h. Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.

i. Insurers must be authorized to do business in the State of Texas and have a current A. M. Best rating of A VII or equivalent measure of financial strength and solvency.

j. Deductible limits, or self-funded retention limits, on each policy must not exceed $10,000.00 per occurrence unless otherwise approved by the City.

k. The City may consider alternative coverage or risk treatment measures through insurance pools or risk retention groups in lieu of traditional insurance. Prior to employing such alternative coverage, the FOTHNA must obtain City’s written approval.

l. City shall not be responsible for the direct payment of insurance premium costs for FOTHNA’s insurance. FOTHNA may be required to provide proof of insurance premium payments.

m. During any term of this Agreement, FOTHNA shall report to the Risk Management Division in a timely manner any loss occurrence that could give rise to a liability claim or lawsuit or that could result in a property loss.

13. NONDISCRIMINATION; DISABILITIES

13.01 FOTHNA, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration herein, agrees that no person shall be excluded from participation in or denied the benefits of FOTHNA’s use of the Premises on the basis of race, age, color, national origin, ethnicity, religion, handicap, gender, sexual orientation, or familial status. FOTHNA further agrees for itself, its personal representatives, successors in interest, and assigns that no person shall be excluded from the provision of any services on the Premises on grounds of race, age, color, national origin, ethnicity, religion, handicap, gender, sexual orientation, or familial status.

14. FORCE MAJEURE

14.01 If the Premises or any portion thereof shall be destroyed or damaged by reason of force majeure so as to prevent the use of the Premises for the purposes and during the periods specified in this Agreement, then this Agreement shall terminate, and FOTHNA hereby waives any claim against CITY for damages by reason of such termination.

15. ASSIGNMENT

15.01 FOTHNA shall not assign this Agreement nor suffer any use of the Premises other than herein specified, without the written consent of CITY. If assigned per the written consent of CITY, FOTHNA agrees to ensure that any assignee will comply with all terms, provisions, covenants, and conditions of the Agreement. Assignment of this Agreement shall not relieve FOTHNA from any of its obligations under this Agreement.
9.02 In the event any damage is done to the Premises or to any part of the fixtures, structures, or natural environment of the Premises by any act of FOTHNA or of FOTHNA's employees, agents, officers, volunteers, invitees, or licensees, FOTHNA shall pay the costs of repairing the Premises, fixtures, structures, or natural environment to the condition in which it existed immediately preceding the occurrence of damage. The CITY will determine whether any damage has been done, the amount of the damage, the reasonable costs of repairing the damage, and whether FOTHNA is responsible under the terms of this Agreement.

9.03. If the CITY determines that damage is attributable to FOTHNA pursuant to section 9.02, the CITY shall provide FOTHNA written notification of such damage. Within thirty (30) days of receipt of the CITY's written notice, FOTHNA shall repair or replace the damaged portion of the Premises, fixtures, structures, or natural environment to the reasonable satisfaction of the CITY.

10. RIGHT TO AUDIT

10.01 FOTHNA agrees that the CITY shall, until the expiration of three (3) years after expiration of this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the FOTHNA involving transactions relating to this Agreement. FOTHNA agrees that the CITY shall have access during normal working hours to all necessary FOTHNA facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. CITY shall give FOTHNA reasonable advance notice of intended audits.

10.02 FOTHNA further agrees to include in any subcontractor agreements hereunder a provision to the effect that the subcontractor agrees that the CITY shall, until the expiration of three (3) years after expiration or termination of the subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor involving transactions to the subcontract, and further that CITY shall have access during normal working hours to all subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. CITY shall give subcontractor reasonable advance notice of intended audits.

11. INDEMNIFICATION

11.01 FOTHNA AGREES TO DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS, AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF, OR BE OCCASIONED BY (i) FOTHNA'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF FOTHNA, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY), OR SUBCONTRACTORS, RELATED TO THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE
INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY OR ITS OFFICERS, AGENTS, EMPLOYEES, OR SEPARATE CONTRACTORS AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH FOTHNA AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF THE CITY’S GOVERNMENTAL IMMUNITY AS FURTHER PROVIDED BY THE LAWS OF TEXAS.

11.02 FOTHNA covenants and agrees that City shall in no way nor under any circumstances be responsible for any property placed on the Premises belonging to FOTHNA, its members, employees, agents, contractors, subcontractors, invitees, licensees, or trespassers that may be stolen, destroyed, or in any way damaged, and FOTHNA hereby indemnifies and holds harmless City from and against any and all such claims. The City does not guarantee police protection and will not be liable for any loss or damage sustained by FOTHNA, its members, employees, agents, contractors, subcontractors, invitees, licensees, or trespassers on any of the Premises.

12.00 The FOTHNA shall not commence work under this Agreement until it has provided insurance required herein and the City has approved such insurance. Nor shall FOTHNA allow any subcontractor or subconsultant to commence work on its subcontract until the subcontractor or subconsultant has provided FOTHNA with insurance that names both the City and FOTHNA as additional insureds and that meets the requirements specified herein. In lieu of requiring subcontractor or subconsultant to acquire separate insurance, FOTHNA may elect, in its sole discretion, to add any subcontractor or subconsultant as an additional insured under its liability policies.

12.01 FOTHNA shall specifically obtain the following types of insurance at the following limits and subject to the additional requirements listed below:

   a. Commercial General Liability (required throughout term of Agreement and any renewals thereof):

      $500,000.00 Each Occurrence

      $500,000.00 Aggregate

      Documentation of commercial general liability insurance shall be provided to the City prior to the commencement of the work.

   b. Liquor Liability (required for all events hosted by the FOTHNA on the Premises at which liquor (beer and wine only) is to be sold, served, provided, or allowed to be consumed)

      $1,000,000.00
The FOTHNA shall notify the Superintendent over Northeast Region Parks in writing at least ten (10) working days prior to the scheduled event; such notice shall include the date, time and location of the event. Documentation of liquor liability insurance shall be provided to the City at least five business days prior to the date of the event.

c.  **Automobile Liability** (required throughout term of Agreement and any renewals thereof).

    $1,000,000.00 each accident on a combined single limit basis

    Automobile liability insurance must provide coverage for "any auto," which is defined to include all autos owned, hired, and non-owned for driving in connection with business activities by, for, or on behalf of FOTHNA

12.02  All insurance required under this Agreement must comply with the following general requirements:

a.  Certificates of insurance shall be delivered to the City of Fort Worth, addressed to the attention of Park Superintendent, Parks and Community Services (PACS), 4200 Seminary, Ste. 2200, Fort Worth, Texas 76115.

b.  The City's Risk Manager shall have the right to review and evaluate all required insurance coverage and to make reasonable requests or revisions pertaining to the types and limits of that coverage. FOTHNA and its subcontractors shall comply with such requests or revisions as a condition precedent to the effectiveness of this Agreement.

c.  Each insurance policy shall be endorsed to provide the City a minimum thirty (30) days' notice of cancellation, non-renewal, and/or material change in policy terms or coverage, provided, however, that a ten day notice shall be acceptable in the event of cancellation for non-payment of premium.

d.  The City, its officers, employees, and servants shall be endorsed as an additional insured on all insurance policies required under this Agreement.

e.  All insurance policies required under this Agreement shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.

f.  FOTHNA's (agent) insurance policies shall each be endorsed to provide that such insurance is primary protection and that any self-funded or commercial coverage maintained by City shall not be called upon to contribute to loss recovery.

g.  On the request of City, FOTHNA shall provide complete copies of all insurance policies required by this Agreement. Current and revised certificates of insurance shall be delivered to the Parks Reservationist of the City of Fort Worth, 4200 Seminary, Ste. 2200, Fort Worth, Texas 76115 with a copy to Park Superintendent, at the PACS office