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**ALTRU SPORTS COMPLEX**  
**DEEP DIVE WELL FACILITY MANAGEMENT AND OPERATIONS AGREEMENT**

**BY AND BETWEEN**

**CITY OF GRAND FORKS, NORTH DAKOTA**

**AND**

**PARK DISTRICT OF THE CITY OF GRAND FORKS**

**AND**

**THE UND AEROSPACE FOUNDATION**

**AND**

**NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION by and through its  
UNIVERSITY OF NORTH DAKOTA**

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**THIS AGREEMENT** (the “Agreement”) is entered this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by and between the **CITY OF GRAND FORKS, NORTH DAKOTA**, a Home Rule City and political subdivision of the State of North Dakota (the “City”), and **PARK DISTRICT OF THE CITY OF GRAND FORKS**, political subdivision of the State of North Dakota (the “Park District”), **THE UND AEROSPACE FOUNDATION**, a North Dakota non-profit corporation, (the “Foundation”) and **THE NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION by and through its UNIVERSITY OF NORTH DAKOTA**, a public institution of higher education and an instrumentality of the State of North Dakota organized under the constitution of the State (“UND”).

### **RECITALS**

1. Beginning in 2021, the City, the Park District, UND, the Grand Forks Public School District and other community stakeholders began meeting to discuss an indoor sports and aquatic facility, which discussions were spurred, in part, by the then impending planned demolition of the Hyslop Sports Center, (which hosted many indoor sports and aquatic events) in order to make way for a STEM center on the UND campus.

2. After study, review and consideration of a feasibility study procured by the Park District, on November 14, 2023, the City conducted a vote to extend and modify the City’s Home Rule Charter to add financing, design, acquisition, construction, reconstruction, and/or leasing of health and wellness multi-use facilities, and related land, fixtures, and infrastructure improvements as authorized uses of the proceeds from the three-quarter percent (¾%) gross retail sales tax authorized to be imposed by Subsection (p)(2) of Article III of the Home Rule Charter, with the added health and wellness facilities to be used as centers for health, wellness, fitness, exercise, athletic, aquatic, and/or recreational activities, functions and events, along with eliminating the provision of Subsection (p)(2) of Article III of the Home Rule Charter relating to the expiration, termination and sunset of the ¾% sales tax.

3. The November 14, 2023, citywide vote resulted in a 66% voter approval of the City’s Home Rule Charter amendment described in Recital 2 above, and thereafter the City Council certified the election results, and modified City Ordinances to implement the Home Rule Charter changes approved by the November 14, 2023, special election.

4. The City is currently pursuing the design and Construction of the indoor sports and aquatic center, (referred to herein as the “ASC”) with the primary source of funds for such design and construction being derived from a portion of the three-quarter percent (¾%) gross retail sales tax authorized by Subsection (p)(2) of Article III of the Home Rule Charter, as amended by the approval from the above-described special election vote.

5. The City and Park District have entered into that certain Altru Sports Complex Management and Operations Agreement, (referred to herein as the “ASC Management Agreement”), which among other matters, provides that the Park District shall manage, operate, supervise, direct, and conduct the ASC and ASC Programs and Activities, in accordance with and subject to all of the terms and conditions thereof.

6. UND has requested the City include in the design and Construction of the ASC the Deep Dive Well Facility for use by UND's educational and research purposes.

7. The Foundation has agreed to contribute and pay to the City funds for the City's use to pay the costs, expenses and fees for the design and Construction of the Deep Dive Well Facility

8. The City has agreed to include the Deep Dive Well Facility within the ASC provided the City has no responsibility for the costs, expenses and fees for the design and Construction, operation, maintenance or repair of the Deep Dive Well Facility.

**NOW THEREFORE**, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, the City, the Park District and UND agree as follows:

## **SECTION 1: DEFINITIONS**

All capitalized terms used, and not otherwise defined herein, shall have the meanings given to them in this Agreement and as defined in this Section unless a different meaning clearly applies from the context.

**1.1 "Agreement"** means this Deep Dive Well Facility Management and Operations Agreement.

**1.2 "Applicable Law"** means, collectively, the Constitutions of the United States and the State, all common law and principles of equity, and all federal, State, and local laws including, without limitation, the City Code, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation, or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any governmental authority, and, with respect to any person, the articles of incorporation, bylaws, or other organizational or governing documents of such person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to **(a)** the City, **(b)** the Park District, **(c)** UND, **(d)** the Foundation, **(e)** the Deep Dive Well Facility, **(f)** the Deep Dive Well Facility Operations, and/or **(g)** the ASC.

**1.3 "ASC"** means the building, structures, facilities, fixtures, equipment, machinery, infrastructure, improvements, and any other real or personal property to be erected, built, assembled, constructed, installed and/or acquired by the City for the health and wellness facility to be used as a center for health, wellness, fitness, exercise, athletic, aquatic, and/or recreational activities, functions and events located on the ASC Premises. As described in this Agreement, the Deep Dive Well Facility is included as part of the ASC. A description and depiction of the ASC is attached hereto as **Exhibit 1.3**. The total costs, expenses and fees to cause the ASC to be Finally Completed is estimated by the City to be \$ .

**1.4 “ASC Management Agreement”** means the Altru Sports Complex Management and Operations Agreement entered into by and between the City and the Park District, with an Effective Date of July 1, 2025, and any amendments thereto.

**1.5 “ASC Operations Manual”** shall mean the document to be developed and drafted by the Park District and submitted to the City, which shall outline and contain the terms, policies and procedures regarding the management and operation of the ASC and ASC Programs and Activities, including the general policies and procedures to be implemented in managing and operating the ASC and to manage, operate, conduct and book ASC Programs and Activities, and fees and charges to Persons to enter or use the ASC and participate in ASC Programs and Activities.

**1.6 “ASC Premises”** means the following described parcel of real property having a street address of 1500 South 42<sup>nd</sup> Street, Grand Forks, ND 58201 and more particularly described as follows:

Lot 2, Block 1 of Danks Fourth Resubdivision, being a replat of Lots 7-11, Block 1 and the adjacent vacated south 43<sup>rd</sup> Street Right-of-Way, Danks Second Resubdivision and Lot A, Block 1 of the Replat of Lot 12, Block 1, Danks Second Resubdivision to the City of Grand Forks, North Dakota, according the plat recorded as Document Number 846235.

Unless the defined term ASC Premises is specifically referenced in this Agreement, use or any reference to the defined term ASC in this Agreement shall also include and refer to the ASC Premises.

**1.7 “ASC Programs and Activities”** means any and all activities, programs, functions or events, sponsored, conducted or engaged within or upon the ASC, including without limit health, wellness, fitness, exercise, athletic, aquatic, and/or recreational activities, programs, functions, events, classes, games, tournaments, and practices.

**1.8 “Best Efforts”** means an entity will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this Agreement, in accordance with Applicable Law.

**1.9 “Calendar Day”** shall mean Monday, Tuesday, Wednesday, Thursday, Friday, Saturday or Sunday. When this Agreement requires a calculation of the number of Calendar Days, each day is counted, regardless of whether it is a Saturday, Sunday or holiday described in N.D.C.C. § 1-03-01.

**1.10 “City”** means the City of Grand Forks, North Dakota, a Home Rule City and political subdivision of the State of North Dakota.

**1.11 “City Administrator”** means the Person appointed and acting as the city administrator for the City.



**1.20 “Deep Dive Well Facility Capital Expenditures”** means costs, expenses and fees for additions, alterations, repairs, maintenance, improvements, re-construction or replacement of structures, facilities, fixtures, equipment, machinery, apparatus, personal property, other devices, walls and support walls, and cover for the Deep Dive Well Facility, including but not limited to plumbing, electrical, heating, ventilation, pool shell and/or pool mechanical systems (UV systems, pumps, heaters, filtration system, or other pool mechanical systems),

**1.21 “Deep Dive Well Facility Construction Account”** shall mean the bank checking account, for the benefit of and owned by the City, and at a financial institution acceptable to the City, for which Deep Dive Well Facility Escrow Funds shall be deposited, held and distributed pursuant to the terms of this Agreement.

**1.22 “Deep Dive Well Facility Escrow Funds”** shall mean the money, in US Dollars, within the Deep Dive Well Facility Construction Account, at any given time and from time to time, and shall include all funds deposited therein by UND pursuant to Section 3.3 below plus any and all interest thereon and deducting any bank fees or charges.

**1.23 “Deep Dive Well Facility Operations”** means any and all services, activities, programs, functions, acts and things as are appropriate or necessary, as required by Applicable Law, are Usual and Customary and meet Good Industry Practice for the management, operation, repair and maintenance of the Deep Dive Well Facility. The Parties acknowledge and agree the Deep Dive Well Facility shall be subject to the terms and conditions of the ASC Operations Manual and the Deep Dive Well Facility Use Agreement. The Parties further agree Deep Dive Well Facility Operations does not include the design and Construction of the Deep Dive Well Facility or Deep Dive Well Facility Capital Expenditures.

**1.24 “Deep Dive Well Facility Use Agreement”** shall mean the document and agreement to be developed, drafted and entered into by the Park District and UND, and presented to the City, containing the terms, policies and procedures for the Deep Dive Well Facility Operations, including the general policies and procedures to be implemented in the Park District’s management and operation of the Deep Dive Well Facility, fees and charges to be paid by UND for its use of the Deep Dive Well Facility. The Park District and UND, shall negotiate, in Good Faith, the terms and conditions, policies and procedures contained the Deep Dive Well Facility Use Agreement, provided, however, no term or condition of the Deep Dive Well Facility Use Agreement shall conflict or be inconsistent with the any term of this Agreement, the ASC Management Agreement or the ASC Operations Manual, and to extent any such conflict or inconsistency exists, then the terms of this Agreement, the ASC Management Agreement or the ASC Operations Manual, as the case may be, shall prevail.

**1.25 “Effective Date”** means the     day of    , 2026. The Effective Date is based upon a necessity to commence start-up and planning for operations of ASC with a Substantially Completed target date of Fall 2027.

**1.26 “Exhibit”** means the documents designated as an exhibit and attached to this Agreement. Any reference to an Exhibit in this Agreement shall mean such document and all

information contained on the document is incorporated into this Agreement as if fully set forth herein. In the event of any conflict between any provision of an Exhibit and the provisions of this Agreement, the provisions of the Agreement shall prevail.

**1.27 “Finally Completed”** means the date all Construction of the ASC has been fully completed and finally accepted by the City. The City Administrator shall provide written notice to the Park District and UND upon determining that the ASC is Finally Completed.

**1.28 “Foundation”** means The UND Aerospace Foundation, a North Dakota non-profit corporation.

**1.29 “Good Faith”** means the observance of reasonable commercial standards of fair dealing in a given trade or business.

**1.30 “Good Industry Practice”** means the industry practices and standards that would be exercised by a prudent, professional and experienced service provider engaged in the same kind of undertakings and under similar circumstances as those applying to the services and uses under this Agreement or the management and operation of the Deep Dive Well Facility.

**1.31 “Mayor”** means the Person elected and acting as the mayor of the City pursuant to N.D.C.C. § 40-08-14.

**1.32 “Park District”** means the Park District of the City of Grand Forks, a political subdivision of the of the State of North Dakota.

**1.33 “Park District Representative”** is defined at Section 8.13.1.

**1.34 “Party”** means either the City, UND or the Park District, as the context may require, and its respective legal representatives, successors, and permitted assigns, and whenever a reference in this Agreement is made to any Parties hereto, **“Parties”** means the City, the Park District and UND, collectively, and their respective legal representatives, successors, and permitted assigns. The City, UND, Park District and Foundation acknowledge and agree the Foundation excluded, for all purposes in this Agreement, from the term “Party because upon its deposit of funds under Section 3.3.1(a) below, any and all of its rights, titles, interests, duties and obligations under this Agreement immediately terminate, are null and void, and of no effect whatsoever, as described in Section 3.3.2 below.

**1.35 “Person”** means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

**1.36 “Substantially Completed”** means the time at which the ASC has progressed to the point where, in the opinion of City, in the exercise of its discretion, is sufficiently complete so that the ASC (or a specified part thereof) can be utilized for the purposes for which the ASC is intended. The City Administrator shall provide written notice to the Park District and UND upon determining the ASC is Substantially Completed.

**1.37** “UND” means the North Dakota State Board of Higher Education by and through the University of North Dakota, a public institution of higher education and an instrumentality of the state of North Dakota organized under the constitution of the State.

**1.38** “UND Representative” is defined in Section 8.13.1.

**1.39** “Usual and Customary” means the reasonable and lawful public custom or customary in the industry concerning transactions of the same nature as those which are to be affected thereby and either known to the Parties or so well established, general, and uniform that they must be presumed to have acted with reference thereto.

**1.40** “Utility” means a privately, publicly, or cooperatively owned line, facility, or system serving, transmitting or distributing to the ASC, directly or indirectly, (a) power, electricity, light, heat, gas, (b) water and sewer and (c) telephone, television, internet and other communication services.

## **SECTION 2: INCORPORATION OF RECITALS AND DEFINITIONS/INTERPRETATION**

**2.1** **Incorporation of Recitals and Definitions.** The Recitals and Definitions are hereby restated and incorporated into and made part of terms of this Agreement.

**2.2** **Interpretation.** The headings of Sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Agreement. The definition of terms herein shall apply equally to the singular and plural forms of the defined terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “relating to” means relating to, referring to, relevant to, pertaining to, consisting of, reflecting, evidencing, concerning, or in any way logically or factually connected with the matter discussed. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person’s permitted assigns, (c) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, and (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Agreement.

## **SECTION 3: CONSTRUCTION OF DEEP DIVE WELL FACILITY**

**3.1** **Design and Construction of Deep Dive Well Facility.**

**3.1.1** Provided the Foundation has deposited the entire amount of funds described in Section 3.3.1(a) and subject to the terms and conditions of the ASC Management Agreement, including without limitation, the discretion by and funding limitations for the City's design and Construction of the ASC, as described in the ASC Management Agreement, the City shall include the Deep Dive Well Facility in the design and Construction of the ASC.

**3.1.2** The City will consult and work in Good Faith with UND and the Park District to determine the features, components and the design and Construction of the Deep Dive Well Facility. In connection with the City's consultation with the Park District and UND, the City will use reasonable efforts to notify (either written or oral notice) and request representatives from UND and the Park District to attend meetings that the City participates in and which concern the design, features, components and Construction of the ASC, provided, however, the failure of the City to provide notice to either UND or the Park District shall not constitute an event of default by the City hereunder.

**3.1.3** Notwithstanding anything to the contrary, the City shall have the sole, exclusive and final decision-making authority and control over the design, Construction, acquisition and installation of the Deep Dive Well Facility and any other components of the ASC, including, but not limited to, (a) determining the features and components to be included in or excluded from the Deep Dive Well Facility and other portions of the ASC, (b) approving change orders, additions, deletions, revisions or other modifications of the work or timing of the work to be performed to for the design and/or Construction of the Deep Dive Well Facility and other portions of the ASC, (c) determining when the Deep Dive Well Facility and the ASC is Substantially Completed and Finally Completed, and (d) other authority or control of the City that is Usual and Customary for the design and/or the Construction of a public improvement.

**3.2** **Costs and Expenses for the Construction of the Deep Dive Well Facility** The costs, expenses and fees for the design and Construction of the Deep Dive Well Facility shall be paid from the funds described in and pursuant to Section 3.3.

**3.3** **Escrow of Costs and Expenses for the Deep Dive Well Facility**

**3.3.1** **Deposit by Foundation.**

(a) Within [REDACTED] Calendar Days after the Effective Date the Foundation shall deposit with the City the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), to be held in the Deep Dive Well Facility Construction Account and distributed in accordance with the provisions of this Section 3.3.

(b) In the event the Foundation does not deposit the funds described in this Section 3.3.1(a), then the City may terminate this Agreement by providing to the other Parties a thirty (30) day advance written notice.

**3.3.2** **Deposit Terminates Foundation's Interests and Obligations under the Agreement.**

(a) Upon the Foundation depositing all of the funds described in Section 3.3.1(a), any and all of the Foundation's rights, titles, interests, duties and obligations arising or in any manner related to this Agreement shall immediately terminate, be null and void, and of no effect whatsoever.

(b) Without in any manner limiting Section 3.3.2(a), but for removal of doubt, upon the Foundation's deposit of entire \$1,500,000 described in Section 3.3.1(a), the following shall occur:

(1) The Foundation, for all purposes, shall have irrevocably and forever waived any and all rights, titles or interests in and to all of the funds deposited with the City under Section 3.3.1(a) and any interest thereon.

(2) The Foundation, for all purposes, shall have irrevocably and forever waived any and all rights, titles or interests to enforce any provision of this Agreement, to assert or claim a Party has defaulted under this Agreement, or otherwise pursue or seek any remedy under this Agreement against any Party.

(3) The Parties, for all purposes, shall have irrevocably and forever waived, and shall have no right, title or interest to enforce any provision of this Agreement, to assert or claim the Foundation has defaulted, or otherwise pursue or seek any remedy under this Agreement against the Foundation.

**3.3.3 Additional Deposits.** In the event of any change order, cost overrun or other cost increases occur for the Construction of the Deep Dive Well Facility results in the total costs, expenses and fees the Deep Dive Well Facility, upon it being Finally Completed, to exceed the funds deposited by the Foundation under Section 3.3.1(a), then [REDACTED] shall make addition payments to the City to be deposited into the Deep Dive Well Facility Construction Account in the amount of such change order, cost overrun or other cost increase. The Parties acknowledge and agree the process for recommendation and approval of change orders, cost overruns or other costs increases set out in the contract between the CMAR and the City will apply. The additional deposit under this Section 3.3.4 shall be made within ten (10) Business Days after the change order, cost overrun or other cost increase has been approved in accordance with the contract between the City and the CMAR. The City shall provide [REDACTED] with copies of the documents relating to a change order, cost overrun or other cost increase.

**3.3.4 Distributions from Deep Dive Well Facility Construction Account - General.** Subject to the procedures under Section 3.3.5, Section 3.3.6 and Section 3.3.7, from and after the Effective Date, the City shall be authorized to make withdrawals and distributions of funds from the Deep Dive Well Facility Construction Account and use such funds to pay amounts due and owing for the design and Construction of the Deep Dive Well Facility.

**3.3.5 Distributions from Deep Dive Well Facility Construction Account - Design**

(a) The City shall be authorized and directed to withdraw and be distributed funds from the Deep Dive Well Facility Construction Account to pay and be reimbursed for the periodic invoices, statements or requests for payment for costs, expense, and fees from the City's Outside Design Architect/Engineer for the design the Deep Dive Well Facility. The Parties acknowledge and agree some of the costs, expenses and fees for the City's Outside Design Architect/Engineer will be incurred prior to the Foundation's deposit into the Deep Dive Well Facility Construction Account under Section 3.3.1(a), and accordingly, the City shall be reimbursed for such costs, expenses and fees that have been paid by the City prior to such deposit.

(b) Each distribution and withdrawal under this Section 3.3.5 shall be equal to the amount of the respective periodic invoice, statement or request for payment from the City's Outside Design Architect/Engineer.

(c) With respect to reimbursement of costs, expenses and fees for the design of the Deep Dive Well Facility the City paid to the City's Outside Design Architect/Engineer prior to the Foundation's deposit under Section 3.3.1(a), the City shall be authorized to make a distribution and withdrawal in an amount equal such costs, expense and fees on the first Business Day following the date of the Foundation's deposit under Section 3.3.1(a).

(d) With respect all other costs, expenses and fees for the City's Outside Design Architect/Engineer, the City shall be authorized to make the distribution and withdrawal under this Section 3.3.5 on the First Business Day following the date the City has approved payment of the respective periodic invoice, statement or request for payment to the City's Outside Design Architect/Engineer.

(e) The amounts distributed and withdrawn under this Section 3.3.5 shall be used and applied by the City as reimbursement for previously paid costs, expenses and fees or to pay, in a timely manner, the respective invoice(s), statement(s) or requests for payment, as the case may be.

(f) With respect to the distributions and withdrawals under Section 3.3.5(c) and 3.3.5(d), the City shall have available for inspection by the Parties copies of the invoices, statements or requests for payment provided by the City's Outside Design Architect/Engineer.

### **3.3.6 Distributions from Deep Dive Well Facility Construction Account – Construction**

(a) The City shall be authorized and directed to withdraw and be distributed funds from the Deep Dive Well Facility Construction Account to pay the periodic progress payment requests and/or the final payment request for the Construction of the Deep Dive Well Facility. The Parties acknowledge and agree some of the costs, expenses and fees for the Construction of the Deep Dive Well Facility will be incurred prior to the initial deposit into the Deep Dive Well Facility Construction Account under Section 3.3.1(a), and accordingly, the

City shall be reimbursed for such costs, expenses and fees that have been paid by the City prior to such deposit.

(b) The amount of each distribution and withdrawal under this Section 3.3.6 for the respective progress payment request and/or the final payment request shall be the amount approved for payment by the City Council. The Parties acknowledge and agree the process for recommendation and approval of the Deep Dive Well Facility Construction progress payment(s) or the final payment, as the case may be, as set out in the contract between the City and the CMAR must be completed before the distribution and withdrawal of funds under this Section 3.3.6 may be made to the City.

(c) The distribution and withdrawal under this Section 3.3.6 shall be authorized on the first Business Day following the date the City has approved the respective Deep Dive Well Facility progress payment request or the final payment.

(d) The amounts distributed and withdrawn under this Section 3.3.6 shall be used and applied by the City to pay, in a timely manner, the respective Deep Dive Well Facility Construction progress payment request and/or the final payment request.

(e) The City shall have available for inspection by the Parties each progress payment request and the final payment request, and supporting documentation at least five (5) Calendar Days before the same are considered at a meeting of the City Council for payment approval.

**3.3.7 Remaining Balance Due/ Deep Dive Well Facility Construction Account Overage**

(a) Within thirty (30) Calendar Days after the Claims Expiration Date, the City shall provide to the Park District and UND a statement showing total of all costs, expenses and fees for the design and Construction of the Deep Dive Well Facility.

(b) If the total of all costs, expenses and fees for the design and Construction of the Deep Dive Well Facility exceeds the total amount of funds deposited by the Foundation under Section 3.3.1(a), plus any interest earned thereon and less bank fees and charges, [REDACTED] shall make an additional payment to the City for such excess amount. [REDACTED] shall pay to the City such excess amount within thirty (30) Calendar Days after [REDACTED]'s receipt of the statement described in Section 3.3.7(a).

(c) If the total of all costs, expenses and fees for the design and Construction of the Deep Dive Well Facility is less than the total amount of funds deposited by the Foundation under Section 3.3.1(a) plus any interest earned thereon and less bank fees and charges, the City shall distribute to UND the remaining balance in the Deep Dive Well Facility Construction Account, which shall be retained and used by the UND solely for Deep Dive Well Facility Capital Expenditures. UND shall be entitled to the distribution and withdrawal of funds under this Section 3.3.7(c) within thirty (30) Calendar Days after Park District's receipt of the statement described in Section 3.3.7(a).

**3.3.8 Accounting of Deep Dive Well Facility Construction Account** The City shall, during regular business hours, make available for inspection by the Park District and UND an accounting showing distributions and withdrawals from the Deep Dive Well Facility Construction Account under this Section 3.3 and the payments made with such funds. Further, the City shall, during regular business hours, make available for inspection by the Park District and UND the account statements for the Deep Dive Well Facility Construction Account.

**3.3.9 Tax reporting** Any interest on the Deep Dive Well Facility Construction Account shall be reported to the City, provided, however, any interest that may be included in a distribution under Section 3.3.7(c), if any, shall be reported to the Park District.

## **SECTION 4: USE, OPERATION, MAINTENANCE AND REPAIR OF DEEP DIVE WELL FACILITY**

### **4.1 UND's Use of Deep Dive Well Facility**

**4.1.1** From and after the date the ASC is Finally Completed, UND shall be entitled to use the Deep Dive Well Facility for its educational curriculum and research purposes, provided, however, UND's use shall be subject to and in accordance with all Applicable Law, the terms and conditions of this Agreement, the ASC Management Agreement, the ASC Operations Manual and the Deep Dive Well Facility Use Agreement.

**4.1.2** UND acknowledges and understands the Park District does not have adequately trained and qualified employees, staff, contractors or other personnel available to monitor and oversee UND's use of the Deep Dive Well Facility. Accordingly, UND shall secure and pay the costs, expenses and fees for all safety, medical, emergency and/or other trained personnel to be present and to monitor and oversee UND's use of the Deep Dive Well Facility. The personnel secured by UND shall have the necessary and Usual and Customary skill, training and competence and which complies with and meets Good Industry Practice for the type of and intended use by UND of the Deep Dive Well Facility.

### **4.2 Deep Dive Well Facility Operations.**

**4.2.1** As UND is the main user and benefactor of the Deep Dive Well Facility and are financially responsible for the Deep Dive Well Facility, UND shall perform all of the Deep Dive Well Facility Operations as approved of by the Park District.

**4.2.2** In performing the Deep Dive Well Facility Operations, UND and all of its employees, agents, and representatives shall perform such services and activities in Good Faith and shall be subject to and comply with the following standards:

**(a)** Devote sufficient time and use Best Efforts to perform, furnish, provide and fulfill all powers, authorities, duties, obligations and responsibilities conferred or imposed under this Agreement.

(b) Perform and furnish the Deep Dive Well Facility Operations in a timely and competent manner and in accordance with the standard of care, diligence and competence that is Usual and Customary and that complies with and meets Good Industry Practice.

(c) In the event the UND engages any Person to perform all or any part of the Deep Dive Well Facility Operations, require that such Persons to perform, furnish and provide the same at the same standard of care, skill, diligence, and competence required of UND under this Agreement.

4.2.3 UND shall work in Good Faith with the Park District and the City to perform all Operations of the Deep Dive Well Facility to ensure there is the least disruption and interruption into the operations, management, scheduling, or conducting of the ASC or ASC Programs and Activities and the City's ownership of the ASC.

#### **4.3 Maintenance and Repair of the Deep Dive Well Facility.**

**4.3.1** UND shall be responsible for additions, alterations, repairs, maintenance, improvement and cleaning of the Deep Dive Well Facility, and ensure such addition, alteration, repair, maintenance, improvement or cleaning is of a quality and class that is Usual and Customary and that meets Good Industry Practice. UND shall coordinate with the Park District and the City for such additions, alterations, repairs, maintenance, improvement and cleaning of the Deep Dive Well Facility to ensure there is the least amount of interruption or disruption to operations, management, scheduling, or conducting of the ASC or ASC Programs and Activities.

**4.3.2** UND will be responsible for and pay all of the Deep Dive Well Facility Capital Expenditures. The Park District, at least annually, or more frequently as the Park District deems necessary, shall submit to the UND Representative, with a copy to the City Representative, a listing of proposed Deep Dive Well Facility Capital Expenditures and the estimated cost for each Deep Dive Well Facility Capital Expenditure, for the purpose of allowing UND to consider and decide on whether to pursue such matters. The determination as to whether a Deep Dive Well Facility Capital Expenditures shall be made by UND but the Park District shall be afforded an opportunity to explain the reasoning behind a request for a Deep Dive Well Facility Capital Expenditures to UND and/or the UND Representative. UND is under no obligation to make a Deep Dive Well Facility Capital Expenditures proposed by the Park District, provided, however, in making its decision regarding Deep Dive Well Facility Capital Expenditures, UND shall act in Good Faith to ensure Usual and Customary operations that meet Good Industry Practice continue for Deep Dive Well Facility.

**4.3.3** In the event of an emergency, the Park District shall contact the UND Representative to advise of the emergency and need to pursue the Deep Dive Well Facility Capital Expenditure, and the UND Representative is authorized to permit the Park District to order, procure, and obtain such Deep Dive Well Facility Capital Expenditures, and UND shall be invoiced for such Deep Dive Well Facility Capital Expenditure. For purpose of this Section 4.3.3, an emergency means any situation that has or that is likely to imminently endanger life,

property or the public health and safety or that has or is imminently likely to cause an adverse effect on the security of, or damage to public or private property, (including to all or any part of the ASC and/or the Deep Dive Well Facility), or that the Park District determines a response or mitigation actions is warranted to protect lives and property, to provide for the public health and safety, or to avert or lessen the threat of a disaster, or that the Park District determines a response or mitigation action is warranted to prevent significant impact to operations of either the ASC or the Deep Dive Well Facility

**4.3.4** If UND determines not to pursue a Deep Dive Well Facility Capital Expenditures proposed by the Park District and that determination materially hinders, disrupts, interferes, or causes a safety concern with the operations, management, scheduling, or conducting of the ASC or ASC Programs and Activities, then UND, the City and Park District shall meet, at least once or more often as the Parties may agree, to negotiate and seek, in Good Faith, a resolution of such matter. In the event the Parties agree, after all Good Faith efforts have been exhausted, that a resolution cannot be reached, then either the City or the Park District may terminate this Agreement by providing notice to the other Parties a one year advance written notice.

#### **4.4 Execution of Contracts.**

**4.4.1** The Park District and UND shall have the right to enter into contracts, in their own respective name, relating to their respective performance under this Agreement and for UND's and other Person's use of the Deep Dive Well Facility. Any such contracts shall contain standard indemnification and insurance obligations that are Usual and Customary and that meets Good Industry Practice for the type of services, obligations or uses being provided or performed under this Agreement.

**4.4.2** No contract entered into by the Park District or UND shall extend beyond the term of the Agreement or earlier termination of this Agreement.

**4.5 Alterations to Deep Dive Well Facility.** In the event UND desires to reconstruct or make any alterations, additions, or replacements to the Deep Dive Well Facility, UND shall first request approval for such reconstruction, alterations, addition or replacement from the Park District and then with Park District approval, the Park District and UND shall request City approval. The Park District and UND shall not reconstruct or make any alterations, additions or replacements to the Deep Dive Well Facility without the prior written approval of the City, except as provided in Section 4.3.3.

#### **4.6 Independent Contractors of the Park District/UND Employees and Staff.**

**4.6.1** All staff, employees, independent contractors, and other personnel hired by, or contracted with, the Park District for its performance under this Agreement shall be the employees, agents, and/or independent contractors of the Park District and not of the City, the Foundation or UND.

**4.6.2** All staff, employees, independent contractors, and other personnel hired by, or contracted with, the UND for its performance under this Agreement or its use of the Deep Dive Well Facility shall be the employees, agents, and/or independent contractors of UND and not of the City, the Park District or the Foundation.

**4.6.3** All staff, employees, independent contractors, and other personnel hired by, or contracted with, the City for its performance under this Agreement shall be the employees, agents, and/or independent contractors of the City and not of the Park District, UND or the Foundation.

**4.6.4** All staff, employees, independent contractors, and other personnel hired by, or contracted with, the Foundation for its performance under this Agreement shall be the employees, agents, and/or independent contractors of the Foundation and not of the City, Park District, or UND.

**4.6.5.** All salaries, benefits, costs and expenses associated with Park District, UND, City or Foundation employees shall be paid solely by the Park District, UND, the City or the Foundation, as the case may be.

**4.7 No City Responsibility for Deep Dive Facility Operations or Maintenance or Repairs.** Notwithstanding any contrary term or condition under the ASC Management Agreement or the ASC Operating Manual, under no circumstance shall the City be responsible for any of the following:

**4.7.1** Payment for any costs, expenses or fees for the design and/or Construction of the Deep Dive Well Facility (other than to use and apply the funds received and described in Sections 3.2 and 3.3);

**4.7.2** Any Deep Dive Well Facility Operations;

**4.7.3** Any maintenance or repair of the Deep Dive Well Facility, including without limitation Deep Dive Well Facility Capital Expenditures;

**4.7.4** Payment of any costs, expenses, debts, liabilities or obligations relating to or arising from the Deep Dive Well Facility Operations; and

**4.7.5** Payment of any costs, expenses, debts, liabilities or obligations relating to or arising from maintenance or repair of the Deep Dive Well Facility, including without limitation Deep Dive Well Facility Capital Expenditures.

**4.7.6** Without in any manner limiting the provisions of Sections 4.7.1 through 4.7.5 above, in the event the City incurs any operational costs, expenses or fees for inclusion of the Deep Dive Well Facility within the ASC or for the Deep Dive Well Facility Operations, including additional costs, expenses or fees for liability coverage for the ASC and/or Utility service, UND shall reimburse the City for such operational costs, expenses and fees. The City shall provide to UND a statement showing the amount of such operational costs, expenses and

fees incurred by the City, and the amount of these operational costs, expenses and fees without the Construction of the Deep Dive Well Facility or the Deep Dive Well Facility Operations having been performed. For purposes of this Section 4.7.6, the operational costs, expenses or fees shall not include the costs, expenses and fees incurred for the design and Construction of the Deep Dive Well Facility, which shall be paid by UND under Sections 3.2 and 3.3 above.

## **SECTION 5: OWNERSHIP OF DEEP DIVE WELL FACILITY**

### **5.1 City Ownership of Deep Dive Well Facility**

**5.1.1** The City shall have the exclusive and sole ownership right, title and interest in and to the entirety of the Deep Dive Well Facility and all of the plans and specifications for the design and Construction of the Deep Dive Well Facility.

**5.1.2** Nothing in this Agreement, the Deep Dive Well Facility Use Agreement, the ASC Management Agreement or the ASC Operations Manual, nor any actions taken by UND, the Park District and/or the Foundation under this Agreement, the Deep Dive Well Facility Use Agreement, the ASC Management Agreement or the ASC Operations Manual grants, transfers, conveys, vests or otherwise confers to UND, the Park District or the Foundation any ownership right, title or interest in or to the Deep Dive Well Facility or the ASC.

## **SECTION 6: LIABILITY AND INSURANCE**

**6.1 Liability.** The Park District shall be responsible for any acts or omission of the Park District and the Park District's respective directors, officers, agents, representatives, and employees in the Park District's performance under this Agreement. UND shall be responsible for any acts or omission of UND and UND's respective directors, officers, agents, representatives, and employees in UND's performance under this Agreement and its use of the Deep Dive Well Facility. Nothing herein shall be construed as a waiver or release of any rights, privileges or defenses that may be afforded to the Park District, UND or the City, including without limit rights, privileges, defenses and immunities existing under any Applicable Law, (including under N.D.C.C. ch. 32-12.1, N.D.C.C. ch. 32-12.2), and all of these rights, privileges, defenses and immunities are specifically reserved by the Park District, UND and the City.

**6.2 UND Insurance.** UND will obtain and maintain the following coverages and insurance during the term of this Agreement:

**6.2.1** Workforce Safety insurance as required by the State of North Dakota.

**6.2.2** General liability, personal injury, bodily injury, and property damage (except ASC building property damage) on an occurrence basis with limits of liability not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. The Park District and the City shall be named as an additional insureds, or if coverage is through the State Risk Management Fund, then the Park District and the City shall be named as an additional covered party.

**6.2.3** All policies shall be issued by the State Risk Management Fund, or by companies authorized to do insurance business in the State of North Dakota, name UND as the covered party under such provided coverage or as the insured under insurance policies.

**6.2.4** Confirmation of coverage from NDIRF, the State Risk Management Fund, or certificates of insurance under insurance policies evidencing the above-described coverage or insurance shall be submitted to the Park District and the City prior to the commencement of operations under this Agreement and at least fifteen (15) calendar days prior to the expiration dates of expiring policies. A current confirmation of coverage from the State Risk Management Fund, or certificate of insurance, as the case may be, must be on file with Park District and the City for the duration of this Agreement. Said coverage shall be primary coverage rather than any policies and insurance owned or maintained by the Park District. Coverage or policies shall be issued by the State Risk Management Fund, or insurers, as the case may be, who endorse the coverage or policies to reflect that, in the event of payment of any loss or damages, subrogation rights under those contract documents will be waived by the State Risk Management Fund, or the insurer with respect to claims against the Park District and the City.

**6.2.5** UND shall be responsible for the payment of all deductibles contained in any coverage or insurance hereunder.

**6.2.6** If, during the term of this Agreement, changed conditions or other pertinent factors should, in the reasonable judgment of the Park District and the City, render inadequate the above-described coverage or insurance limits, UND will furnish on demand such additional coverage as may reasonably be required by the Park District and the City under the circumstances. All such coverages and insurance shall be obtained at UND's expense, under valid and enforceable policies, issued by the insurers of recognized responsibility which are well-rated by national rating organizations and are acceptable to the Park District and the City.

**6.2.7** The provisions requiring UND to carry said coverages and insurance shall not be construed in any manner as waiving or restricting the liability of UND under this Agreement.

**6.2** **Park District Insurance.** The Park District will obtain and maintain insurance coverage as provided in Section 7 of the Altru Sports Complex, Management and Operations Agreement, by and between, City of Grand Forks, North Dakota and Park District of the City of Grand Forks. UND acknowledges a copy of such agreement.

**6.3** **City Insurance.** The City will obtain and maintain insurance coverage as provided in Section 7 of the Altru Sports Complex, Management and Operations Agreement, by and between, City of Grand Forks, North Dakota and Park District of the City of Grand Forks. UND acknowledges a copy of such agreement.

## **SECTION 7: TERM/TERMINATION/DEFAULT**

## **7.1 Term/Mid-Term Review/Extension.**

**7.1.1 Term.** Unless terminated early as provided herein, this Agreement shall commence on the Effective Date and shall terminate on the earlier of December 31, 2035 or the date the ASC Management Agreement is terminated.

**7.1.2 Mid-term review.** The Parties shall meet on or before July 1, 2030, to review this Agreement, and may modify such provisions upon mutual consent of the Parties. Nothing in this mid-term review requires any modification or mandates any Party to agree to a modification.

**7.1.3 Extension.** This Agreement may be extended by mutual consent of the Parties hereto. If an extension is contemplated, the Parties shall commence negotiations for such extension within one year prior the termination date described in Section 7.1.1 above.

**7.2 Termination by Mutual Agreement.** The Parties may mutually agree, in writing, to terminate this Agreement, at any time, without termination fee, penalty, or payment of any damages.

**7.3 Termination by the City, the Park District or UND.** In addition to a termination by the City or Park District under Section 3.3.1(b), Section 4.3.4 and a non-defaulting Party under Section 7.5(a), the City, the Park District or UND may terminate the Agreement, for any reason or for no reason, without termination fee, penalty, or payment of any damages by providing the other Parties a one year advance written notice.

## **7.4 Event of Default**

**7.4.1** In the event any Party to this Agreement has defaulted in the performance of the Party's obligations hereunder, violated any term, condition, covenant or provision of this Agreement, and/or fails to meet the standards of performance under this Agreement, (a "Non-Performance Event"), either of the other Parties shall give written notice to such Party of describing the Non-Performance Event and demand the Non-Performance Event be corrected, remedied, ceased or cured within a reasonable period after the date of such notice, which period shall not be less than fifteen (15) or more than sixty (60) Calendar Days. If the Party receiving written notice of a Non-Performance Event does not correct, remedy, cease or cure such Non-Performance violation within the time specified in such notice, then an event of default shall have occurred. Notwithstanding anything to the contrary, if the Non-Performance Event shall be of such a nature that the same cannot be completely corrected, remedied, ceased or cured within the specified time period, then such Non-Performance Event shall not constitute or otherwise be an event of default if the non-performing Party shall have commenced actions to correct, remedy, cease or cure the Non-Performance Event within the specified time period and continues to proceed with reasonable diligence and in good faith to correct, remedy, cease or cure the Non-Performance Event.

**7.4.2** If the Non-Performance Event constitutes malfeasance or misfeasance by the defaulting Party, the non-defaulting Parties shall not be obligated to provide an opportunity to

correct, remedy, case or cure. For purposes of this Agreement, malfeasance means **(a)** conduct that demonstrates lack of even slight care which is practically willful in nature and displays a reckless temperament, **(b)** evil doing, ill conduct, the commission of some act which is positively unlawful, the doing of an act which is wholly wrongful and unlawful, or the doing of an act which the person ought not to do at all, and/or **(c)** the unjust performance of some act which the party had no right or which he had contracted not to do. Malfeasance shall also include any wrongful conduct that affects, interrupts, or interferes with the performance of official duties. For purposes of this Agreement, misfeasance means the improper performance of some act, which the party may lawfully do.

**7.5 Remedies** Upon the occurrence of an event of default under Section 7.4, the non-defaulting Parties shall have the right to **(a)** terminate this Agreement without termination fee, penalty, or payment of any damages., whereupon all obligations of the non-defaulting Party that had not been incurred as of the effective termination date, including but not limited to the obligation to pay the balance of fees due, shall terminate and **(b)** pursue any and all other available remedies against the defaulting Party.

**7.6 Effect of Termination.** Upon termination of this Agreement, the following shall be the effect of such termination and/or occur upon the date of termination:

**7.6.1** In the event the City or Park District terminate this Agreement, other than a termination by the City or Park District pursuant to Section 3.3.1(b), Section 4.3.4 or Section 7.5(a), or the termination of this Agreement is caused by the termination of the ASC Operations Agreement:

**(a)** The Park District and UND shall discontinue the performance of all Deep Dive Well Facility Operations, and

**(b)** The Park District and UND shall make available to the City all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Deep Dive Well Facility and Deep Dive Well Facility Operations as may have been accumulated by the Park District and UND in performing its obligations hereunder, whether completed or in process, and

**(c)** The City shall appoint a successor, which may include appointing UND, to manage and operate the Deep Dive Well Facility and Deep Dive Well Facility Operations. The City shall enter into an agreement to perform the Deep Dive Well Facility Operations consistent with the terms of this Agreement.

**7.6.2** In the event this Agreement is non-renewed by UND or is terminated by UND under Section 7.3, or this Agreement is terminated by the City or Park District under Section 3.3.1(b), Section 4.3.4 or Section 7.5(a):

**(a)** UND shall discontinue the performance of all Deep Dive Well Facility Operations, and

(b) UND shall discontinue all use of the Deep Dive Well Facility, and

(c) UND, at its sole cost and expense, shall cause the Deep Dive Well Facility to be decommissioned, and to be removed or reconstructed, altered, modified and converted to another fixed and permanent athletic facility or component of the ASC, as determined and directed by the City with Good Faith input and coordination from the Park District.

(d) Since UND is the main user of the Deep Dive Well Facility, the Park District will look for alternative users/customers but UND and the Park District acknowledge such users are limited in the area, and therefore, in addition to the obligations in 7.6.2 (b) – (c), UND shall pay to the Park District a fee of \$25,000.00 to be paid in equal installments over 5 years, with the first installment due the following January 1<sup>st</sup> and every January 1<sup>st</sup> thereafter for the 5-year period until paid in full. The purpose of the fee in this section is to offset operational costs of the Deep Dive Well Facility. If the City directs the Deep Dive Well Facility to be decommissioned, and/or removed, or reconstructed, altered, modified, and converted to another fixed and permanent athletic facility or component of the ASC within one-year of UND's termination, then this fee shall not be applicable and UND shall be subject to pay such fee to the Park District.

**7.6.3** In the event this Agreement is terminated by UND under Section 7.5(a):

(a) UND shall discontinue the performance of all Deep Dive Well Facility Operations, and

(b) The City shall appoint a successor, which may include appointing UND, to manage and operate the Deep Dive Well Facility and Deep Dive Well Facility Operations. The City shall enter into an agreement to perform the Deep Dive Well Facility Operations consistent with the terms of this Agreement.

**7.6.4** Any obligations of the Parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

## **SECTION 8 MISCELLANEOUS**

**8.1 Authority.** The Parties to this Agreement acknowledge, warrant and represent that each has the full right, authority and power to enter into this Agreement. The Parties to this Agreement further acknowledge, warrant and represent that the execution by the individuals noted below for such Party, and the delivery and performance by the Parties of this Agreement has been and/or shall be duly authorized by all necessary action of the Parties and no other action on the part of the respective Parties is required in connection therewith and that this Agreement and each agreement, document and instrument executed and delivered pursuant to this Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of the respective Parties enforceable in accordance with their terms.

**8.2 Assignment.** No Party may assign this Agreement without the prior written consent of the other Parties. The Parties' rights and obligations under this Agreement will be passed to the assignees to which those rights and obligations have been permissibly assigned.

**8.3 Modification.** This Agreement may be amended or modified only by mutual written consent of the Parties, unless otherwise provided for herein.

**8.4 Severability.** If any of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions contained herein.

**8.5 Governing Law/Jurisdiction** This Agreement will be governed by and construed in accordance with the laws of the State and the City Code, and any action or claim relating to this Agreement shall be brought in the District Court for Grand Forks County, North Dakota.

**8.6 Agreements Read *In Pari Materia*.**

**8.6.1** The Parties acknowledge and agree the Deep Dive Well Facility Use Agreement is intended to supplement this Agreement by providing more detail and description of the Deep Dive Well Facility Operations by the Park District. This Agreement and the Deep Dive Well Facility Use Agreement are to be read together and *in pari materia*, but to the extent of any inconsistency between any term of this Agreement and any term of the Deep Dive Well Facility Use Agreement, the terms of this Agreement shall prevail.

**8.6.2** This Agreement shall not, in any manner, alter, waive, modify or otherwise limit the rights of the City or the obligations and duties of the Park District under ASC Management Agreement.

**8.7 No Discrimination.** The Park District, UND and City agree that they will discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, gender identity, sexual orientation, disability, national origin, ancestry, physical handicap, or age, and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age.

**8.8 Waiver.** No waiver of any Party of any right or remedy pursuant to this Agreement will be deemed to be a waiver of any other or subsequent right or remedy pursuant to this Agreement. The consent of one Party to any act by any other Party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given. One or more waivers by a Party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by a Party with respect to any act by another Party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such Party.

**8.9 No Third Party Beneficiaries.** Nothing contained in this Agreement is intended or will be construed as creating or conferring any right, benefits, or remedies upon, or creating any obligations of the Parties hereto toward, any person or entity not a Party to this Agreement, except those rights expressly contained herein.

**8.10 Entire Agreement.** This Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter, except as otherwise provided herein.

**8.11 Counterparts.** This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**8.12 Survival.** The limitations, obligations, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement will survive the expiration or earlier termination of this Agreement.

**8.13 Authorized Representatives**

**8.13.1** The City, the Park District and UND hereby designate the following individuals as their initial representatives, respectively, to administer this Agreement on their respective behalf:

- (a) City Representative: City Administrator
- (b) Park District Representative: Executive Director
- (c) UND Representative:

**8.13.2** The above-named representatives will be reasonably available to each other during the term of this Agreement and will have the authority to issue instructions and other communications on behalf of the City, the Park District and UND, respectively, and will be the recipients of notices and other written communications from the other Party pursuant to this Agreement, except as otherwise provided in this Agreement.

**8.13.3** The above-named representatives shall not have the authority to make decisions or give instructions binding upon the City, Park District or UND, except to the extent expressly authorized by the City, the Park District or UND, as the case may be, in writing, or with respect to the City Representative, as may be authorized under the City Code, under applicable policies of the City or under this Agreement.

**8.13.4** Any reference herein to City approval or consents shall mean any process of the City to approve or consent to a particular matter under Applicable Law, including the City Code, or as may be permitted under applicable policies of the City.

**8.13.5** In the event either the City, the Park District or UND designates a different representative, it will give the other Party written notice of the identity of and contact information for the new representative, as the case may be.

**8.14 Notices**

**8.14.1** All notices under this Agreement shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier services, with delivery receipt requested; or (d) sent by email communication followed by a hard copy, to the following addresses.

**8.14.2** All notices to the City shall be marked as regarding this Agreement and shall be delivered to the following address or as otherwise directed by the City Representative:

City of Grand Forks  
Attn: City Representative  
255 North 4<sup>th</sup> Street  
Grand Forks, ND 58201  
E-mail:

**8.14.3** All notices to Park District shall be marked as regarding this Agreement and shall be delivered to the following address or as otherwise directed by the Park District Representative:

Park District of the City of Grand Forks  
Attn: Executive Director  
P.O. Box 12429  
Grand Forks, ND 58208-2429  
Email: ghellyer@gfparks.org

**8.14.3** All notices to UND shall be marked as regarding this Agreement and shall be delivered to the following address or as otherwise directed by the UND Representative:

Email:

**8.14.4** Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery.

**8.15 Time of Essence.** Time is of the essence for all matters and obligations under this Agreement and all documents and agreements referenced herein.

**8.16 Cooperation.** The Parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to accomplish the purposes of this Agreement. Further, the Parties recognize that, in the performance of this Agreement, the greatest benefit will be derived by promoting the interests of the Parties, and each of the Parties, therefore, enter into this Agreement with the intention of cooperating with the other in carrying out the terms of this Agreement, and each Party agrees to interpret its own provisions, insofar as it may legally do so, in such manner as will best promote the interests of the ASC and the Deep Dive Well Facility and the Parties and to render the highest service to the public concerned.

**8.17 Performance of Additional Acts.** The Parties agree to perform such acts and to prepare, execute, file or record any documents, instruments, or stipulations requested by each other to perform the covenants, to satisfy the conditions herein contained, or to give full force and effect to this Agreement.

**8.18 Public Health Modification.** The Parties acknowledge the public health guidelines related to public gatherings may make some provisions within this Agreement difficult or impossible to execute. Should public health recommendations or mandates create a situation in which the Parties desire or are required to make modifications to the terms of this Agreement to move forward, the Parties agree to work together in Good Faith to modify such term to ensure a safe, enjoyable and beneficial event. All changes made pursuant to this Section 8.18 shall be agreed upon in writing and signed by the Parties. Further, a public health recommendation or mandate described in this Section 8.18 shall not constitute a Non-Performance Event, event of default or Force Majeure Event.

**8.19 Force Majeure.** In the event that either Party to this Agreement is unable to perform its obligations hereunder or to enjoy any of its benefits because of the substantial damage or destruction of the Project due to any cause, a natural disaster, pandemic, social unrest or action, order or decree of a governmental body with appropriate jurisdiction (hereinafter referred to as a “Force Majeure Event”), the Party that has been so affected shall immediately give notice to the other Party of such fact and shall do everything possible to resume its performance. Upon the other Party's receipt of such notice, each Party's obligations hereunder shall be suspended for the period of such Force Majeure Event and, if applicable, the payments due under this Agreement shall be reduced pro rata. If the Force Majeure Event lasts for a period of two (2) years or more from the date that the other Party receives notice of such Force Majeure Event and the Party that received such notice has been able to perform its obligations hereunder despite such Force Majeure Event, the Party that received such notice may terminate this Agreement by giving notice thereof to the Party unable to perform because of such Force Majeure Event and shall be under no further obligations to the other Party under this Agreement.

**8.20 Binding Effect.** This Agreement will inure to the benefit of and is binding upon the City, the Park District, UND, and the Foundation and their respective successors and assigns.

**PARK DISTRICT OF THE CITY OF**

**CITY OF GRAND FORKS**

**GRAND FORKS**

By: Tim Skarperud  
Its: President of the  
Board of Park Commissioners  
Dated: \_\_\_\_\_

By: George Hellyer  
Its: Executive Director  
Dated: \_\_\_\_\_

By: Brandon Bochenski  
Its: Mayor

Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Maureen Storstad  
Its: City Auditor  
Dated: \_\_\_\_\_

**UNIVERSITY OF NORTH DAKOTA**

By: Dr. Andrew Armacost  
Its: President  
Dated: \_\_\_\_\_

**THE UND AEROSPACE FOUNDATION**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

**NORTH DAKOTA STATE  
BOARD OF HIGHER EDUCATION**

By: \_\_\_\_\_  
Its: Chancellor  
Dated: \_\_\_\_\_