

FOOD AND BEVERAGE AGREEMENT

This Food and Beverage Agreement (this "**Agreement**") is made as of the __ day of December, 2017, by and between Ovations Food Services, L.P., a limited partnership organized under the laws of the Commonwealth of Pennsylvania d/b/a Spectra Food Services & Hospitality ("**Spectra**"), and the City of Sioux City, Iowa ("**City**").

RECITALS

WHEREAS, City owns a multi-purpose indoor arena currently known as the Gateway Arena located at the Tyson Event Center in Sioux City, Iowa as well as the public, military use airport currently known as the Sioux Gateway Airport or Colonel Bud Day Field and the IBP Ice Center, all located in Sioux City, Iowa (collectively the "Facilities"); and

WHEREAS, Spectra is in the business of managing and operating food, beverage, novelty and merchandise concessions services and catering services at indoor and outdoor single and multi-purpose facilities; and

WHEREAS, City desires to grant to Spectra the exclusive right and privilege to manage and operate the food, beverage, and catering services at the Facilities, and solely with respect to the Sioux Gateway Airport, the novelty and merchandise concession services and solely with respect to the IBP Ice Center, the concession services; and

WHEREAS, Spectra desires to accept the right and privilege to exclusively manage and operate such concessions and catering services at the Facilities, subject to the terms and conditions contained herein.

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS

Capitalized terms used in this Agreement and not defined elsewhere in this Agreement shall have the following meanings:

"Buyout Amount" shall have the meaning given to such term in Section 8.1(c) hereof.

"Catering Sales" shall mean any sales of food and/or beverages (including both alcoholic and non-alcoholic beverages) to multiple customers, where payment for the entire function rests with one (or a limited number of) individuals or companies, typically where payment for such items has been arranged for in advance of such function, such as sales in the suites, banquet rooms, picnic areas or

conference rooms in the Facilities; provided that Catering Sales shall not include Sub-Contractor Sales, or Off-Premise Catering Sales.

“Concession Alcohol Sales” shall mean the sale of all alcoholic beverages, including distilled spirits, beers, malt beverages and wines, at or from the Facilities, other than Catering Sales (such as, by way of example only, sales from permanent or portable concession stands or roving vendors to individual customers (including, without limitation, by means of “hawking” at the Gateway Arena)); provided that Concession Alcohol Sales shall not include Sub-Contractor Sales.

“Concession Food Sales” shall mean all sales of food and non-alcoholic beverages at or from the Facilities not including Catering Sales or Off-Premise Catering Sales (such as, by way of example only, sales from permanent or portable concession stands or roving vendors to individual customers (including, without limitation, by means of “hawking”)); provided that Concession Food Sales shall not include Sub-Contractor Sales.

“Effective Date” shall be January 1, 2018.

“Food and Beverage Areas” shall have the meaning given to such term in Section 2.1(b) hereof.

“Food and Beverage Services” shall mean the business of managing and providing (or causing to be provided) food, food products, non-alcoholic and alcoholic beverages, (and solely with respect to the Gateway Sioux Airport, candy, novelties, souvenirs and merchandise) in the concession areas, seating bowl, picnic areas, luxury boxes, restaurants, lounges, banquet rooms, catering areas, and all other areas of the Facilities.

“General Manager” shall have the meaning given to such term in Section 5.1(b) hereof.

“Gross Receipts” shall mean the total of all amounts received by Spectra from the operation of the Food and Beverage Services, whether such amounts are evidenced by cash, check, credit, charge account, exchange or otherwise, less (i) retail sales taxes and other direct taxes imposed upon receipts collected from the consumer, (ii) fees and charges on credit card transactions, (iii) the management charge (also known as the “service charge”) in connection with catering performed at the Facilities, and (iv) tips and gratuities paid out to employees; provided, however, that for purposes of calculating the commissions to be paid by Spectra to City under Section 3.1 below, Gross Receipts shall *not* include (i) receipts from sales that Spectra does at cost, or (ii) amounts received from any Sub-Contractor Sales.

“Investment” shall have the meaning given to such term in Section 8.1(a) hereof.

“Losses” shall have the meaning given to such term in Section 11.1 hereof.

“Major Repair” shall mean the repair of any piece of equipment, structure or other item that costs, in the aggregate, in excess of one thousand five hundred dollars (\$1,500).

“Merchandise Sales” shall mean the net proceeds received by Spectra in connection with the sale of all non-edible souvenirs, novelties, articles of clothing and publications sold at the Sioux Gateway Airport, after deducting the cost to Spectra of acquiring such merchandise for sale.

“Minimum Events” shall have the meaning given to such term in Section 3.1(b).

“Monthly Accounting Period” shall mean each 4 or 5 week period during the Term ending on the last Wednesday of each month, except for the month of December, which shall end on December 31.

“Net Sub-Contractor Sales” shall mean the net proceeds paid to and received by Spectra from its sub-contractors in connection with Sub-Contractor Sales.

“Off-Premise Catering Sales” shall mean the any sales from the Facilities for the provision by Spectra of catering services at locations or events that take place away from the Facilities.

“Operating Account” shall have the meaning given to such term in Section 10.1 hereof.

“Operating Year” shall have the meaning given to such term in Section 4.1 hereof.

“Sub-Contractor Sales” shall mean any sales at or from the Facilities from any third party sub-contractor of Spectra.

“Term” shall have the meaning given to such term in Section 4.1 hereof.

ARTICLE 2 GRANT OF RIGHTS; SCOPE OF SERVICES

Section 2.1 Concession License.

(a) City hereby grants to Spectra the exclusive right and privilege to provide Food and Beverage Services at the Facilities. Spectra covenants and agrees to exercise the full Food and Beverage Service rights granted hereunder at all events in the Facilities in such manner and with such number of personnel as are necessary to provide adequate supplies and service of the food, beverage and other products described herein to patrons of the Facilities. City agrees that it will not, without the prior written consent of Spectra, grant to any party other than Spectra or a sub-contractor mutually agreed by City and Spectra, the right to perform any Food and Beverage Services at or upon the Facilities.

(b) In connection with the foregoing grant of exclusive rights, City hereby licenses to Spectra the concession stands, souvenir and gift shops, novelty stands, customer serving locations, food preparation areas, vendor commissaries, kitchen and warehouse facilities, and other areas

related to the foregoing and/or reasonably required by Spectra to perform the Food and Beverage Service at the Facilities (“Food and Beverage Areas”), together with the improvements, equipment, and personal property upon or within such areas, along with the non-exclusive right to use the concourses, spectator seating areas, parking areas, common areas, loading areas, walkways, and other public areas of the Facilities, solely for the purpose of providing Food and Beverage Services. Spectra agrees to operate the Food and Beverage Areas with respect to all events at the Facilities, during hours as may be reasonably requested by City to adequately meet public demand.

**ARTICLE 3
COMPENSATION**

Section 3.1 Concession Commission.

(a) As consideration for the rights granted to Spectra hereunder, Spectra shall pay City a percentage of Gross Receipts, in accordance with the following schedule:

| | <u>Category</u> | <u>Gross Receipts Per Year</u> | <u>Commission on Gross Receipts</u> |
|-------|----------------------------|--------------------------------|-------------------------------------|
| (i) | Concession Food Sales | \$0 to \$750,000 | 40% |
| | | In excess of \$750,000 | 45.5% |
| (ii) | Concession Alcohol Sales | \$0 to \$500,000 | 30% |
| | | In excess of \$500,000 | 35% |
| (iii) | Catering Sales | \$0 to \$150,000 | 30% |
| | | In excess of \$150,000 | 35% |
| (iv) | Off-Premise Catering Sales | All | 10% |

The foregoing commissions shall be calculated on an incremental, step-scale basis, as opposed to being retroactive back to dollar 1.

Spectra shall reserve an amount equal to One percent (1%) of Gross Revenues during each Operating Year to be used for marketing activities related to the Food and Beverage Services in a manner that is mutually determined by Spectra and the City in good faith.

Additionally, Spectra shall pay City Fifty percent (50%) of Net Sub-Contractor Sales and Merchandise Sales. For the sake of clarity, the parties acknowledge that Spectra shall not be obligated to pay City any other payments with respect to Sub-Contractor Sales or Merchandise Sales.

(b) The parties acknowledge that the commission schedule described in Section 3.1(a) is based on the parties' mutual expectation that the arena football team and minor league hockey team (or replacements thereof) will play all of their home games at the Gateway Arena, and therefore, in the event that either team ceases to do business as an ongoing concern, or otherwise no longer utilizes the Gateway Arena for its home games (and provided that no reasonable replacement is timely found) then Spectra shall have the right to renegotiate the foregoing commission schedule so that the economic benefits anticipated to be realized by Spectra as of the date of execution of this Agreement are preserved. If the parties are unable to come to agreement on changes to the commission schedule within thirty (30) days of Spectra's request to renegotiate such terms, Spectra may terminate this Agreement upon thirty (30) days written notice.

(c) Spectra shall pay the commissions to City on a monthly basis, together with the statements described in Section 10.3 below. Such payments and statements shall be delivered to City with respect to each Monthly Accounting Period by the twentieth (20th) day following the end of such Monthly Accounting Period. The balance of all Gross Receipts shall be retained by Spectra.

(d) In the event of a significant increase in costs incurred by Spectra to perform its services hereunder, which costs are outside the reasonable control of Spectra, Spectra may notify City that it desires to renegotiate the financial terms of this Agreement so that Spectra is not negatively impacted by such cost increase. In such case, Spectra and City shall in good faith renegotiate such terms for a period of at least 60 days. If the parties are unable to come to agreement on such terms, Spectra shall have the right to terminate this Agreement upon 90 days prior written notice to City. Notwithstanding the foregoing, the risk of an increase in the cost of procuring food and beverage products from vendors/suppliers shall be borne by Spectra and shall not trigger Spectra's right to renegotiate under the terms of this paragraph.

ARTICLE 4 TERM; TERMINATION

Section 4.1 Term. The initial term ("Initial Term") of this Agreement shall begin on the Effective Date, and, unless sooner terminated pursuant to the provisions of Section 4.2 below, ending on June 30, 2023; provided, however, City shall have the right to extend the Initial Term for an additional Five (5) year period by providing written notice to Spectra no later than one hundred twenty (120) days in advance of the end of the Initial Term (the Initial Term plus any such renewal period shall be referred to herein as the "Term"). Each twelve (12) month period during the Term commencing on the Effective Date and continuing on the anniversary of such date shall be referred to herein as an "Operating Year".

Section 4.2 Termination. This Agreement may be terminated (i) by either Spectra or City upon thirty (30) days written notice to the other, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions hereof, and such failure is not cured during such thirty (30) day period, (ii) by either Spectra or City by written notice to the other upon the other being judged bankrupt or insolvent, or if any receiver or trustee of all or any part of the

business property of the other shall be appointed and shall not be discharged within one hundred twenty (120) days after appointment, or if either such party shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition in bankruptcy or insolvency, or shall apply for bankruptcy under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State or otherwise, or if such petition shall be filed against either party and shall not be dismissed within one hundred twenty (120) days after such filing, or (iii) as otherwise specifically provided for herein.

Section 4.3 Appropriation of Funds. This Agreement may be terminated by the City if at the end of any City fiscal term, the City Council fails to appropriate sufficient funds for the next fiscal year for the operation of the Facilities, or if the funds are not provided for just a portion of the Facilities, to terminate the portion of the Agreement relative to that part of the Facilities.

ARTICLE 5 PERSONNEL

Section 5.1 Generally.

(a) Spectra shall employ, train and supervise personnel with appropriate qualifications and experience, in sufficient number to provide all the services appropriate for the duties of such party to be performed under this Agreement. All such personnel shall be employees, agents or independent contractors of Spectra (or a subsidiary or affiliate thereof), as applicable, and not of City. Spectra shall select the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment relating to such employees. Spectra agrees to use reasonable and prudent judgment in the selection and supervision of such personnel, and shall strive to employ persons who are courteous and efficient, and who will not use improper language or act in a loud or boisterous manner while performing duties at the Facilities. Spectra agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, sexual orientation, or age. Except as specifically set forth in Section 5.1(b) below, City shall have no right to supervise or direct the hiring or firing of any such personnel.

(b) Spectra shall employ as part of its personnel at the Facilities an individual with managerial experience to serve as a full-time general manager of Food and Beverage Services (“General Manager”). Hiring of the General Manager by Spectra shall require the prior approval of City, which approval shall not be unreasonably withheld or delayed. The General Manager will have general supervisory responsibility for Spectra at the Facilities and will be responsible for day-to-day operations of the Food and Beverage Services, supervision of Spectra employees, and management and coordination of all activities associated with the Food and Beverage Services.

(c) Spectra shall ensure that its non-management employees performing the duties of Spectra at the Facilities shall be neatly attired in clean, commercially-attractive uniforms which shall be subject to the approval of City. Spectra shall train all such employees so that they are aware of the high standards for cleanliness, courtesy and service required by Spectra.

(d) All personnel engaged by Spectra to work at the Facilities shall be admitted to the Facilities without payment of any admission fee, at an entrance to be designated by City. All such personnel shall have the right to park at the Facilities without charge in areas designated by City.

Section 5.2 Non-Solicitation.

(a) During the Term and for a period of one (1) year after the end of the Term, City and its affiliates shall not, without the prior written consent of Spectra, solicit for employment by City, or encourage to cease rendering services to Spectra, any management-level employee of Spectra with whom City has had dealings by virtue of the engagement of Spectra hereunder. In the event of a breach of this provision, Spectra will be entitled (in addition to any other rights and remedies which Spectra may have at law or in equity, including money damages) to equitable relief, including an injunction to enjoin and restrain City from continuing such breach.

(b) During the Term and for a period of one (1) year after the end of the Term, Spectra shall not, without the prior written consent of City, solicit for employment by Spectra, or encourage to cease rendering services to City, any management-level employee of City with whom Spectra has had dealings by virtue of the engagement of Spectra hereunder. In the event of a breach of this provision, City will be entitled (in addition to any other rights and remedies which City may have at law or in equity, including money damages) to equitable relief, including an injunction to enjoin and restrain Spectra from continuing such breach.

ARTICLE 6
INVENTORY; EQUIPMENT; SPONSORSHIPS; UTILITIES

Section 6.1 Inventory. At the beginning of the Term, Spectra shall purchase from the City any remaining and sellable food and beverage, and consumable goods (e.g., cups, napkins, etc.), inventory on hand at the Facilities, for the price paid by the City for such inventory, as evidenced by written invoices or receipts. Notwithstanding the foregoing, Spectra shall not be obligated to purchase any such inventory that is branded with a non-Spectra name or logo, or to the extent purchase thereof would be in violation of applicable law. During the Term, Spectra shall order, stock, prepare, pay for and sell quality food, beverage and other concession and catering products. Consumables shall be first quality, wholesome and pure, and all food and beverage merchandise on hand shall be stored and handled with due regard for sanitation. Spectra shall have sufficient amounts of product prepared and an inventory on the premises so as not to run out of product during an event at the Facilities. During all events at the Facilities, Spectra shall post signs and provide

menus displaying the prices of items offered for sale. Such signs and menus shall be subject to the reasonable approval of City. At the end of the Term, City shall purchase (or shall require the successor food and beverage company at the Facilities to purchase) from Spectra any remaining food and beverage, and consumable goods (e.g., cups, napkins, etc.), inventory on hand at the Facilities, for the price paid by Spectra for such inventory, as evidence by written invoices or receipts. Notwithstanding the foregoing, City shall not be obligated to purchase (or to have the successor food and beverage manager purchase) any such inventory that is branded with the Spectra name or logo, or to the extent purchase thereof would be in violation of applicable law.

Section 6.2 Brands/Prices. The brands and price of all products sold by Spectra shall be determined by Spectra, subject to the reasonable approval of City. Provided price, quality, market acceptability, service and other terms are generally competitive, Spectra agrees to give preference to and feature at the Facilities suppliers of products designated by City who purchase advertising from City (or, if applicable, an agent or licensee of City) so long as the giving of such preference does not violate applicable laws, rules or regulations and the features of such product and terms of such transaction are reasonable (as determined by Spectra in its sole discretion).

Section 6.3 Inventory Buyback. Upon expiration or termination of this Agreement, City shall purchase from Spectra, or shall require any successor concessionaire to purchase from Spectra, any non-perishable usable product inventory (including all logoed inventory) on-site or otherwise ordered for the Facilities and not consumed by Spectra during the Term. The purchase price for such unused non-perishable inventory shall be the actual amount paid by Spectra for acquiring such inventory.

Section 6.4 Equipment. Spectra shall have the right to use during the Term, all equipment owned or controlled by City existing within the Food and Beverage Areas as of the date hereof and/or subsequently added by City or Spectra to such areas during the Term. City represents that all such equipment is in good working order, and Spectra agrees to exercise reasonable care when using such equipment, so as to avoid any damage to such equipment.

Section 6.5 Utilities. City shall provide to Spectra all utilities necessary for Spectra's operation of the Food and Beverage Services (e.g., electricity, gas and water) at no cost to Spectra, except for telephone charges, for which Spectra shall be responsible.

ARTICLE 7 MAINTENANCE

Section 7.1 Maintenance; Sanitation.

(a) Spectra shall perform minor, routine servicing on all fixtures, equipment, furniture and other property installed, furnished or supplied by or for the benefit of Spectra so that such items are kept in good order and repair. Spectra shall further make all necessary repairs thereto,

provided that any Major Repair or replacements of furniture, fixtures or equipment shall be paid for by City, upon agreement of the Parties. Spectra shall use reasonable commercial efforts to project anticipated Major Repairs and shall use reasonable commercial efforts to notify the City of those anticipated major repairs during the City's budget process.

(b) Spectra will maintain the Food and Beverage Areas in a clean and neat condition by cleaning, on a day-to-day basis, the interiors of the Food and Beverage Areas and bars, concession stands and vending stations under its control at the Facilities (and within a (5) feet perimeter of such stands and stations). Spectra shall further clean, as needed, the walls, windows, ceilings, light fixtures and equipment located within the Food and Beverage Areas. Spectra shall deposit in receptacles provided by City all waste, garbage and refuse which shall accumulate in the Food and Beverage Areas. Spectra shall also provide extermination services as may be necessary for the Food and Beverage Areas.

(c) Spectra shall comply with and observe all federal, state and local laws, ordinances and regulations as to sanitation and the purity of food and beverages or otherwise relating to its operations under this Agreement.

ARTICLE 8 INVESTMENT BY SPECTRA

Section 8.1 Investment by Spectra.

(a) Spectra agrees to invest Three Hundred Thousand Dollars (\$300,000.00) at the Facilities over the course of the Term for design services, leasehold improvements and/or capital equipment dedicated to the food and beverage Food and Beverage Services to be performed by Spectra hereunder (which shall include, when Spectra purchases equipment, a cost equal to 7% of the equipment purchased as an administrative fee for purchasing such equipment, on-site project management and Spectra out-of-pocket expenses in connection therewith, but which shall not include such cost where Spectra provides money to the City for its purchase of such equipment).). The actual amount invested by Spectra hereunder is referred to herein as the "Investment". In the event additional amounts are required to complete the food and beverage facilities, or to provide equipment and/or smallwares so as to enable Spectra to perform the Food and Beverage Services to a reasonable standard, City shall be solely responsible for such amounts. City and Spectra shall mutually agree upon the specific equipment and improvements to be purchased or made with the Investment, as well as the location for such improvements or installation of such equipment.

(b) Once identified, the specific equipment and other related tangible personal property to be purchased with the Investment shall be set forth in a writing to be signed by the parties and updated by the parties from time to time as necessary to reflect any replacements or substitutions thereof. All equipment, improvements and other items purchased with the Investment, including any replacements or substitutions thereof, shall be owned by Spectra until fully amortized, or until payment of the Buyout Amount (as described below), and City agrees to execute such documents as

Spectra shall reasonably request evidencing Spectra's ownership interest in such improvements and equipment, including financing statements. For the sake of clarity, nothing in this paragraph shall be construed as requiring Spectra to replace any equipment or other personal property at its own cost.

(c) The Investment shall be amortized on a straight line basis over a Five (5) year period (at the rate of 1/60 per month), commencing when funds for the Investment are first spent. Upon the natural expiration of early termination (for any reason whatsoever, including without limitation if due to a breach, default or bankruptcy event by or affecting Spectra) of this Agreement, City shall immediately pay to Spectra the unamortized amount of the Investment ("the Buyout Amount"). In the event that City fails to repay Spectra the Buyout Amount upon termination or expiration of this Agreement in accordance with the terms hereof, the Buyout Amount shall accrue interest at the rate of one and a half percent (1.5%) per month, or the highest rate permitted by law, whichever is less, City covenants and agrees not to permit any liens or encumbrances to attach to the leasehold improvements and equipment purchased with the Investment, and hereby waives any right to attach any claim, lien, or attachment to such improvements or equipment. Once the Investment is fully amortized or the Buyout Amount is paid to Spectra, title to the equipment and improvements will become vested in City, and Spectra agrees to execute all necessary documents to evidence same. The rights of Spectra set forth in this Section 8.1(c) shall be in addition to any other rights of Spectra in law or in equity.

ARTICLE 9 LICENSES; ALCOHOLIC BEVERAGES; TAXES

Section 9.1 Permits and Licenses. Spectra shall use reasonable commercial efforts to secure and maintain throughout the Term all licenses and permits necessary for the operation of the Food and Beverage Services, including those required for the sale of alcoholic beverages at the Facilities. City shall cooperate with Spectra in connection with filing applications for, and securing and maintaining in good standing, any and all licenses and permits and renewals thereof needed by Spectra to fulfill its obligations hereunder. In the event that Spectra is unable to secure or maintain the necessary licenses or permits to sell alcoholic beverages at the Facilities for any reason, or if Spectra is prevented or limited from selling alcoholic beverages at the Facilities for any reason, at Spectra's request the parties shall renegotiate in good faith the economic terms of this Agreement so that the economic benefits provided to Spectra hereunder are maintained. If, despite such good faith negotiations, the parties are unable to come to agreement on the revised economic terms of this Agreement, Spectra may terminate this Agreement, without liability to Spectra, upon thirty (30) days written notice to City.

Section 9.2 Alcoholic Beverages. In connection with the sale of alcoholic beverages hereunder by Spectra, Spectra agrees to strictly comply with the laws of the State of Iowa regarding the sale of such beverages to minors. Spectra agrees to adopt an identification policy to verify the age of potential purchasers of alcoholic beverages. Spectra further agrees that it will endeavor not to

sell alcoholic beverages to customers who are visibly intoxicated. Spectra will institute and conduct training programs for Spectra employees at the Facilities on the proper standards to use to avoid selling alcoholic beverages to customers who are or who appear to be intoxicated.

Section 9.3 Taxes. Spectra shall collect and pay all taxes imposed upon the sale of concession items hereunder, as required by Federal, State or local law. Spectra shall be responsible for and pay all social security, unemployment insurance, old age retirement and other federal and state taxes that are measured by the wages, salaries, or other remuneration paid to persons employed by Spectra. City shall be responsible for and hold Spectra harmless from any and all possessory interest or leasehold taxes which may be levied or are in effect during the Term.

ARTICLE 10 OPERATING ACCOUNT; REPORTING

Section 10.1 Establishment of Operating Account. Spectra shall establish and maintain, in its name, a separate commercial bank account for the Facilities (“Operating Account”) and shall deposit all Gross Receipts in such account.

Section 10.2 Books and Records. Spectra agrees to maintain separate and independent books and records, in accordance with generally accepted accounting principles, relating to its operations in connection with its management of the Food and Beverage Services, as applicable. Such books and records shall contain documentation regarding the deposit of all Gross Receipts in the Operating Account and inventories and receipt of merchandise at the Facilities, including daily receipts from all sales and other transactions on or from the Facilities by Spectra. City or its designee shall have the right to inspect such books and records from time to time upon reasonable notice during the ordinary business hours of Spectra.

Section 10.3 Financial Reports. Spectra shall provide to City, within twenty (20) days following the end of each Monthly Accounting Period, financial reports regarding its provision of Food and Beverage Services during such Monthly Accounting Period, including a statement showing Gross Receipts for the applicable period, as set forth in Section 3.1 above. Additionally, Spectra shall provide to City, by noon the day following each event at the Facilities, a daily Gross Receipts report in a form to be mutually agreed upon.

Section 10.4 Audit. Not more than once each Operating Year, City shall have the right, at its sole cost, to engage an independent third party to audit the books and records of Spectra for the preceding twelve (12) month period, for the purpose of confirming that the amounts remitted by Spectra to City hereunder are the proper amounts due City. In the event such audit reveals any underpayment to City, Spectra shall promptly pay to City the amount of such deficiency. If such

audit reveals any overpayment to City, City shall promptly pay to Spectra the amount of such overpayment.

ARTICLE 11 INDEMNIFICATION

Section 11.1 Indemnification by Spectra. Spectra agrees to defend, indemnify and hold harmless City, its elected officials, officers, employees and agents of the foregoing, against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "**Losses**") suffered by such parties, arising out of or in connection with any (a) negligent act or omission, or intentional misconduct, on the part of Spectra or any of its employees or agents in the performance of its obligations under this Agreement, or (b) breach by Spectra of any of its representations, covenants or agreements made herein.

Section 11.2 Indemnification by City. City agrees to defend, indemnify and hold harmless Spectra, its parents, subsidiaries and affiliates, and their respective successors and assigns, and all agents, employees, directors, officers and partners of the foregoing, against any Losses suffered by such parties, arising out of or in connection with (a) any negligent act or omission, or intentional misconduct, on the part of City or any of its employees or agents in the performance of its obligations under this Agreement, (b) a breach by City of any of its representations, covenants or agreements made herein, or (c) any construction, maintenance, operations or activities of or at the Facilities, unless to the extent such Losses are caused by the negligence or intentional misconduct of Spectra or its employees or agents.

Section 11.3 Conditions to Indemnification. Each party seeking indemnification shall give prompt written notice to the other party of each claim giving rise to an indemnification obligation under this Agreement (and in any event not more than 30 days after any third party litigation is commenced asserting the claim giving rise to an indemnification obligation hereunder), specifying the amount and nature of any such claim. The party seeking indemnification shall not settle or compromise any claim by a third party for which it is entitled to indemnification hereunder without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld. The party seeking indemnification shall cooperate in the indemnifying party's defense of such claim at the sole cost of the indemnifying party.

Section 11.4 Survival. The obligations of the parties contained in this Article 11 shall survive the termination or expiration of this Agreement and continue on indefinitely.

ARTICLE 12 INSURANCE

Section 12.1 Types and Amount of Coverage. Spectra agrees to secure and maintain throughout the Term insurance coverage in the manner and amounts as set forth in Schedule I,

attached hereto, and shall provide to City promptly following the Effective Date a certificate or certificates of insurance evidencing such coverage.

Section 12.2 Rating; Additional Insureds. All insurance policies shall be issued by companies rated no less than A VIII in the most recent "Bests" insurance guide, and licensed in the State of Iowa or as otherwise agreed by the parties, and shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved. The commercial general liability policy to be obtained by Spectra hereunder shall name City as an additional insured.

ARTICLE 13 MISCELLANEOUS

Section 13.1 Authorization.

(a) Spectra represents and warrants that it has the full right and legal authority to enter into this Agreement and to grant the rights and perform the obligations of Spectra herein, and that, except as otherwise set forth herein, no third party consent or approval is required to grant such rights or perform such obligations hereunder.

(b) City represents and warrants that it is the City of the Facilities, and that it has the full right and legal authority to enter into this Agreement and to grant the rights and perform the obligations of City herein, and that no other third party consent or approval is required to grant such rights or perform such obligations hereunder.

Section 13.2 Force Majeure. In the event that a party is prevented or delayed in the performance of any of its obligations under this Agreement (not including any payment obligation hereunder) due to circumstances beyond its control, including but not limited to, (a) fire, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion occurring at the Facilities, or (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation, or (c) labor dispute which results in a strike or work stoppage affecting the Facilities or services described in this Agreement (each, a "*force majeure*" event) , then, subject to Section 4.1 above, performance hereunder by the affected party shall be excused for the period of delay.

Section 13.3 Assignment. Neither party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; however, Spectra or City may, without the prior written consent of the other, assign this Agreement and/or its rights and obligations hereunder (i) to any person or entity who succeeds (whether by merger, consolidation or sale of assets or equity or the like) to all or substantially all of the business and properties of such party, or (ii) in connection with a corporate restructuring, to any person who is an City, parent, subsidiary or affiliate of such party, and who carries on the business of such party in

substantially the same manner. Any assignee of Spectra or City pursuant to the preceding sentence must agree in writing to assume the assignor's obligations hereunder, in whole or in part (as applicable), in order for such assignment to become effective. This Agreement shall be binding on the parties' successors and permitted assigns.

Section 13.4 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

If to City:

City of Sioux City
405 6th Street
P.O. Box 447
Sioux City, IA 51102
Attn: City Clerk

If to Spectra:

Spectra Food Services & Hospitality.
3601 S. Broad Street
Philadelphia, PA 19148
Attn: President

With a copy to:

City of Sioux City
405 6th Street
P.O. Box 447
Sioux City, IA 51102
Attn: Legal Department

With a copy to:

Comcast Spectacor, L.P.
3601 S. Broad Street
Philadelphia, PA 19148
Attn: General Counsel

The designation of the individuals to be so notified and the addresses of such parties set forth above may be changed from time to time by written notice to the other party in the manner set forth above.

Section 13.5 Severability. If a court of competent jurisdiction or an arbitrator determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 13.6 Prior Agreements. This Agreement (including the schedule(s) attached hereto) constitutes the entire agreement of the parties with respect to the subject matter hereof, and

supersedes all prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written.

Section 13.7 Governing Law and Venue. The Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Iowa, without regard to its conflict of laws principles. The exclusive venue for any disputes arising from the Agreement shall be in the District Court of Woodbury County, Iowa in Sioux City, Iowa.

Section 13.8 Amendments. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

Section 13.9 Waiver; Remedies. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 13.10 Relationship of Parties. Spectra is engaged by City hereunder as an independent contractor to perform the services described herein, and nothing contained in this Agreement shall be deemed to create, whether express or implied, a partnership, joint venture, employment, or agency relationship between City and Spectra, except as otherwise expressly set forth in this Agreement.

Section 13.11 Counterparts; Faxed or Emailed Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. This Agreement may be executed by the parties and transmitted by facsimile or electronic mail, and if so executed and transmitted, shall be effective as if the parties had delivered an executed original of this Agreement.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, each party hereto has caused this Food and Beverage Agreement to be executed on behalf of such party by an authorized representative as of the date first set forth above.

CITY OF SIOUX CITY, IOWA

OVATIONS FOOD SERVICES, L.P. d/b/a
SPECTRA FOOD SERVICES &
HOSPITALITY

By: Ovations Food Services, LLC,
its general partner

By: _____
Name: Robert E. Scott
Its: Mayor

By: _____
Name:
Its:

**SCHEDULE I
INSURANCE**

At all times during the Term of this Agreement, Spectra shall maintain the following coverages, in the amounts set forth below:

| <u>Coverage</u> | <u>Amount</u> |
|--|--|
| Commercial General Liability, including Products Coverage | \$1,000,000 per occurrence |
| Excess Liability (which shall be primary to City's excess liability coverage) | \$5,000,000 per occurrence and aggregate |
| Commercial Automobile Liability | \$1,000,000 per accident |
| Workers Compensation | As required under law |
| Crime | \$1,000,000 |
| Liquor Liability (if applicable) | \$1,000,000 |