

MANAGEMENT AGREEMENT VICKSBURG CONVENTION CENTER

This MANAGEMENT AGREEMENT ("Agreement"), made and entered into as of October 1, 2018, by and between THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, a Mississippi municipality with offices at 1401 Walnut Street, Vicksburg, Mississippi 39180 ("City"), and, VENUWORKS OF VICKSBURG, LLC, an Iowa corporation, with offices at 4611 Mortensen Road, Suite 111, Ames, IA 50014 ("VenuWorks").

WITNESSETH

WHEREAS, the City is the Owner of a place of public gathering known as the Vicksburg Convention Center, featuring a convention/exposition hall and meeting rooms, hereinafter referred to as the "Location"); and

WHEREAS, VenuWorks is in the business of providing management, operation and marketing services to entertainment and convention facilities such as the Location and possesses the knowledge and expertise to manage and market the Location; and

WHEREAS, the City has retained VenuWorks for the management of the Location under the terms of a contract dated March 8, 2006, as amended with Addendums dated November 1, 2011 and February 18, 2014; and

WHEREAS, the City is desirous of having VenuWorks continue to provide said management and marketing services, and VenuWorks desires to accept such engagement under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other consideration the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
CONTRACTING OF VENUWORKS

The City hereby contracts with VenuWorks as an independent contractor for the purpose of performing the services described in this Agreement. Subject to the terms and conditions set forth herein, VenuWorks agrees to provide management, operation, and marketing services in accordance with this Agreement, and consistent with policies approved by City. VenuWorks agrees to use its best efforts to maximize revenues from use of the Location, including but not limited to, marketing and sales and event production and promotion and otherwise managing the Location in accordance with this Agreement. In conducting such services, VenuWorks hereby acknowledges and agrees that it has a fiduciary obligation to the City. City acknowledges that it expects VenuWorks to operate the Location in accordance with sound business practices and industry standards. VenuWorks will work in good faith to minimize annual financial subsidy requirements, and to limit the extent of annual financial subsidies to an amount no greater than the hospitality tax receipts collected and dedicated to purpose of operating the Location.

The Parties recognize that equipment owned by the City, and used for the presentation of events at both the Location and the Auditorium, will continue to be used jointly by both venues, with no charge one to the other for such use. Furthermore, VenuWorks staff working at the Convention Center will, from time to time, provide support services as appropriate and necessary when the City needs additional labor support at the Auditorium. If providing staffing services to the Auditorium results in the Convention Center incurring additional expense, that expense will be charged to the Auditorium.

The parties to this agreement acknowledge that the City will retain title, ownership of and access to the Location and that VenuWorks will not acquire title to, any security interest in, or any rights of any kind in or to the Location, including, but not limited to, any income, receipts or revenues therefrom.

ARTICLE 2

COMMENCEMENT DATE AND TERM

This Agreement takes the place of, and supersedes the "Management Agreement" dated March 8, 2006 and the Addendums to that Agreement dated November 1, 2011 and February 18, 2014. This Agreement shall be for a term of three (3) years, commencing on October 1, 2018 (the "Commencement Date") and expiring on October 31, 2021 unless earlier terminated as set forth herein. This Agreement may be extended by mutual agreement of the parties for an additional two (2) -year renewal term. VenuWorks acknowledges that the terms of the current Mayor and Board of Alderman shall end on or around July 1, 2021. VenuWorks further acknowledges that this contract is a voidable contract and may be terminated for convenience by the succeeding Board of Mayor and Aldermen.

ARTICLE 3

MANAGEMENT AGREEMENT

- 3.1 Provision of Services. During the term, and any renewal term of this Agreement, VenuWorks shall provide the City with the services set forth herein.
- 3.2 Grant to VenuWorks. During the term and any renewal term of this Agreement, the City grants to VenuWorks the right to manage, market, promote, operate and maintain the Location, and, subject to City approval, the exclusive right to sell sponsorship projects and advertising at the Location, subject to state, local and federal law and the City's right to terminate this Agreement as provided herein.
- 3.3 VenuWorks' Responsibilities. For the term of the Agreement, and any renewal period, VenuWorks will assume management responsibilities which will include, though not be limited to the obligations set forth below. It is understood and agreed that, as to the accomplishment of any obligation or obligations set forth below, wherein VenuWorks, in order to fulfill its hereinafter obligation or obligations, requires certain services necessary in the operation of the Location. VenuWorks shall have the authority to either employ as its employee all persons to perform such services or shall contract with a third party for the performance of such services.
- 3.3.1 Marketing and Promotion. VenuWorks shall direct all marketing activities which shall be undertaken so as to maximize the use of the Location by all persons, including independent promoters and affiliates of VenuWorks so as to provide maximum Revenue, as defined in Paragraph 3.3.14 below for the Location and accessibility of the public to the Location. Along with the annual budget for the Location, the promotional plan shall be reviewed and updated at least once each year with the proposed update delivered to the City for approval simultaneously with the delivery of the annual budgets for Location. VenuWorks shall be responsible for ensuring that appropriate programs are booked into the Location and that suitable media coverage is obtained and shall coordinate such efforts with the City and the Convention Center Advisory Board.
- 3.3.2 Scheduling. VenuWorks shall develop and maintain all schedules for events held at the Location and scheduling shall be accomplished in accordance with applicable laws, and in a manner to maximize the use of the Location so as to provide maximum revenue and accessibility for the public to the Location.

VenuWorks shall use an event rental agreement acceptable and approved in form by the City. The parties understand and agree that VenuWorks shall be empowered to negotiate rental agreements as the City's agent, which may deviate from the standard rental rate, when such negotiation is deemed by both parties to be in the best interests of the City, as set forth by established policy. The City may schedule meeting space for use on a complimentary no fee basis for City meetings and/or employee training. Meetings will be scheduled through VenuWorks and will be approved through the regular Board of Mayor and Alderman City Board meeting. The city shall be liable for any costs associated with such activities with the exception of rent, utilities reimbursement charges and facility fee charges.

- 3.3.3 Annual Budget. As part of the Business Plan referenced in Section 3.6 hereof, VenuWorks shall prepare and develop an Annual Budget for the Location, as defined below, which shall be submitted to the City for approval each year for the following Contract Year. To the extent possible, the goals of the Business Plan shall be reflected in the Annual Budget for Location. VenuWorks will cooperate and will work with the City and Advisory Board to ensure that the Annual Budget meet the reasonable requirements and expectations of the City.
- 3.3.4 Concessions and Catering. VenuWorks may negotiate a new contract with Palmertree Catering Services, the food service provider currently providing catering for the Location. Said contract will be for the right to be the Location's Primary Caterer, and shall be subject to the approval of the City. The Primary Caterer will hold the liquor license for the Location, and provide concession and catering services for most activities and events occurring at the Location. In the event that an acceptable agreement cannot be developed with Palmertree for the rights to be named Primary Caterer, VenuWorks may, subject to City approval, seek a contract with another vendor for the rights to become Primary Caterer. The Primary Caterer will have exclusive use of the food and beverage equipment, and the kitchen at the Location, subject to the inspection, audit, control and direction of VenuWorks. City owned spaces and equipment shall be used to provide catering only for events in the Location. In addition to the Primary Caterer, other local caterers may be designated as Alternate Caterers, which shall be allowed to provide catering for events, at the request of organizations or persons renting the Location. Each year of the term of the Agreement, VenuWorks shall evaluate the performance, reputation and credentials of local caterers, and make a recommendation to the City regarding the selection of the Alternate Caterers. The final selection of the Alternate Caterers will be subject to the approval of the City. All caterers shall be licensed, and

have necessary permits and appropriate insurance coverage in place. VenuWorks will develop an event contract to be used with the Alternate Caterers, subject to City approval. Alternate Caterers will not have the use of or access to the food and beverage equipment, spaces or kitchen at the Location, but instead will have to provide their services using their own equipment and service ware. The Alternate Caterers will pay a commission to the City for catering in the location which will be equal to the commission to be paid by the Primary Caterer. All billings to clients for catering, concessions or bar service in the Location shall be done by Primary Caterer or Alternate Caterer in accordance with the Banquet Event Orders provided to VenuWorks and processed as follows:

1. All Events held from the first (1st) through the fourteenth (14th) of the month shall be paid on the fifteenth (15th) day of the month or the following business day, and all events held from the fifteenth (15th) through the last day of the month shall be paid on the first (1st) day of the month or the following business day.

2. All event information shall be submitted to VenuWorks on the following business day. Event information should be defined as a banquet event order, final settlement report and copy of client payment either by check or credit card. These reports will consist of template forms provided by VenuWorks to be used by Primary or Alternate Caterer for settlement after all events.

3. Should the Primary or Alternate Caterer choose to pay VenuWorks by credit card, a 3% convenience charge will be added to the total.

4. Caterer shall provide a limited selection of budget priced lunch, dinner and reception menu options for events that have a minimum of 100 attendees.

3.3.5 Location Maintenance. City shall be responsible for the maintenance of the Location and its facility; provided however that VenuWorks employees may provide limited services related to ordinary and routine minor maintenance which costs less than \$2,500.00. Any anticipated repairs or maintenance which, if performed, would cause expenditures in excess of the annual approved budget for maintenance and repair shall be subject to prior written approval and funding by the City.

3.3.6 Custodial and Cleaning Services. VenuWorks shall perform or cause to be performed all routine cleaning and janitorial services at the Location.

3.3.7 Pest Control. Pest control services shall be provided pursuant to an existing contract the City has with a pest control company. The City shall be reimbursed by Company and the charge for said services shall be considered as an operation

expense; or VenuWorks shall direct all necessary pest control services, whether performed by VenuWorks or a pest control service engaged by the City.

- 3.3.8 Snow Removal. VenuWorks shall direct all snow removal services on the pathways and sidewalks adjacent to the Location and parking lots.
- 3.3.9 Trash Removal. Pursuant to existing City contract, VenuWorks shall direct removal of all trash from the Location and agrees that it shall not permit any employee, concessionaire or caterer to place refuse outside the buildings on the Location adjacent to the kitchen area, except in designated trash containers, the location of which shall be approved by the City. VenuWorks will continue the solid waste disposal contract.
- 3.3.10 Operational Services. VenuWorks shall direct all services required to stage (set up and tear down) the Location for each event, including but not limited to, services involving the setting of tables, chairs, decorator curtains, electrical distribution, sound system, lighting system, stage rigging, dressing area, stage equipment, loading in and loading out. VenuWorks shall hire and manage all management and sales staff, operations personnel, ushers and other personnel required for the operation of the Location.
- 3.3.11 Ticket Sales. VenuWorks shall direct all aspects of ticket sales for events and activities including computerized tickets. Ticket sales services shall include ordering, selling and accounting for tickets, reporting ticket revenues for a given event for each user of the Location, cash and credit card processing, complete auditing and accounting for each event, and providing an accounting of the event income and expenses within ten days after each event is held. Ticketing services providers shall be selected by VenuWorks subject to approval by the City. All discounts and rebates accruing to the Location from the sale of tickets through any vendor shall be for the benefit of the Location.
- 3.3.12 Security. VenuWorks shall arrange and/or approve security arrangements for events at the Location. Security may be provided by VenuWorks or by contract, as set forth by established guidelines. Police Security will be required for all events hosted by the City or one of its departments. VenuWorks shall review exterior crowd management and traffic control with the appropriate City officials.
- 3.3.13 Licenses and Permits. VenuWorks shall obtain and maintain all licenses and permits

necessary for management and operation of the Location, subject to state, local and federal laws for the granting of such licenses and permits, with the exception of the liquor license, which shall be held by the Primary Caterer.

3.3.14 Revenues, Bank Accounts and Payment of Operating Expenses. VenuWorks shall be responsible for the collection of all Revenues and payment of Operating Expenses, as defined in Exhibit A, including payment and remittance of applicable sales taxes. As used herein, "Revenue" is defined as the total amount of funds received by VenuWorks, arising out of or connected with the use of the Location, including, without limitation, transactions for cash, credit and credit card sales, less applicable taxes. VenuWorks shall establish in its own name, under its own federal identification number, two separate commercial bank accounts in the City of Vicksburg, separate from any other accounts which VenuWorks may have, which shall be for the exclusive use of (1) depositing Revenues from the sale of tickets to events at the Location, or deposits received for future use of the Location (the "VenuWorks Event Escrow Account") and, (2) the deposit of all other receipts, and disbursements related to this Agreement (the "VenuWorks Operating Account"). Revenues from deposits and the sale of tickets to events at the Location shall be deposited by VenuWorks in the VenuWorks Escrow Account. After payment from such ticket sales and deposit revenues of all event-related expenses, and within seven (7) working days after the end of the event, VenuWorks shall transfer the remaining event ticket sales and deposit revenues into the VenuWorks Operating Account.

All other Revenues generated by use of the Location and collected by VenuWorks shall be deposited in the VenuWorks Operating Account, VenuWorks is authorized to make disbursements from the VenuWorks Event Escrow Account to promoters or performers in any amount due the performer or promoter as per contracts with them, and to pay budgeted Operating Expenses from the VenuWorks Operating Account. The City shall be authorized at any time to obtain information and records from the bank concerning such accounts and to inspect the same. VenuWorks will provide written authorization to the bank holding these accounts, allowing the City to have the right to make said inspections. It shall be an Event of Default, as defined herein, entitling the City to terminate this Agreement, if VenuWorks withdraws any money from the Operating Account or the Event Escrow Account except in accordance with this Agreement. Interest accrued in these accounts shall be revenue to the location. At termination of this Agreement, VenuWorks shall reimburse City for the balance held in the above two accounts on the day of termination.

33.15 Staffing. All Location staff will be in the employment of VenuWorks. All employee expenses will be considered operating expenses of the Location.

3.3.16 Concessions Supervision. VenuWorks shall be responsible for overseeing and coordinating the activities of the food, beverage and other concessionaires authorized to operate at the Location.

3.3.17 Additional Duties. VenuWorks shall also be required to provide, on a timely basis, information, data, and solutions to project issues as may be reasonably requested by the City, together with such other services consistent herewith as the City may reasonably require.

3.3.18 Use of City Equipment. VenuWorks will use City owned or leased equipment at the Location in performance of its obligations hereunder. VenuWorks will abide by the City rules and regulations concerning use and inventory controls, per City policy.

3.3.19 Expenditures from Operating Fund. Any equipment and unused supplies inventory purchased with funds from the VenuWorks Operating account, at the termination date of this agreement shall become the property of the City and VenuWorks shall transfer any applicable title and ownership rights to the City.

3.4 Written Powers Reserved to the City. The City shall have right of prior written approval in connection with the following:

- (a) The Annual Budget and Business Plan
- (b) Acceptance of sponsors, display advertising and naming rights for the Location
- (c) System of deviation from established rental. All rates need to be listed to be included in business plan
- (d) Certified statements in 4.4
- (e) Naming Rights
- (f) Selection of the Executive Director, who will serve at the pleasure of the City.

3.5 Relationship of Parties. VenuWorks is an independent contractor of the City and shall not be deemed to be an employee, joint venturer or partner of the City. The authority of VenuWorks shall be limited to those matters which are specifically addressed in this Agreement.

- 3.6 VenuWorks shall update the Business Plan on an annual basis and shall deliver the same to City simultaneously with the delivery of the Annual Budget. The Business Plan shall in no way become a performance obligation for either the City or VenuWorks, but shall serve as a management blueprint to monitor VenuWorks' performance.

The Business Plan, including the budget, marketing plan and operational plan for each FY, will be turned in to the City by July 1 of each year and will be referred to as Exhibit B.

ARTICLE 4
ANNUAL BUDGET AND BUSINESS PLAN

- 4.1 Delivery. On July 1 or a date established by the City of each year during the term and any renewal term of this Agreement thereafter, VenuWorks shall submit to the City a proposed annual operating budget and business plan for the ensuing year, listing all projected Revenues and Operating Expenses by category, broken down by month, with explanations and assumptions for each Revenue and Operating Expense line item. The proposed annual budgets and business plan shall include a proposed rent structure for events proposed to take place in the Location for the ensuing Fiscal Year, broken down, if necessary, by types of events to be held at the Location,
- 4.2 Review of Budget. The proposed annual budget and business plan shall be reviewed by the City in accordance with the City's budget development schedule. Upon approval by the City, which approval shall be granted or refused in the City's sole discretion, the proposed annual budgets shall become the final annual budgets and business plan (the "Annual Budget") for the Fiscal Year. It is understood and agreed that if the City objects to the proposed annual budget and business plan or any part thereof, VenuWorks shall be obligated to promptly respond to each such objection and revise the proposed annual budget and business plan in connection therewith, The City will adopt the Convention Center Budget at the same time that it adopts all other City funds and will approve the VenuWorks budget at the same time.
- 4.3 Revision of Annual Budget. VenuWorks and the City may revise the Annual Budgets for either Location and Business Plan at any time by mutual written agreement and in accordance with applicable State of Mississippi Department of Audit Standards and applicable state statutes governing municipal budgeting.
- 4.4 Certified Statements. VenuWorks shall deliver to the City, within thirty (30) days after the end of each successive calendar month and additionally within forty-five (45) days after the end of each Fiscal Year, a true and correct financial statement, certified as true and correct by an officer of VenuWorks, of all Revenues and Operating Expenses of the preceding calendar month and Fiscal Year, together with any requested supporting documentation requested by the City. VenuWorks shall provide an accounting of each event held at the Location in said monthly reports for the preceding calendar month.

ARTICLE 5
THE MANAGEMENT FEES and COMMISSIONS

- 5.1 Base Management Fee. For the period beginning with the Commencement Date, and continuing through year one of the Agreement, City shall pay VenuWorks a Base Management Fee consisting of the following:
- Ten thousand dollars (\$10,000) per month. In subsequent years, the base fee amount shall be increased by two percent (2%).
 - The actual cost of operating expenses, as defined in Exhibit A, which is hereby incorporated into this Agreement.

Payments for Base Management Fees will be due to VenuWorks by the 15th day of the month following the month for which the management fee is earned.

- 5.2 Variable Fee. City shall pay VenuWorks a performance-based Variable Fee, over and above the Base Management Fee. The Variable Fee will consist of three parts, as follows:
- Number of Events: By meeting or exceeding the rolling four-year average number of events during the current fiscal year. (The number of events required to achieve this benchmark in Fiscal 2019 is 156.) VenuWorks shall earn an additional \$7500.
 - Attendance: By meeting or exceeding the rolling four-year average attendance during the current fiscal year. (The attendance number for fiscal 2019 is 47,494.) VenuWorks shall earn an additional \$7500.
 - Financial Performance: VenuWorks shall earn a Variable Fee of \$10,000 for each fiscal year in which it successfully operates the Convention Center within the approved operating budget, excluding unbudgeted Repairs and Maintenance Expenses.
 - The Variable Fee, if any, shall be paid by the City to VenuWorks no later than ninety (90) days following receipt by the City of the annual financial statements for the Location for the preceding Operating Year and a written computation of the Variable Fee, prepared by VenuWorks and certified by a senior officer of VenuWorks. Variable Fees for any given fiscal year shall not exceed \$25,000.00.

- 5.3 Commission. VenuWorks shall be paid a Commission equal to five percent (5%) of revenues realized from sponsorships, naming rights, display advertising revenues, soft drink pouring rights. Commissions shall be paid by the 15th day of the month following the month in which the revenues were realized.

ARTICLE 6
PAYMENT OF MANAGEMENT FEES,
ADDITIONAL FEES AND OPERATING EXPENSES

6.1 Management Fees. VenuWorks will invoice the City monthly for all base management fees and commissions as applicable. The Variable Fee, if any, shall be paid by the City to VenuWorks no later than ninety (90) days following receipt by the City of the annual financial statements for the Location for the preceding Operating Year and a written computation of the Variable Fee, prepared by VenuWorks and certified by a senior officer of VenuWorks

6.1.1 At the conclusion of each fiscal year, VenuWorks shall pay to the City the amount of \$15,000 to be utilized at the City's discretion for Repairs and Maintenance or to fund new capital projects at the facility.

6.2 Operating Account. Each quarter during the term and any renewal term of this Agreement, the City will deposit into the VenuWorks Operating Account, an amount equal to the total amount of operating expenses, less the balance carried forward in the Account. VenuWorks shall submit a statement detailing the amount due each quarter based on the projected operating expenses for the subsequent quarter for the Location.

6.3 Insufficient Funds. In the event that funds in the VenuWorks Operating Account are deemed by VenuWorks to be insufficient to cover the Operating Expenses due and payable during a quarter, (the "Quarterly Deficiency"), the amount of the projected Quarterly Deficiency shall be deposited by the City into the VenuWorks Operating Account after approval by Board of Mayor and Aldermen, and after the City's receipt of the Quarterly Financial Projection. If the amounts paid by the City into the VenuWorks Operating Account exceed the amounts required to pay the Operating Expenses, the positive balance shall be credited against the City's obligation to make future payments into VenuWorks Operating Account.

This agreement shall not in any way obligate the City at any time to make payments which would cause the City to be in noncompliance with any State of Mississippi statute or State Department of Audit regulation pertaining to budgeting of municipal funds.

64 Monthly Meetings. Representatives of VenuWorks' on-site management team shall meet monthly with the Convention Center Advisory Board. VenuWorks staff will meet with the City Accountant, City Clerk, and the City Board as requested throughout the term of this Agreement, and any renewals.

6.5 VenuWorks agrees that during the initial term of the Agreement it will host a national staff meeting at the Vicksburg Convention Center.

ARTICLE 7
VENDING AND POUR RIGHTS

- 7.1 Vending: Vending machines in the Location shall be under control of VenuWorks on behalf of the City, with revenues accruing to the Location.
- 7.2 Pour Rights: The pouring and service of soft drinks, including soda, teas and waters, will be controlled by the City's selection of an exclusive soft drink provider, and the Location shall participate in whatever product agreement the City may have in place, or choose to put into place for City facilities.

ARTICLE 8
GENERAL TERMS AND CONDITIONS

- 8.1 Representation of the City. The City hereby represents and warrants to VenuWorks, as an Inducement to VenuWorks entering into this Agreement, that it is the City's intent that the Location will be permitted to be open to the paying public on a daily basis in a manner consistent with industry practices.
- 8.2 Representation of VenuWorks. VenuWorks hereby represents and warrants to the City on its own behalf and on behalf of its shareholders, officers, directors and employees, that VenuWorks is fully capable of providing services as outlined in this Agreement.
- 8.3 Standard of Operation. VenuWorks represents and warrants to the City that it shall maintain an efficient and high quality operation at the Location comparable to facilities similar to those of the Location.
- 8.4 Accounting Records, Reports and Practices.
- 8.4.1 Maintain Records. VenuWorks shall maintain accounting records relating to the Location using accounting practices in accordance with generally accepted accounting principles consistently applied.
- 8.4.2 Internal Financial Controls. VenuWorks shall establish internal financial control policies and practices which are in accordance with generally accepted standards in the industry and reasonably acceptable to the City.
- 8.4.3 City Access. The City shall have unlimited access to all accounting records and supporting documentation of VenuWorks relating to the Location during the term and any renewal term of this Agreement and for a period of three (3) years thereafter. Such right to access shall be exercised in a reasonable manner.
- 8.4.4 Concession Revenue. VenuWorks shall maintain accounts in a manner which will allow budget reporting of expenditures in categories as specified by the Mississippi Department of Audits and which shall allow a profit and loss statement to be extracted pertaining to the Concessions operation.
- 8.5 Default, Right to consent to Jurisdiction and Waiver of Jury Trial.
- Event of Default. It shall be an event of default ("Event of Default") hereunder if either party hereto:
- (i) fails to pay or deposit sums due by one party to the other within seven (7) days after written notice by the other of such failure, or
- (ii) fails to perform or comply with any other obligation of such party hereunder within thirty (30) days after written notice by the other of such failure (which notice shall specify, in sufficient detail, the specific circumstances so as to

give the defaulting party adequate notice and the opportunity to cure the same); provided, however, that if the default is of a nature that it cannot be cured within thirty (30) days, then the defaulting party shall not be deemed in default hereunder if it commences to cure the default within ten (10) days after the effective date of the notice of such default and diligently proceeds to cure such default within ninety (90) days after the effective date of notice.

Upon failure to cure an event of default within the above stated time period, the non-defaulting party may terminate the contract with written notice to the defaulting party.

- 8.6 Jurisdiction. The parties and each of them hereby irrevocably submits to the jurisdiction of the State of Mississippi. Venue for state actions shall be Warren County, Mississippi and for federal actions shall be the U.S. District Court, Southern District of Mississippi for claims arising out of or relating to this Agreement, or any other document evidencing the transaction contemplated by this Agreement. The parties hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such Mississippi state or federal court. The parties hereby irrevocably waive, to the fullest extent such party may effectively do so, the defense of any inconvenient forum to the maintenance of such action or proceeding and agree that any such action or proceeding venue shall be in Mississippi. The parties agree that a judgment final by appeal or expiration of time to appeal without an appeal being taken in any such action or proceeding shall be conclusive and may be enforced in any other jurisdictions by suit on the judgment or in any other manner provided by law. The specific remedies to which the parties may resort hereunder are cumulative and are not intended to be exclusive of any other remedies or means of redress at law or in equity to which such party may be lawfully entitled in case of breach of this Agreement.

8.7 Insurance.

- 8.7.1 Employment Matters. In connection with the employment of its employees, VENUWORKS shall pay all applicable social security, re-employment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, re-employment insurance and workers' compensation. VENUWORKS shall indemnify and hold harmless the CITY from all costs, expenses, claims or damages resulting from any failure of VENUWORKS to comply with this Section.
- 8.7.2 Insurance Requirements:
- 8.7.3 Workers Compensation Insurance: VENUWORKS shall purchase and maintain during this contract, workers compensation insurance in accordance with statutory requirements with limits of not less than \$500,000 per accident and per employee for bodily injury.

- 8.7.4 General Liability Insurance: VENUWORKS shall purchase and maintain during this contract, commercial general liability insurance including liquor liability insurance on a per occurrence basis with limits of liability not less than \$2,000,000 per occurrence /\$2,000,000 in aggregate for Bodily Injury, Personal Injury, and Property Damage. Policy coverage shall include Premises and Operations, Products and Completed Operations. Any additional exclusions shall be clearly identified on the Certificate of Insurance and shall be subject to the approval of CITY and VENUWORKS. The insurance required by this contract shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the State of Mississippi and currently rated "A" or better by the A.M. Best Company. Policies shall name City of Vicksburg, officers, elected officials and employees as additional insureds.
- 8.7.5 Automobile Liability Insurance: VENUWORKS shall purchase and maintain during this contract, automobile liability insurance on a per occurrence basis with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage. Coverage shall include any owned, all hired and non-owned motor vehicles used in the performance of this contract by VENUWORKS or its employees. The insurance required by this contract shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the State of Mississippi and currently rated "A" or better by the A.M. Best Company.
- 8.7.6 Umbrella and Excess Liability Insurance: VENUWORKS shall purchase and maintain during this Agreement an umbrella and excess insurance policy on a per occurrence basis with limits of liability of not less than \$5 million per occurrence / \$5 million in aggregate. Any umbrella and excess insurance shall be written on a per occurrence basis on a pay on behalf form providing the same coverage and endorsements required of the primary policies.
- 8.7.7 Property Insurance: CITY will maintain property insurance coverage on the Facility itself. VENUWORKS shall assume all risks for loss of or damage to its own property at the Facility and VENUWORKS may maintain such insurance, at its sole expense, as it deems necessary to protect its own property.
- 8.7.8 Subcontractors: VENUWORKS shall require all its subcontractors who perform work and / or services under this contract to meet appropriate insurance requirements as reasonably required by CITY.
- 8.7.9 Deductibles and Self-Insured Retention: Any policy deductible or self-insured retention must be declared on the Certificate of Insurance and shall be subject to the approval of the CITY, and will not be considered an operating expense.
- 8.7.10 Proof of Insurance: VENUWORKS shall furnish CITY with Certificates of Insurance and a copy of the policies if requested by CITY. The name of the project or contract shall be listed on the certificates of insurance along with any deductible or self- insured retention. Before commencing any

performance under this Contract, VENUWORKS shall deliver all the Certificates of Insurance to CITY certifying that the policies stipulated above are in full force and effect. All insurance shall remain in effect during the life of the contract.

8.7.11 Insurance Cancellation or Material Change Notice: The certificates of insurance shall state that the insurance company will provide thirty (30) days written notice prior to cancellations, non-renewal, or material change including reduction of insurance coverage or limits. The notice will be sent to the CITY, via certified mail.

8.7.12 Cooperation: Each party agrees to cooperate fully with the other in promptly providing such insurance underwriting and other information as may be necessary or appropriate to obtaining and maintaining the insurance described herein. The parties further agree to cooperate with the insurance companies and agents by responding promptly to their reasonable requests.

8.7.13 VenuWorks Property. VenuWorks shall be entirely responsible for maintaining, at its sole expense, such insurance coverage as it determines to be appropriate to protecting its own property interests.

8.7.14 Crime Insurance. During the term of this Agreement, VenuWorks shall maintain Crime Insurance, with an insurer acceptable to City (such acceptance by City not to be unreasonably withheld or delayed), providing at least the following coverages in at least the amounts set forth below for each coverage:

- (A) Employee Dishonesty Blanket Bond - \$500,000;
- (B) Depositor's Forgery - \$500,000;
- (C) Money & Securities - \$500,000 (each, "Inside" and "Outside");
- (D) Computer Fraud - \$500,000;
- (E) Wire Transfer Fraud - \$500,000;

Provided, however, that if such coverages are provided on a "blanket" limit basis, a blanket limit of \$500,000 shall be considered to be sufficient to comply with this provision. City shall be both a Loss Payee (as its interests may appear) and an Additional Insured under such policy, which policy shall be written to apply only to the Crime exposures arising under or in connection with this Agreement, and not to any other unrelated Crime exposures incurred by VenuWorks or City under any other similar agreements or otherwise.

8.7.15 Insurance Cost. The cost of providing insurance hereunder shall be an Operating Expense. In the case of an insurance claim, any cost of deductible will be an Operating Expense, unless as otherwise noted.

8.7.16 Insurance Terms. Insurance terms not otherwise defined in this Agreement shall be interpreted consistent with insurance industry usage.

8.7.17 Tort Liability Limit. Insurance referenced in this Agreement, except

Workers Compensation/Employers Liability, shall name City as an additional insured.

8.8 Indemnity. VenuWorks agrees to indemnify, hold harmless, protect, and defend the City, its agents, representatives and any affiliated or related entities against any and all claims, loss, liability, damage, costs and expenses, including reasonable attorney's fees, that are alleged to have occurred as a result of or due to the breach of contract, negligence or willful misconduct of VenuWorks, its agents, consultants, subcontractors, employees or representatives, or a breach of VenuWorks' representation set forth in Section 8.2 hereof to the extent that such claim, loss, liability, damage, cost or expense is alleged to have been caused by VenuWorks, its agents, consultants, subcontractors, employees or representatives. VenuWorks hereby waives any claims it may have, now or in the future, against City, which claims are or should have been covered by the insurance specified in this Agreement.

8.9 Damage to and Destruction of the Location. If all or part of the Location is rendered unusable by damage from fire and/or other casualty.

(A) Then the City may decide to repair the damage under applicable laws and governmental regulations within 365 days from the date of such casualty (employing normal construction methods without overtime or other premium), and the City shall forthwith at its own expense repair such damage other than damage to improvements, furniture, chattels or trade fixtures which do not belong to the City. During the period during which the Location or any part thereof remains unusable until such time as the Location resumes full operation, (1) the Management Fee shall be suspended, and VenuWorks and the City shall jointly decide on an operating budget for the duration of the repair period and shall jointly determine whether to retain personnel during the repair period, and (2) subject to applicable law, the term and any renewal term of this Agreement shall be extended by the amount of time in which the Location is closed to the general public due to said damage; or

(B) Then the City may decide not to repair the damage, and the City shall notify VenuWorks, in writing, of the termination of the agreement. See section 8.13.

8.1.0 Employees.

8.10.1 Employees of VenuWorks. All persons engaged at the Location in operating any of the services hereunder shall be the sole and exclusive employees of VenuWorks and shall be paid by VenuWorks, except for those individuals employed or utilized by contractors or subcontractors of VenuWorks, as provided for in this Agreement but in no event deemed an employee of the City. In connection with the employment of its employees, VenuWorks shall pay all applicable social security, re-employment insurance, worker's compensation or other employment taxes

or contributions to insurance plans, and retirement benefits, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, re-employment insurance and worker's compensation, and shall defend, indemnify and hold the City harmless from any responsibility therefor. VenuWorks shall comply with all applicable laws, ordinances and regulations including, without limitation, those pertaining to human rights and non-discrimination during the term of this agreement.

- 8.10.2 Employee Standards. VenuWorks will employ trained and neatly uniformed employees and said employees shall conduct themselves at all times in a proper and respectful manner. Employee personnel practices shall be handled in accordance with VenuWorks' corporate policy and applicable federal, state or local laws which may be in effect and, further, shall be in compliance with applicable union or labor organizational agreements which may be in effect at the time of said dismissal and VenuWorks shall defend, indemnify and hold the City harmless from any claim, cause of action, expense (including attorneys' fees) loss, cost or damage of any kind or nature arising therefrom, except in the case of express written direction from the City,
- 8.11 Availability of Location. VenuWorks agrees that, except as a result of full or partial destruction of the Location, the Location will be made available for all events scheduled therein and VenuWorks agrees to defend, indemnify and hold the City harmless from and against any and all claims, causes of action, expenses (including attorneys' fees) losses, costs and damages arising from the failure of the Location to be available in the condition necessary for the conduct of scheduled events due to the negligence or willful misconduct of VenuWorks, its agents, servants, employees or contractors of any tier, and in such case, VenuWorks shall pay to the City the estimated Revenues, less Operating Expenses, for such event within five (5) days after the event was to have taken place.
- 8.12 No Payment by City. Notwithstanding anything in this Agreement or exhibits hereto to the contrary, the City shall not be obligated to reimburse VenuWorks as Operating Expenses or otherwise for costs and expenses (including attorneys, fees) for litigation which is covered by VenuWorks' defense and indemnification obligations set forth in this contract.
- 8.13 Termination for Convenience. Notwithstanding anything herein contained to the contrary, City may terminate this Agreement by written notice in which event the City shall pay to VenuWorks all amounts owing hereunder and accrued through the date of termination. City may terminate this Agreement at any time with 180 days written notice. Based on Mississippi laws, a succeeding administration may void this contract after taking office.

- 8.14 Compliance with Laws. VenuWorks will comply with all federal, state and local ordinances, statutes, rules and regulations as they relate to the operation of the Location. VenuWorks' failure to comply with such ordinances, statutes, rules and regulations relating to the Location shall be an Event of Default under this Agreement and shall entitle the City to terminate this Agreement pursuant to the provisions of Section 8.5 hereof. VenuWorks agrees that it shall not be entitled to claim litigation costs (including attorneys' fees) as Operating Expenses pursuant to Subparagraph (1) of Exhibit A with regard to its rules and obligation to comply with ordinances, statutes, and regulations as set forth herein.
- 8.15 Non-waiver. The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
- 8.16 Amendment. The parties may amend this Agreement only by written agreement executed by the parties.
- 8.17 Choice of Law. The laws of the State of Mississippi shall govern the rights and obligations of the parties under this Agreement.
- 8.18 Severability. Any provision of this Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of this Agreement,
- 8.19 Notices. Any notice required herein shall be in writing and shall be deemed effective and received (a) upon personal delivery; (b) five (5) days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; or (c) one (1) business day after deposit with a national overnight air courier, fees prepaid, to VenuWorks or City at the following addresses:

If to City:

Attention:
City Clerk
City of Vicksburg
1401 Walnut Street, Suite 201
Post Office Box 150
Vicksburg, MS 39181

If to VenuWorks:

VenuWorks of Vicksburg, LLC
4611 Mortensen Road
Ames, IA 50014

Either party may designate an additional or another representative or address for notices upon giving notice to the other party pursuant to this paragraph. For the

purposes of this Agreement, "business day" shall mean a day which is not a Saturday, a Sunday or a legal holiday of the United States of America.

- 8.20 Representatives. The City's representative to VenuWorks in connection with Location operations shall be the City's designee, and the VenuWorks representative shall be VenuWorks' on-site General Manager at the Location. Furthermore, both parties recognize the significant role played by the Convention Center Advisory Board in the governing and policy-making decisions of the Location. Therefore, VenuWorks will make every effort to include the Advisory Board Chair and Board members, as appropriate, in communications and decisions relating to the Location.
- 8.21 Force Majeure. Neither party shall be obligated to perform hereunder, and neither shall be deemed to be in default, if performance is prevented by fire, earthquake, flood, act of God, riot, civil commotion or other matter or condition of like nature, including the unavailability of sufficient fuel or energy to operate the Location, or any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, war or governmental law and regulations.
- 8.22 Labor Dispute. In the event of a labor dispute which results in a strike, picket or boycott affecting the Location or the services described in this Agreement, VenuWorks shall not be deemed to be in default or to have breached any part of this Agreement,
- 8.23 Integration. This Agreement and all appendices and exhibits hereto embody the entire agreement of the parties relating to the services to be provided hereunder. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto. Exhibits hereby integrated hereto are: Exhibit A: Operating Expenses, and Exhibit B: Business Plan, including marketing and operating plans and budget as referenced in Section 3.6. If the terms of the Agreement and exhibit are found to be inconsistent, the terms of the Agreement shall control.
- 8.24 Section Headings. Section headings in this Agreement are for convenience only and shall have no effect on the interpretation of this Agreement.
- 8.25 Regional Exclusion: VenuWorks shall not enter into a Management Agreement for another Convention Center Facility within 100 miles of Vicksburg without prior written approval of The Board of Mayor and Aldermen of the City of Vicksburg.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

For the City of Vicksburg:

George Flaggs, Jr., Mayor

Date

For VenuWorks of Vicksburg, LLC:

Steven L. Peters, Member

Date

EXHIBIT A

Operating Expenses

The term "Operating Expenses" shall mean the following and shall be, in all cases, subject to the Annual Budget:

- (a) on-the-job payroll cost, including wages, bonuses and severance paid to employees and the cost of paid holidays, vacations, severance benefits, sick leave, employment practices liability, work compensation and other compensation and benefits, consistent with law and VENUWORKS standard HR practices: cost of training, payroll processing costs; note that severance obligations may exceed the term of the Agreement if termination of the Agreement results in the termination of staff who may be entitled to severance pay due to the early termination of the Agreement. However, in consideration of the payment of severance benefits to eligible employees whatsoever the cause, VENUWORKS must have the mutual agreement of the City prior to such payment.
- (b) employer contribution cost, in relation to employees carried on the on-the-job payroll mentioned in the foregoing clause (a), of every nature whatsoever, including but not limited to, social security, re employment insurance, benefits for medical and hospital care, disability, death, termination, retirement or pensions, or insurance or annuity contracts to provide any of the foregoing, and all payments, other than those referred to in the foregoing clause (a), required under any collective bargaining agreement to which VenuWorks is a party, or under any state or federal law or any regulations promulgated thereunder;
- (c) cost of medical and security examination for employees on the on-the-job payroll;
- (d) cost of purchasing, tenting, maintaining and cleaning uniforms;
- (e) cost of equipment, materials and supplies, including the cost of installation thereof;
- (f) cost of insurance, permits, licenses and fees; except liability coverage of VenuWorks;
- (g) cost of property, business, privilege, sales and all taxes other than taxes based on net income, provided that any penalties or fines for failure to collect and remit sales taxes shall not be an Operating Expenses but shall be borne by VenuWorks;
- (h) cost of marketing, promotions and advertising; cost of travel from Vicksburg on behalf of location
- (i) cost of necessary outside professional services, upon prior written approval by the city
- (j) cost of the Commodities;
- (k) cost of utilities;
- (l) litigation expenses or other costs (including attorneys' fees) incurred by VenuWorks in connection with any proceeding pertaining to the collection of revenues; provided, however, that the City shall not be obligated to pay any such fees or costs (including attorneys' fees); (i) unless prior to incurring any legal expense (including attorneys' fees), VenuWorks shall consult with the City and the City and

VenuWorks shall jointly determine the course of action (including payment obligations thereof) to be taken with regard to any claim made against VenuWorks or the City (concerning the Location) or to be made by VenuWorks or the City (concerning the Location); and (ii) to the extent a court of competent jurisdiction (after all appeals have been made or the time to make an appeal has run, the determination of whether to make such appeal to be jointly made by VenuWorks and the City (including payment obligations thereof)) determines that VenuWorks or any person for whom VenuWorks was responsible in law failed to comply with federal, state and local statutes and ordinances affecting the Location, was negligent or engaged in willful misconduct, the cost of settling the claim (including litigation costs and attorney's fees) shall not be an Operating Expense, but shall be borne by VenuWorks in its entirety, and VenuWorks shall repay the City any amount expended by the City with regard to such proceeding (including attorneys' fees) within thirty (30) days after demand therefore. Notwithstanding the foregoing, it is understood and agreed that with regard to subparagraph (ii) above, VenuWorks shall only be liable to pay the City that portion of the City's costs incurred in connection with the action (including attorneys' fees) representing VenuWorks' percentage of negligence or willful misconduct. For example, if in a proceeding, the City or a third party is determined to be twenty percent negligent and VenuWorks is determined to be eighty percent negligent, VenuWorks shall only be obligated to pay eighty percent of the legal costs of the City (including attorneys' fees) in such action, To the extent VenuWorks and/or the City is/are determined to be liable to a third party for legal costs in any action (including attorneys' fees) by virtue of a determination of the court to that effect, VenuWorks and the City shall pay such costs (including attorneys' fees), subject, in all cases, to state statute in proportion to their determined liability as set forth in this subparagraph (1), and as to VenuWorks, such costs (including attorneys' fees) shall not be deemed Operating Expenses hereunder;

- (m) cost of travel and accommodations for VenuWorks corporate staff visiting the Location in the routine support of operations and management.
- (n) cost of equipment replacement;
- (o) cost of ordinary maintenance and repair of the Location and the equipment,
- (p) Cost of ordinary housekeeping of the Location;
- (q) All other expenses not specifically set forth in this Exhibit, but not including the cost of home office overhead relating to the services provided by VenuWorks hereunder, subject to the City's prior written approval of any such expense, which approval shall not be unreasonably withheld or denied.