

INDEPENDENT CONTRACTOR AGREEMENT
Between
First Fleet Concerts, L.L.C.
and
Des Moines Water Works Park Foundation
for
Water Works Park Amphitheater Production 2019 - 2020

THIS INDEPENDENT CONTRACTOR AGREEMENT (“Agreement”) is made this ___ day of _____, 2019 by and between the Des Moines Water Works Park Foundation, an Iowa nonprofit corporation with its principal office at SW 7th - Suite G3, Des Moines, Iowa 50309 (“Park Foundation”), and First Fleet Concerts, L.L.C. an Iowa limited liability company, with its principal place of business at 500 E Locust, Suite 500, Des Moines, IA 50309 (“Contractor”).

WHEREAS, the Water Works Park Amphitheater (the “Park Amphitheater”) is an open-air stage, viewing area, and entertainment facility, depicted in Exhibit A attached hereto, that is currently under construction within the property known as “Water Works Park” that is owned by the Board of Water Works Trustees of the City of Des Moines Iowa (“DMWW”) and supported by the Park Foundation;

WHEREAS, the Park Amphitheater, which is expected to be completed in the summer of 2019, will be a highly desirable location for various events such as shows, concerts, ceremonies, social events, and festivals;

WHEREAS, Board and Park Foundation have entered into a Chapter 28E Agreement for Operation & Maintenance of Phase I Park Improvements, which include the Park Amphitheater (the “O&M 28E Agreement”);

WHEREAS, in accordance with that Operation and Maintenance 28E Agreement Park Foundation has responsibility for promoting the venue, and coordinating with event sponsors, in addition to other responsibilities;

WHEREAS, Park Foundation and DMWW desire that suitable events be conducted at the Park Amphitheater for the betterment of the community and to provide revenue to defray the cost of operation and maintenance of Water Works Park facilities supported by the Park Foundation;

WHEREAS, Park Foundation desires to engage Contractor as a promoter and producer to provide services, on a non-exclusive basis, to attract, sponsor, promote, produce, and otherwise establish a minimum number of concerts, shows, and similar entertainment events to be presented at the Park Amphitheater during the Term of this Agreement (“Contractor Amphitheater Events”), with such events to include those on the stage facing an area known as the “Great Lawn” (“Large-Side Events”) and smaller events on the stage facing the “Celebration Lawn” (“Small Side- Events”);and

WHEREAS, Contractor desires to provide the services as defined and provided herein.

NOW, THEREFORE, the parties agree as follows:

- 1) **Provision of Services**. Contractor hereby agrees to use reasonable efforts as a promoter and producer to attract, sponsor, promote, produce, and otherwise establish a number of economically successful Contractor Amphitheater Events, to include both Large-Side Events and Small Side- Events to the extent deemed feasible (“Services”).

- 2) **Event Site Agreements.** Each of the Contractor Amphitheater Events shall require the execution of a specific site use agreement with DMWW on such terms as DMWW may require.
- 3) **Number of Contractor Amphitheater Events.** Subject to the minimums set forth below, the exact number and character of Amphitheater Events shall be determined by Contractor in consultation with Park Foundation, with the subsequent ultimate approval of the Board of DMWW, based on availability of the Amphitheater, the availability of suitable performers and shows, and Contractor's expertise in the market for entertainment. It is the expectation of the parties that Contractor will deliver a minimum of 5 Small-Side Events and 1 Large-side Event in 2019 and a maximum of not more than 12 total Events in 2019. It is the expectation of the parties that Contractor will deliver a minimum of 15 Small-Side Events and 3 Large-side Events in 2020 and a maximum of not more than 20 total Events in 2020. Additional Large-Side Events will decrease minimum Small-Side Event requirements in either year on a 1 for 1 basis. Failure to meet targets in 2019 or to be on track to meet targets in 2020 shall be grounds for early termination of this Agreement by Park Foundation.
- 4) **Use of Amphitheater not Exclusive to Contractor.** Contractor shall have the right to propose and present events at the Amphitheater and to reserve dates in advance, but such right is not exclusive. DMWW has reserved, and Park Foundation reserves on behalf of DMWW, the right to limit the maximum number of Contractor Amphitheater Events each year and to reject any event for cause.

Subject to Section 3, DMWW and Park Foundation reserve the right to schedule events at the Amphitheater that are not entertainment events of the kind to be promoted and produced by Contractor, and entertainment events at the Amphitheater that are ancillary to festivals and similar events using Water Works Park grounds and facilities beyond the Amphitheater.

- 5) **Scheduling.** Contractor shall have priority for scheduling events at the Amphitheater. Each season Contractor shall identify dates to be held for its exclusive use in scheduling events on or before the ___ day of _____. These dates shall be selected in consideration of, and allowing calendar space for, other types of events which are contemplated in the area as described in Section 2, including but not limited to a community cultural series and community heritage events. Reserved dates without Contractor-scheduled events will be released from hold 60 days in advance if no Event Site Agreement has been executed with DMWW by such date. DMWW may request that any reserved date be released as needed for DMWW or Foundation scheduled events if no Event Site Agreement has been executed. Scheduling of reserved dates and specific events by Contractor shall be accomplished directly with DMWW staff and resolution of any scheduling conflicts shall be between Contractor and DMWW. The overall calendar of events will be coordinated between DMWW staff and Contractor and managed by Park Foundation's designated event manager. No specific event date shall be final until Contractor has executed an Event Site Agreement with DMWW.
- 6) **No Direct Site Rental Fee.** No direct site rental fee will be charged by DMWW or Park Foundation to Contractor for use of the Amphitheater for Contractor Amphitheater Events, but DMWW may require reimbursement for its actual costs for any event.

- 7) **Revenues and Revenue Sharing.** Direct and ancillary revenues from Contractor Amphitheater Events will be allocated as follows:
- (a) Contractor will collect and retain ticket sales revenue for Contractor Amphitheater Events, but shall pay Park Foundation a \$2.00 "facility fee" for every ticket sold for each Contractor Amphitheater Event. Contractor shall provide Park Foundation ten (10) free tickets for each Contractor Amphitheater Event.
 - (b) Contractor will collect and retain beverage sales revenue for all Contractor Amphitheater Events, but shall pay Park Foundation 25% of adjusted (after sales tax) gross sales of liquor or other beverages dispensed by beverage vendors. Nothing in beverage vendor agreements shall limit the availability of tap water at Contractor Amphitheater Events.
 - (c) Park Foundation will collect and retain parking and camping revenue, but Contractor will receive 25% of net parking and camping revenue. Traffic Control within the park, parking security and parking shuttles are all direct expenses of parking revenue.
 - (d) Park Foundation will coordinate all food and non-artist merchandise vendor contracts and will collect and retain 100% of revenue from food and non-artist merchandise vendor contracts.
 - (e) Contractor shall have the right to sell any and all sponsorships directly related to any Contractor Amphitheater Event or a related series of events and retain revenue from such sales. Park Foundation shall have the right to sell Amphitheater naming sponsorships and any "venue-related" sponsorships. To resolve sponsorship conflicts, tour sponsorships supersede promoter sponsorships which supersede venue sponsorships.
 - (f) Park Foundation shall be allowed to set up an on-site booth for the purpose of selling "Friends of Water Works Park" memberships at all Contractor Amphitheater Events. Members of the Friends of Water Works Park shall have exclusive rights to pre-sale of tickets for Contractor Amphitheater Event, provided pre-sale is allowed in the talent agreement for the event.
 - (g) Any other revenue sources not enumerated, shall be allocated as the parties shall agree. If the parties are unable to agree, net revenue after any direct expenses shall be allocated one-half to each party.
- 8) **Event Standards.**
- (a) Contractor shall obtain all permits required for each Contractor Amphitheater Event.
 - (b) Contractor shall be responsible to ensure all activities at each Contractor Amphitheater Event comply with the terms of this Agreement, all permits issued for the event, and all local requirements including but not limited to sound permit limits and requirements for serving alcoholic beverages.
 - (c) Contractor shall be responsible to provide all materials, equipment and labor necessary to deliver Contractor Amphitheater Event and for all costs of these materials, equipment and labor.

- (d) Contractor shall provide beverage service, including alcoholic beverage service as appropriate, at each Contractor Amphitheater Event. Contractor shall provide all equipment and personnel necessary to furnish beverage service. Beverage service must meet the requirements of City/County/State/Federal health regulations. Contractor must be properly licensed and insured to serve alcoholic beverages. Current license and insurance certificates must be on file with Des Moines Water Works 30 days prior to the event.
 - (e) Contractor shall maintain ongoing communication with DMWW staff and the Park Foundation representative regarding the calendar of events, schedule changes, setup and tear down timetables, and other event management matters.
 - (f) Contractor will have access to the Area the day before an event for Large-Side Events and the night before an event for Small-Side Events, unless an earlier time is agreed upon in writing.
 - (g) Any Contractor items brought in or stored on site will not be the responsibility or liability of Park Foundation or DMWW. Lost or stolen items are not the responsibility of Park Foundation or DMWW.
 - (h) Contractor will be responsible for the installation, set up, operation and clean-up of events. This includes but is not limited to picking up trash and waste from the grounds and removal of all event garbage from the premises the same day.
 - (i) Contractor will leave all DMWW property in a clean and orderly fashion after each use. All rental equipment including portable restrooms must be removed by 9am the day following an event unless prior arrangements have been made.
 - (j) If Contractor or any employee or vendor working on behalf of the Contractor damages DMWW property during a Contractor Amphitheater Events, Contractor will be responsible for repair of the damages or for reimbursing DMWW for the cost of the repairs.
 - (k) Contractor will make every effort to use recyclable materials and to have recycling bins available at Contractor Amphitheater Events.
- 9) **Sales and Marketing.** Contractor will promote the Amphitheater. Promotion will focus on growing awareness through traditional and social media. Contractor and DMWW Staff will have dual-control of social media accounts associated with the Amphitheater for this purpose. There will be no "exclusives" given to beverage service by the Park Foundation. In addition there should be no naming rights granted to a beverage, ticketing, or promotions company (ie ticketmaster stage, Budweiser stage, live nation stage.)
- 10) **Representations and Warranties.** Each party represents and warrants that it has the full right to enter into and perform this Agreement. Contractor represents and warrants that:
- (a) All services hereunder provided by Contractor shall be performed in a professional, diligent, and workmanlike manner;
 - (b) Neither services nor materials provided by Contractor will in any way infringe, misappropriate, or violate any intellectual property rights or other rights of any person or entity.

- (c) Neither the Services nor any obligation under this this Agreement is or will be inconsistent with any obligation Contractor may have to others; and
- 11) **Relationship Between Contractor and Park Foundation.**
- (a) Contractor is an independent contractor and not an employee of Park Foundation.
 - (b) Contractor shall not advertise or hold itself out as the agent or employee of Park Foundation.
 - (c) Contractor shall have no power or authority to make any contracts for or create any obligations or liability against Park Foundation.
 - (d) Park Foundation does not have any direction or control over, or right to direct or control, Contractor's activities or manner of doing business. Contractor reserves the right to operate the business of Contractor in such manner and at such times as in the judgment of Contractor is desirable.
 - (e) Contractor shall be responsible for injury or damage to any persons or property whatsoever, by reason of, or in any manner growing out of, any act or failure to act of Contractor or Contractor's employees, agents and subcontractors.
 - (f) Contractor shall, at its own expense, furnish all equipment and facilities, and bear and pay all obligations and liabilities arising out of its business as Contractor.
- 12) **Third-Party Beneficiary.** The parties to this Agreement recognize DMWW as an intended third-party beneficiary to this Agreement and that the terms of this Agreement cannot be changed without approval of the Board of DMWW.
- 13) **Contractor Employee Standards.** Contractor shall employ a sufficient number of employees to effectively provide the Services. Contractors employees shall be identified to the public as Contractor employees and shall be neat, clean, and courteous at all times. All employees, agents and subcontractors of Contractor shall be knowledgeable, appropriately trained and qualified in order to provide the Services. Contractor will compensate its employees, agents and subcontractors appropriately. Contractor agrees to have background checks done on all employees prior to providing Services under this Agreement. Contractor will inform Park Foundation in advance of any employees with felony convictions in the last 5 years who will be providing Services under this Agreement.
- 14) **Compliance with Laws.** Contractor and its employees, agents and subcontractors will comply with all applicable laws and ordinances, and all federal, state, and local rules and regulations in performing the Services, including, without limitation, all safety rules and regulations.
- 15) **Records.** Contractor shall keep, during the term of this Agreement and for a period of one (1) year thereafter, all documents and records necessary to substantiate all work done by Contractor hereunder in such form as shall permit easy review and analysis and shall make such records available to Park Foundation for auditing purposes upon request.
- 16) **Permits and Licenses.** Contractor shall comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the Services performed under this agreement and to comply with its Event Agreements with DMWW.
- 17) **Term.** The term of this Agreement shall begin as of the date of execution of this Agreement through October 14, 2020.
- 18) **Limitation of Liability.** **EACH PARTY UNDERSTANDS THAT NO PARTY MAKES ANY GUARANTEE, EXPRESS OR IMPLIED, TO ANY OTHER OF PROFIT, OR OF ANY**

PARTICULAR ECONOMIC RESULTS FROM TRANSACTIONS HEREUNDER. IN NO EVENT SHALL ANY PARTY BE LIABLE FOR SPECIAL, COLLATERAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES FOR ANY ACT OR OMISSION COMING WITHIN THE SCOPE OF THIS AGREEMENT, OR FOR BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF GOOD WILL, LOSS OF PROFITS, LOSS OF USE AND INTERRUPTION OF BUSINESS.

- 19) **Taxes.** Each party shall be solely responsible for any taxes imposed on it arising under this Agreement.
- 20) **Independent Status.** Under no circumstances shall this Agreement be construed as one of agency, sponsorship, joint venture, partnership, or employment between the parties. The parties agree that each is an independent contractor engaged in the operation of its own respective business or activity, each shall be solely liable for the costs, expenses and obligations of its own business and operations, and that neither has any general authority to enter into any contracts, assume any obligations, bind, serve as agent for or make any warranties or representations on behalf of the other. None of the personnel under contract to or employed by either party shall be deemed to be employed by, or in any way to have any contractual relationship with the other party.
- 21) **Attorneys' Fees.** In the event that either party to this Agreement shall commence any legal proceedings in connection with any dispute arising out of this Agreement, the prevailing party shall recover from the losing party reasonable attorneys' fees, costs and other expenses.
- 22) **Insurance.** Contractor shall procure and maintain in full force and effect during the term of this Agreement the insurance policies in Exhibit B ("Insurance and Indemnification Requirements")
- 23) **Indemnification.** Contractor agrees to indemnify Park Foundation and DMWW in accordance with Exhibit B attached hereto and incorporated herein by this reference.
- 24) **Entire Agreement.** This Agreement is a fully integrated agreement and constitutes the entire Agreement between Park Foundation and Contractor. All prior and contemporaneous oral conversations or agreements are merged herein. Each party acknowledges that such party has not been induced to enter this Agreement by any representations or statements oral or written, not contained in this Agreement. Neither party may modify this Agreement except by written agreement signed by an authorized representative of each party. To the extent Contractor submits invoices that contain any terms that add to or contradict the terms of this Agreement, such terms are hereby rejected, and the terms of this Agreement shall solely control.
- 25) **Notices.** All notices, demands, or requests provided for or permitted to be given pursuant to this Agreement shall be in writing. All notices, demands, and requests shall be deemed to have been properly served if given by personal delivery, or if transmitted by fax transmission, or if delivered to Federal Express or some other reputable overnight carrier for next business day delivery, charges billed to or prepaid by shipper, or if deposited in the United States mail, registered or certified with return receipt requested, proper postage prepaid, addressed as follows:

To Contractor:

To Park Foundation:

To DMWW:

Each notice, demand, or request shall be effective upon personal delivery, or upon confirmation of receipt of the applicable fax transmission, or one (1) business day after delivery to a reputable overnight carrier in accordance with the foregoing, or three (3) business days after the date on which the same is deposited in the United States mail in accordance with the foregoing. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall not adversely impact the effectiveness of any such notice, demand, or request. Service by personal delivery shall be valid only if delivered personally to an officer. Any addressee may change its address for notices hereunder by giving written notice in accordance with this section.

- 26) **Waiver of Terms**. Park Foundation may waive any term of this Agreement included for Park Foundation's benefit on any occasion or series of occasions, and any such waiver or waivers shall not be construed as a continuing waiver by Park Foundation of such term on any subsequent occasion or series of occasions.
- 27) **Headings**. Paragraph headings are for convenient reference only and shall not be used in construing this Agreement.
- 28) **Severability**. In the event one or more of the provisions of this Agreement are found to be invalid, illegal or unenforceable by a court with competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 29) **Force Majeure**. The obligations of the parties under this Agreement shall be suspended to the extent a party is hindered or prevented from complying therewith because of labor disturbances (including strikes or lockouts), war, acts of God, fires, storms, accidents, governmental regulations, or any other cause whatsoever beyond a party's control.
- 30) **Governing Law**. This Agreement shall be construed, both as to validity and performance, and shall be enforced in accordance with, and governed by, the laws of the State of Iowa applicable to contracts to be performed entirely within that State, without giving effect to the principles of conflicts of law.
- 31) **Exclusive Jurisdiction and Venue**. Each party hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceedings relating to this Agreement, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the courts in the state of Iowa, and appellate thereto. Each party further consents that any such action or proceeding may be brought in such courts and waives to the fullest extent permitted by law in connection with any such action or proceeding any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same.
- 32) **Waiver of Jury Trial**. **BOTH Park Foundation AND CONTRACTOR HEREBY WAIVE**

ANY RIGHT TO A JURY TRIAL EACH MAY HAVE WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ANY OTHER DEMAND OR MATTER WHATSOEVER ARISING OUT OF THIS AGREEMENT.

- 33) **Assignment.** Contractor may not assign or transfer this Agreement or any of the rights granted under it, without the prior, written consent of Park Foundation, to be given or denied in Park Foundation's sole and absolute discretion. Any attempted assignment without Park Foundation's consent shall be void. In all events, and irrespective of any assignment approved by Park Foundation, Contractor shall remain liable for the obligations imposed pursuant to the terms of this Agreement. Park Foundation may assign or transfer this Agreement and all rights granted under it in its sole and absolute discretion.
- 34) **Equal Opportunity.** Contractor will comply with Chapter 62 of the City of Des Moines Municipal Code. In performing the Services, in dealing with the public and in engaging contractor and vendors, Contractor shall not discriminate against any person on the basis of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability, or any other basis protected by law.

Contractor shall not commit the following unlawful employment practices, and shall include this non-discrimination clause in subcontracts connected with the performance of this Agreement:

- (a) To refuse to hire or employ, to bar, or to discharge from employment any individual because of their age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability, or any other basis protected by law.
- (b) To discriminate against any individual in terms, conditions, or privileges of employment because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability, or any other basis protected by law.
- (c) To use any form of application for employment, or to make any inquiry in recruiting or advertising for employees which request their age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability, or any other basis protected by law of any individual.
- (d) To discharge, expel, or otherwise discriminate against any individual because they have opposed practices forbidden under this section or because they have filed a complaint, testified, or assisted in any proceeding under this section of the Contract.

Sexual harassment is a prohibited discriminatory practice under each of the foregoing provisions.

- 35) **Legal Representation of the Parties.** The parties negotiated this Agreement with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.
- 36) **Headings.** Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
- 37) **Partial Invalidity.** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 38) **Counterparts.** This Agreement shall be executed in two or more counterparts, each of which shall be deemed an original.

- 39) **Receipt of Copy.** Each of the parties to this Agreement acknowledges receipt of a fully executed copy of this Agreement and all attachments thereto.
[Signature Page(s) Follow]

Des Moines Water
Works Park
Foundation:

By _____
Name: **Sam
Carrell**
Title: **Executive Director**

Contractor:

By _____ Name: **Sam
Summers**
Title: **Owner**

DRAFT

EXHIBIT A

Water Works Park Amphitheater located at Des Moines, Iowa 50321

DRAFT

EXHIBIT B

INSURANCE AND INDEMNIFICATION REQUIREMENTS

For purposes of this Attachment and all provisions included herein, the term "Park Foundation" means Des Moines Water Works Park Foundation and "DMWW" means the municipal utility known as the Board of Water Works Trustees of the City of Des Moines, Iowa together with each of their respective directors, trustees, officers, employees, agents, representatives, and volunteers.

1. GENERAL

The Contractor shall purchase and maintain insurance to protect the Contractor, Park Foundation and the Board of Water Works Trustees of the City of Des Moines throughout the duration of the Agreement. Said insurance shall be provided by insurance companies "admitted" or "non-admitted" to do business in the State of Iowa having no less than an A. M. Best Rating of "A-." All policies shall be written on an occurrence basis and in form and amounts satisfactory to Park Foundation and the DMWW. Certificates of Insurance confirming adequate insurance coverage shall be submitted to Park Foundation and DMWW prior to Agreement execution or commencement of work and/or Services.

2. INSURANCE REQUIREMENTS

A. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: The Contractor shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage, both written with State of Iowa statutory limits.

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The Contractor shall procure and maintain Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable).

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form.

C. AUTOMOBILE LIABILITY INSURANCE: The Contractor shall procure and maintain Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit covering Bodily Injury and Property Damage. Coverage shall include all owned, non-owned, and hired vehicles. If the Contractor's business does not own any vehicles, coverage is required on non-owned and hired vehicles. Policy shall include Contractual Liability coverage.

D. UMBRELLA/EXCESS LIABILITY INSURANCE: The Contractor shall procure and maintain Umbrella/Excess Liability Insurance with a minimum limit of \$1,000,000 each occurrence and \$1,000,000 aggregate. This policy shall provide excess limits over the General Liability coverage and Automobile Liability coverage,

E. ADDITIONAL INSURED ENDORSEMENT: The General Liability Insurance policy shall include standard ISO endorsements CG 20 26 07 04 and CG 20 37 07 04 or their non-ISO

equivalents. The Contractor's insurance shall be primary to that of DMWW and noncontributory to any other insurance or similar coverage available to DMWW whether the other available coverage is primary, contributing or excess.

3. INDEMNIFICATION REQUIREMENTS

To the fullest extent permitted by law, Contractor agrees to defend, pay on behalf of, indemnify, and hold harmless Park Foundation and DMWW against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by Park Foundation or DMWW by reason of any injury or loss including, but not limited to, personal injury; including bodily injury or death, property damage; including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with Contractor's work.

Contractor's obligation to indemnify Park Foundation and DMWW contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

Park Foundation and DMWW shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by Contractor arising out of or in any way connected or associated with Contractor's work, except to the extent caused by or resulting from the negligence act of Park Foundation or DMWW .

Contractor expressly assumes responsibility for any and all damage caused to DMWW property arising out of or in any way connected or associated with Contractor's work. Contractor shall ensure that its activities on DMWW property will be performed and supervised by adequately trained and qualified personnel and Contractor will observe all applicable safety rules.