ALCOHOL SERVICE AGREEMENT FOR WARNER PARK COMMUNITY RECREATION CENTER

Between the City of Madison and 16 Bars, LLC, d/b/a Gib's Bar
For 2023-2028

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as "City"), and 16 Bars, LLC, d/b/a Gib's Bar (hereinafter referred to as "Contractor"), a Wisconsin limited liability company, is effective as of January 1, 2023.

WITNESSETH:

WHEREAS, City is the owner and operator of Warner Park Community Recreation Center ("WPCRC") located at 1625 Northport Drive, Madison, Wisconsin 53704, which is available for private event reservations; and,

WHEREAS, Contractor has been selected to be the exclusive alcohol service provider at WPCRC, providing bar service, table service, tray service and self-service of alcohol beverages to meet the needs of private event customers of WPCRC, and is qualified to provide said services; and,

WHEREAS, City and Contractor desire to enter into a written agreement providing for the operation of said services at WPCRC.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Alcohol Service Agreement for Warner Park Community Recreation Center ("Agreement") is to set forth the terms and conditions upon which the City will allow Contractor to be the exclusive provider of alcohol services at WPCRC.

2. Definitions. For the purposes of this Agreement, the following definitions apply:

   A. Alcohol Service. Services provided to WPCRC customers that includes all bar service, table service, tray service and self-service of alcohol beverages at the Facilities.

   B. Gross Receipts. The total receipts from gross sales, both received as paid and as accounts receivable, and for events of any time length as long as they are duly authorized by the WPCRC Facility Manager or designee for events at the WPCRC.

3. Grant. City does hereby grant to Contractor the exclusive right and obligation to offer alcohol services at WPCRC for use by private event customers of the WPCRC. This grant does not affect the City's ability to offer soft drink, juice and water vending machines to its customers at the WPCRC, nor does this grant confer any other right to Contractor, such as the right to sell other merchandise at the WPCRC.

4. Term; Renewal. The initial term of this Agreement shall be from January 1, 2023 through December 31, 2024. This Agreement may be renewed for up to two (2) additional two-year periods (2025-2026 and 2027-2028), with each additional period running from January 1 through the December 31 of the following year. Contractor shall inform the City of its intent to renew no later than September 30 of the final year of the term. The City's decision to renew or not renew the Agreement for the following two-year term will be based upon Contractor performance under this Agreement and will solely be that of the Parks Superintendent, or their designee. The City's decision to renew or not renew the Agreement is not reviewable. The City shall inform Contractor within ten (10) days of receipt of Contractor notice of its intent to renew the Agreement.

5. Scope of Services and Operational Requirements.

A. Permits and Licenses.

(1) Contractor shall, at its own expense and cost, procure and keep in force during the entire period of the Agreement all permits and licenses required by law for the conduct of its operation. If Contractor wishes to serve alcohol in areas outside the WPCRC buildings and within the confines of a tent, Contractor shall ensure that such areas are included within the licensed premise for its licenses; and the rental party shall obtain appropriate permits, pay all fees and shall obtain approval of WPCRC.

(2) It is understood that this Agreement is conditioned upon Contractor acquisition and maintenance of valid licenses to sell fermented malt beverages and intoxicating liquors.

(3) Nothing contained herein shall be construed as binding City to the issuance of any license or permit needed by Contractor for the conduct of its operations hereunder.

(4) In the event City fails to issue to Contractor any license or permit needed for the conduct of its operations under this Agreement, Contractor may, at its option, terminate this Agreement paying only those amounts which are due to City for events which have already taken place.

(5) In the event of termination or expiration of this Agreement by either party, it is mutually understood and specifically agreed that any and all permits or licenses issued by City for operations at WPCRC shall be canceled or surrendered without further notice or hearing.

B. Alcohol Service Requirements.

(1) Contractor shall supply all alcohol services, whether from portable bars, trays, table service or self-service, for all events held at the WPCRC.

(2) In providing alcohol services at the WPCRC, Contractor shall provide all personnel to set up and efficiently serve alcohol, and related non-alcoholic

beverages, in a variety of locations throughout WPCRC, including but not limited to the Community Rooms, Meeting Room and any future spaces developed within the confines of WPCRC.

(3) Bar Staff Per Hour Rate. All bar staff time will be charged to the WPCRC user at a rate of thirty-five dollars ($35.00) per hour. This bar staff charge will reflect a 25% discount for all WPCRC events.

(4) Contractor shall clean and return to storage all portable bar set-up and other serving equipment, tables and displays following each usage.

(5) Contractor shall assure that alcohol deliveries are placed into locked storage in a timely manner.

(6) Contractor shall provide a report of the total gross receipts collected from cash bar sales, on a form to be mutually agreed upon, which will accompany monthly reconciliation (see 6.B(1) below). All cash register tapes and supporting total gross receipts shall be clearly dated, labeled and retained for audit purposes by City.

(7) Contractor shall work toward maximizing the use of the WPCRC and to competitively bid on the alcohol service needs of the users of WPCRC.

C. General Operating Requirements.

(1) In the performance of services under this Agreement, Contractor, and its employees, contractors and/or subcontractors, shall agree to follow the requirements of this Agreement and all WPCRC rules and procedures as may exist from time-to-time.

(2) Contractor shall provide drinkware and related equipment and supplies of the highest quality reasonably attainable for events and gatherings.

(3) Contractor shall provide all necessary serving utensils and containers, linens, skirting, and any other items necessary to properly conduct its service.

(4) Contractor shall furnish a proposed schedule of prices, portion sizes and quality delineations for all beverage service items. The schedule must be approved in writing by City. Further, the grade, quality, and prices of said products shall not be altered without prior written approval of City. Prices may be reviewed annually to allow for adjustments in market prices.

D. Quality of Service.

(1) The services provided by Contractor shall be of the highest quality reasonably attainable. City retains the right to sample the alcohol for all events.

(2) All foods, drinks, beverages, refreshments and the like sold or kept for sale shall be first quality, wholesome and pure. All materials and equipment kept on hand shall be stored and handled with due regard for sanitation and in compliance with City and State Health Codes.

(3) Recognizing that successful performance under this Agreement is dependent on favorable response from eligible users, Contractor shall meet bi-annually with the WPCRC staff to review operations and make necessary adjustments. Contractor agrees to maintain good public relations with eligible users.

(4) If City is dissatisfied with any aspect of Contractor operation (including, but not limited, to its procedures, equipment, employees, service, etc.), City shall meet as needed with Contractor for the purposes of discussing the nature of the dissatisfaction and arriving at a solution.

E. Maintenance and Cleaning. Contractor shall, at its own expense, keep all areas and equipment used in its operations in a clean, sanitary and orderly condition to the satisfaction of City and shall promptly dispose of refuse in areas designated by City.

F. Equipment, Improvements and WPCRC Conditions.

(1) Equipment.

(a) WPCRC has an ice making machine onsite. WPCRC ice will be available to all events, as needed, but may not be removed from premise. WPCRC make no representation that its ice making machine will be solely sufficient to satisfy the needs of Contractor.

(b) Except for temporary or portable equipment, Contractor shall not install any additional equipment or improvement, or remove or alter any equipment or improvement or furnishings, or alter either WPCRC without the written approval of City.

(c) Contractor shall not remove any article or piece of equipment belonging to City without the written authority of City.

(d) WPCRC stock of tables and chairs are available for rental groups and Contractor may request standard tables for bar and catering use at WPCRC.

(2) Improvements. All improvements, additions, and betterments made by Contractor to the WPCRC shall become City property. Contractor agrees, however, that it shall not make, construct or install any improvements, additions, betterments or structures of any kind anywhere in the WPCRC or on adjacent City property without first obtaining the City's written permission. All improvements, additions, or betterments made by

Contractor shall be made at Contractor own expense unless otherwise agreed upon by both parties.

(3) WPCRC Conditions.

(a) Contractor shall not erect, maintain or keep at WPCRC any structure of any kind, whether temporary or otherwise, except with the written consent of City.

(b) Contractor shall not make any structural alterations in or additions to the WPCRC, nor post any signs or decorations upon any part of WPCRC premises nor permit signs or decorations to be posted for advertising of goods of any nature on WPCRC premises without prior permission of City

(4) Repairs. Contractor shall give the City prompt notice of the necessity of repairs and replacements and the City shall have a reasonable time to undertake and complete such repairs and replacements. Contractor agrees to immediately report to City any damage of the WPCRC equipment and facilities which pose a threat to health and safety to WPCRC users.

(5) Vacating the Facilities. Contractor agrees to vacate the WPCRC at the end of the term and leave the WPCRC in a state of cleanliness and repair to City's satisfaction. Contractor will remove all personal property unless otherwise agreed to by the parties.

G. Storage. Contractor shall be provided with approximately 650 square feet of securable space for final preparation, storage, refrigeration and dish washing at WPCRC. City may, at its option, choose to move these spaces to other locations within WPCRC. Contractor may not sub-lease these spaces to any third party without the written permission of City.

H. Employee Requirements.

(1) Contractor employees shall have access to the WPCRC and be admitted thereto in accordance with regulations as may be established for the proper operation of WPCRC. Contractor shall furnish City, upon request, the names of all Contractor personnel working on the premises and provide for the issuance of pass and work identification at no expense to City.

(2) Employees of Contractor shall at all times be neatly and cleanly dressed in a uniformed manner acceptable to City, at no expense to City, and must meet all sanitary standards prescribed for restaurant employees. Employees shall wear identification tags provided by Contractor in a plainly visible fashion. Employees' uniforms shall be devoid of advertising.

(3) Employees shall at all times reflect personal cleanliness. Unkempt and unclean employees will not be tolerated. Contractor shall train and closely

supervise all employees so that they are aware of and habitually practice the high standard of cleanliness, courtesy and service required.

(4) Contractor or its authorized representative, which shall be at least a supervisor, shall be present at all times during Contractor operation of Alcoholic service at WPCRC.

(5) Contractor employees shall at all times be polite and courteous in their dealings with WPCRC patrons and staff. Such employees shall not, either by act or language, offend or unreasonably disturb patrons and spectators or interfere with a program or event in progress.

(6) City may recommend that Contractor discipline an employee, or may request the removal of a Contractor employee from employment at WPCRC. However, employee discipline or removal remain solely within Contractor' authority.

I. Operating Conditions.

(1) City shall have the right to approve the number and location of all bars and location of storage space furnished for use by Contractor. Contractor shall acquire no rights to such locations once assigned, and City may require Contractor to move temporary stands and equipment to accommodate the needs of other users of WPCRC.

(2) Any and all temporary concession stands shall be of first class quality. Final approval of design and decor rests with City.

(3) City shall furnish to Contractor all electricity and water utility service and refuse disposal services without charge.

(4) Contractor shall not permit any waste, injury or damage upon or to WPCRC or its equipment and appurtenances that are under the control of Contractor nor injury or damage by persons or person that are reasonably under the control of Contractor. At the expiration of this Agreement, Contractor shall ensure that WPCRC, its equipment and appurtenances, are in the same condition as they were at the outset of the contract term, excepting only normal wear and tear.

J. Miscellaneous Requirements.

(1) Labor Disputes. Contractor shall comply with all applicable laws, rules and regulations regarding labor as are applicable to operations on and related to the WPCRC and Contractor services. Should any labor dispute interfere with access to or the presentation of all other events occurring at the WPCRC or prevent Contractor from performing the services contemplated hereunder, Contractor shall, at the direction of City, take all necessary steps, including cessation of such activities causing such labor dispute, so as to

cure the interference and maintain the performance of services under this Agreement. Contractor further agrees to not knowingly engage any persons in connection with its activities under this Agreement who would cause City to breach any collective bargaining agreement to which City is a party, or which would directly cause or permit any labor organizations with which City has a collective bargaining agreement to contend successfully that an unfair labor practice has been committed in connection with this Agreement or which subjects City to an authorized strike, picketing or work stoppage, or to continue to engage in any conduct or activity which directly causes WPCRC or Contractor presence in the facility to be picketed due to a labor dispute; and Contractor shall cease and desist from performing any such prohibited conduct or activities upon notice from City if Contractor should ever do so.

(2) Records and Audit.

(a) Record Keeping. Contractor shall maintain records of the alcoholic and related beverage operations conducted at WPCRC, as well as the reports required in Sec. 6.B(1), which records shall be kept in conformance with generally accepted accounting principles consistently applied. Such records shall be maintained separately from any other operations Contractor may have.

(b) Right of Inspection. City, or its authorized representative, shall, at all reasonable times with prior notice, have the right to examine, inspect and audit all books, papers and bank records of Contractor which are relevant to and necessary to determine the accuracy of reports relative to the gross receipts of Contractor operations at the WPCRC. The cost and expense incurred by City incident thereto shall be the sole responsibility of and borne by City.

(c) Invoices. Contractor shall use invoice forms approved by City for billings for services conducted under this Agreement.

6. Payment. In exchange for being granted the right to be the exclusive provider of alcohol services at the WPCRC, Contractor agrees as follows:

A. Percentage Payments.

(1) Standard Events. Except as provided for in paragraph (2), for each event at the WPCRC, Contractor agrees to pay the City twenty-five percent (25%) of that portion of the after-tax gross receipts from all sales at WPCRC.

(2) WPCRC Fund Raising Events. For each WPCRC fund raising event, not to exceed three (3) per year, Contractor agrees to pay WPCRC a flat rate equal to forty percent (40%) of the after-tax gross receipts. The applicable WPCRC events will be determined at the beginning of each calendar year.

B. Payments.

(1) All payments due under this Agreement shall be made by Contractor corporation check, payable to WPCRC. The payments shall be delivered to WPCRC on or before the 25th day of the month following the last day of the month in which the percentages were earned. A monthly report itemizing all to-date sales, cash and credit, less attributable sales tax, shall be due by the 25th of each month in order to compute the total monthly amount due for WPCRC. A copy of all applicable customer invoices must accompany the monthly statement and check. The total amount due WPCRC shall exactly equal the monthly payment check and any differences fully explained.

(2) Payments not received by WPCRC on the 25th day following the last day of the period in which it was earned shall be assessed an interest penalty equal to one and one-half percent (1.5%) of the total balance due for each month or part of a month past due.

7. Status of Parties. It is agreed by the Parties that Contractor is an independent contractor and not an employee or representative of the City, and that any persons who Contractor, either on its own or through Contractor, utilizes and provides for services under this Agreement are employees of Contractor and are not employees of the City. It is also agreed and understood by and between the Parties that in the operation and conduct of this Agreement, City does not grant Contractor the right to sell or distribute any goods or services of the City nor does City grant to Contractor the right to use any City or WPCRC trade name, trademark, service mark, logotype, advertising or other commercial symbol. Additionally, the Parties agree that there is no continuing financial interest between the City and Contractor in either the operation of Contractor business or the marketing of Contractor alcohol services.

8. No Realty. It is expressly understood and agreed that this Agreement is not a lease or a conveyance of realty, but merely a granting to Contractor the right to use the WPCRC for the purposes set forth herein.

9. Access to Facilities. This Agreement gives Contractor the exclusive right and obligation to offer alcohol services at WPCRC for use by private event customers of the WPCRC. In no case shall this limited grant of rights be interpreted to preclude the City's or the public's access to the WPCRC. City may at all times enter in or on any portion of the WPCRC for the purpose of inspection, maintenance, and repair.

10. Indemnification. Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from Contractor and/or

Contractor Subcontractor's acts or omissions in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.

11. Hazardous Substances; Indemnification. Contractor represents and warrants that its use of the WPCRC will not generate any hazardous substance, and it will not store or dispose on the WPCRC nor transport to or over the WPCRC any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. Contractor further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.

12. Insurance.

A. Required Insurance. Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. Contractor shall not commence work under this Agreement, nor shall Contractor allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager:

(1) Commercial General Liability. Contractor shall procure and maintain, during the life of this Agreement, Commercial General Liability insurance including, but not limited to bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than $1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Contractor coverage shall be primary and noncontributory and list the City of Madison, its officers, officials, agents and employees as additional insureds. Contractor shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary and noncontributory basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

(2) Liquor Liability Insurance. Contractor shall procure and maintain, during the life of this Agreement, Liquor Liability insurance in the amount of coverage of at least $1,000,000 per occurrence listing the City of Madison,

its officers, officials, agents and employees as additional insureds. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

(3) Automobile Liability. During the life of this Agreement, Contractor shall procure and maintain Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than $1,000,000 combined single limit per accident. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.

(4) Worker's Compensation. During the life of this Agreement, Contractor shall procure and maintain statutory Worker's Compensation insurance as required by the State of Wisconsin. Contractor shall also carry Employers Liability limits of at least $100,000 Each Accident, $100,000 Disease - Each Employee, and $500,000 Disease - Policy Limit. Contractor shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance.

(5) Umbrella Liability. During the life of this Agreement, Contractor shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Liquor Liability, Automobile Liability and Employers Liability with minimum limits of $2,000,000 per occurrence and aggregate.

B. Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A~ (A minus) and a Financial Category rating of no less than VII.

C. Proof of Insurance, Approval. Contractor shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. Contractor shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. Contractor shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

D. Notice of Change in Policy. Contractor and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.

E. Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Agreement, Contractor shall immediately cease use of the Facilities and the provision of the services under this Agreement until such time

as proof of the required insurance is provided to the City Risk Manager consistent with the requirements of this Section.

F. Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City of Madison
Attention: Risk Manager, Room 406
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

13. Non-Discrimination. In the performance of work under this Agreement, Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

14. Nondiscrimination Based on Disability. Contractor shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Programs and Activities." Under section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance. Under Section 39.05(3)(b)4, "City financial assistance" includes any arrangement by which the City provides or otherwise makes available assistance in the form of the lease of, and the permission to use, City property.

15. Affirmative Action.

A. The following language applies to all contractors employing fifteen (15) or more employees (MGO 39.02(9)(c).):

The Contractor agrees that, within thirty (30) days after the effective date of this contract, Contractor will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the contract is still in effect, or if the City enters into a new agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. The Contractor agrees to interview and consider candidates referred by the Department if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from this Subsection at the time the Request for Exemption in Subsection B. is made.

B. Articles of Agreement, Request for Exemption, and Release of Payment.

These "ARTICLES OF AGREEMENT" apply to all contractors, unless determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN $25,000 Aggregate Annual Business with the City*	$25,000 OR MORE Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

* As determined by the City Comptroller
** As determined by the Department of Civil Rights

REQUEST FOR EXEMPTION: (MGO 39.02(9)(a)2.) Contractors who believe they are Exempt from the Articles of Agreement according to the table above, shall submit a Request for Exemption on a form provided by the Department of Civil Rights ("Department"), within thirty (30) days of the effective date of this Contract. The Department makes the final determination as to whether a contractor is exempt from the Articles of Agreement. In the event the Contractor is not exempt, the Articles of Agreement shall apply. CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO THE ARTICLES OF AGREEMENT UPON REACHING $25,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.

RELEASE OF PAYMENT: (MGO 39.02(9)(e)1.b.) Within thirty (30) days from the effective date of this contract, and prior to release of payment by the city, all non-exempt contractors are required to have on file with the Department, an Affirmative Action plan meeting the requirements of Article IV below.

Additionally, contractors that are exempt from the Articles of Agreement under the Table shown above must have a Request for Exemption form on-file with the Department, prior to release of payment by the City.

ARTICLES OF AGREEMENT

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

ARTICLE II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The Contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true (check one):

☐ A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No, 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a

model affirmative action plan approved by the Madison Common Council _____.

☐ B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council _____.

☐ C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

☐ D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract is in effect is less than fifty thousand dollars ($50,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

ARTICLE V

(This Article applies only to public works contracts.)

ARTICLE VI

The Contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

A. Cancel, terminate or suspend this contract in whole or in part.

B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.

C. Recover on behalf of the City from the prime Contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars ($5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

16. Notices. All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent by mail, or hand delivered to the addresses of the parties listed below:

For the City:	Superintendent of Parks City Parks Division P.O. Box 2987 210 Martin Luther King, Jr. Blvd. #104 Madison, WI 53703
	Facility Manager, Warner Park Community Recreation Center 1625 Northport Drive Madison, WI 53704
For Contractor	Gilbert Altschul Gib's Bar 1380 Williamson Street Madison, WI 53703

Either party shall give five (5) days written notice to the other party regarding any changes.

17. Default/Termination.

A. In the event Contractor shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of the City, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Contractor, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Contractor, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Contractor under this Agreement.

B. Termination for Cause. In addition to the rights set forth in Subsection A., City may declare this Agreement terminated in its entirety upon the happening of any one or more of the following events:

(1) If the fees, charges, or other money payments which Contractor agrees to pay, or any part thereof, are unpaid after the date specified for such payments.

(2) If Contractor has failed in the performance of any covenant, term or condition of this agreement including the failure to make the required payments under Section 6, and if said failure is not remedied within 10 days after notice of such failure is given to Contractor.

(3) Upon the happening of any act or omission which results in the suspension or revocation of any act, power, license, permit or authority that terminates the conduct and operation of any part of the alcoholic beverage service at WPCRC by Contractor, or suspends it for any time in excess of thirty (30) days.

(4) If the interest or estate of Contractor under the Agreement is transferred to, passes to or evolves to, by operation of law or otherwise, any other person, firm or corporation in a merger or a constituent corporation in a consolidation.

(5) If Contractor shall (a) make an assignment of its property for the benefit of creditors, or (b) Contractor shall petition a court to be adjudged bankrupt, or (c) if a petition in bankruptcy shall be filled in any court against Contractor for more than thirty (30) days, or (d) if Contractor be judicially determined to be insolvent, or (e) Contractor shall be adjudged bankrupt, or (f) if a receiver or other officer shall be appointed to take charge of the whole or any part of Contractor property or to wind up or liquidate its affairs, or (g) if Contractor shall seek a reorganization under any of the terms of the National Bankruptcy Act, as amended, or under any other insolvency law, or (h) Contractor shall admit in writing its inability to pay its debts as they become due, or (i) if any final judgment shall be rendered

against Contractor and remain unsatisfied for a period of thirty (30) days from the date on which it becomes final; or (j) if Contractor shall abandon the WPCRC.

(6) If Contractor shall voluntarily abandon, desert, vacate or discontinue all or part of its operation of the alcoholic beverage services at WPCRC, or any other action that results in a failure by Contractor to provide the public and others with the service contemplated.

C. In addition to the rights set forth in Subsections A. and B., either Party to this Agreement may in its sole discretion and without any reason terminate this Agreement at any time by furnishing the other Party with thirty (30) days written notice of termination.

18. Assignability and Subcontracting. Contractor shall not assign or subcontract any interest or obligation under this Agreement without the City's prior written approval. All of the services required hereunder shall be performed by Contractor and employees of Contractor.

19. Change in Corporate Control. Contractor agrees to notify City of any change of corporate control of its business entity not less than ten (10) days in advance of the effective date of such change. Any change of control may be grounds for termination of this Agreement at the sole option of City.

20. Amendments. This Agreement shall be binding on the parties hereto, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any change in any provision of this Agreement may only be made by a written amendment, signed by the duly authorized agent or agents of Contractor and the Parks Superintendent, or his/her designee.

21. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

22. Third Party Rights. This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

23. Goodwill. Any and all goodwill arising out of this Agreement inures solely to the benefit of City. Contractor waives all claims to benefit of such goodwill.

24. Compliance. In the performance of services under this Agreement, Contractor shall comply with all applicable laws and regulations of the City of Madison, County of Dane, State of Wisconsin, U.S. Government, and any other governmental authority having jurisdiction over the Facilities.

25. Law Applied. The parties agree that this Agreement shall be governed by, construed and enforced according to the laws of the State of Wisconsin and Wisconsin courts.

26. Joint Preparation. Each Party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

27. Authority. Contractor represents that it has the authority to enter into this Agreement and the person signing on behalf Contractor represents and warrants that he or she has been duly authorized to bind Contractor and sign this Agreement on Contractor behalf.

28. Severability. It is mutually agreed that in case any provision of this contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this contract remain in full force and effect.

29. Entire Agreement. All terms and conditions of this Agreement are expressly contained herein, and the parties agree that neither the City nor the Contractor has made any representations or promises with respect to this Agreement not expressly contained herein.

30. Counterparts; Electronic Delivery. This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

16 Bars, LLC, d/b/a Gib's Bar

_____ _____

Gilbert Altschul, _____ Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor	Date
Maribeth Witzel-Behl, City Clerk	Date

Countersigned:

David P. Schmiedicke, Finance Director	Date
Eric Veum, Risk Manager	Date

Approved as to form:

Michael R. Haas, City Attorney	Date

Execution of this Agreement by City was approved by Resolution Enactment No. RES-___-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 20___.