED



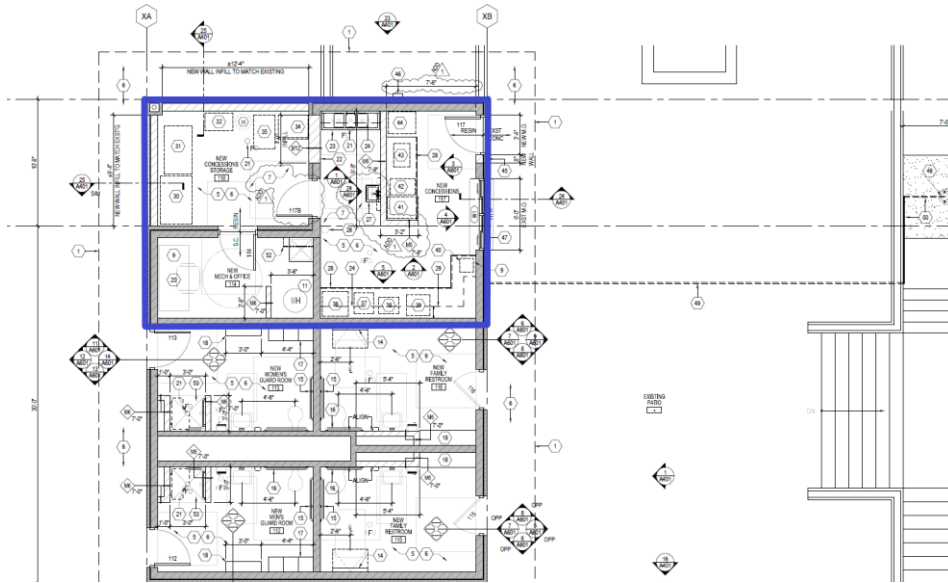
Oxford Community Center

Managed Area and Operational Area are identical in Oxford Community Center and include the concession room, storage room, and dining/seating area in the atrium.



Phalen Beach

Managed Area - in BLUE



Operational Area – in RED



EXHIBIT C - City's Equipment

Como Regional Park Pool

- 1 Pepsi soda dispenser
- 1 Pepsi drink cooler
- 1 Solwave Microwave
- 1 (i5) Turbo chef oven
- 2 Avantco snack ovens
- 1 TRUE refrigerator
- 2 TRUE stand up freezers
- 1 Scotsman Ice maker
- 2 outdoor freezer chest

Oxford Community Center

- 1 Bunn coffee maker
- 1 Bunn Gourmet Ice machine
- 1 Pepsi soda dispenser
- 1 Nemco food warmer
- 1 Galaxy popcorn machine
- 2 Snack ovens
- 1 small silver king freezer
- 1 small Silver king refrigerator
- 1 Pepsi drink cooler
- 1 chip warmer
- 1 Hoshizaki ice maker

Highland Park Aquatic Center

- 1 Turbo chef oven
- 1 solwave microwave
- 1 Pepsi soda dispenser
- 1 scotsman ice maker
- 1 Pepsi drink cooler
- 1 Delfield 6000XL freezer
- 1 Delfield 6000XL refrigerator
- 1 outdoor freezer

Phalen Park Beach

- Pepsi soda dispenser
- 1 solwave microwave
- 1 Turbo chef oven
- 1 scotsman ice maker,
- 1 turbo air refrigerator
- 2 avantco freezers