

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT is made and entered into this 6th day of November, 2023, by and between the City of St. Francis, a Minnesota municipal corporation (the "City"), and St Francis Homerun Club, a Minnesota Nonprofit 501 C3 Charitable Organization (the "Contractor").

WHEREAS, Contractor is in the business of providing management services at recreational facilities including ice arenas and outdoor skating rinks; and

WHEREAS, the City desires to retain the services of Contractor to manage its outdoor skating rinks.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. MANAGEMENT SERVICES. The City hereby retains Contractor to provide management services at the City's outdoor skating rinks. In connection with the foregoing, Contractor shall be responsible for the following:
 - (A) Contractor shall provide all operational staff and shall be exclusively responsible for the management of such personnel and the payment of all wages and withholdings in connection therewith. Contractor shall provide site-specific training to all staff members with a focus on providing excellent customer service.
 - (B) Contractor shall maintain all ice surfaces and keep the same free from snow and debris.
 - (C) Contractor shall keep all walkways free from ice and snow.
 - (D) Contractor shall clean and maintain the interior of the warming house and provide all supplies in connection therewith. Contractor's duties shall include, without limitation, vacuuming, cleaning bathrooms, cleaning windows, restocking toilet paper, hand soap, and hand towels, and providing basic first aid supplies.
 - (E) Contractor shall keep all outdoor areas free from trash and debris.
 - (F) Contractor shall ensure that all City ordinances, rules, and regulations are followed and enforced.
 - (G) Contractor shall ensure that the ice rinks are used only by members of the public and for no private purpose or event without the City's prior written consent.
 - (H) Contractor shall immediately notify the City in the event repairs are required to any building, equipment, or area.

- (I) Contractor shall secure all buildings and equipment when not in use and will be liable for any damages, thefts or other costs resulting from the failure to properly secure any building or equipment.
- (J) Contractor shall manage and take full responsibility for all concession activities, including obtaining all necessary licenses and permits and providing all concession merchandise and supplies. On a monthly basis, Contractor shall provide the City with a written report showing concession revenues, product costs, and the gross margin for each month. Along with such report, Contractor shall pay the City an amount equal to ten percent (10%) of the gross margin shown on such report. Contractor shall be entitled to retain the balance of concession proceeds, which amounts shall be in addition to the Management Fee paid hereunder.
- (K) Contractor shall ensure that any costs incurred in connection with the maintenance or operation of the ice rinks, above and beyond the Management Fee, are within budgeted amounts or otherwise approved in advance by the City.

2. CITY RESPONSIBILITIES. Notwithstanding any language in this Agreement to the Contrary, the City shall be responsible for the following:

- (A) The City shall perform all building and grounds repairs.
- (B) The City shall plow all parking areas.
- (C) The City shall provide basic utilities, including water, sewer, garbage, and local phone service (no long distance).
- (D) The City shall provide one (1) handicapped-accessible toilet (mini-biff) and shall be responsible for cleaning and maintaining the same.
- (E) The City shall provide blue hand towel service.
- (F) The City's Public Works Department shall work with the Contractor to make ice for the purpose of skating as weather and time permits. The Contractor must have all snow and debris removed from the ice surface before City Staff will attempt to make ice.

3. MANAGEMENT FEE.

- (A) For all services provided pursuant to this Agreement, the City shall pay Contractor the sum of One Hundred Sixty Four and 00/100 Dollars (164.00) per day of open operation (the "Management Fee").
- (B) Contractor acknowledges and agrees that the Management Fee shall constitute Contractor's entire compensation hereunder. All expenses of every kind incurred by Contractor in its performance under this Agreement shall be the sole responsibility of and be promptly paid by Contractor.

- (C) All keys, property, and equipment must be returned by Contractor and a final inspection/inventory of the property must be performed by the City prior to the payment of the final installment of the Management Fee.

4. TERM. The term of this Agreement will be for the duration of the 2023-2024 ice skating season, which is anticipated to run approximately 51 days from **December 22nd, 2023**, through **February 11th, 2024**, weather permitting (closed Christmas Day). Notwithstanding the foregoing, this Agreement may be terminated at any time:

- (A) Upon the mutual written agreement of the parties;
- (B) By the City in the event the Contractor fails to fully and satisfactorily perform in accordance with the terms and conditions of this Agreement; provided, the City must provide Contractor with written notice and ten (10) days to correct the failure prior to termination.
- (C) By the City, immediately and without prior notice, in the event Contractor (i) files bankruptcy or becomes insolvent, (ii) sells all or substantially all of its assets, or (iii) dissolves or files a notice of intent to dissolve.

5. CONTRACTOR'S REPRESENTATIONS. In order to induce the City to enter into this Agreement, Contractor makes the following representations to the City:

- (A) The Contractor has visited the City's outdoor ice skating rinks and has had the opportunity to become familiar with and is satisfied as to the conditions that may affect its ability to perform under this Agreement.
- (B) The Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect its ability to perform under this Agreement.

6. INDEPENDENT CONTRACTOR STATUS. Contractor shall perform under this Agreement as an independent contractor and nothing contained herein is intended or shall be construed to make or constitute Contractor as the agent, employee, partner, joint venturer, or representative of the City, but rather Contractor shall act and perform hereunder according to its own means and methods, which means and methods shall at all times be under its exclusive charge and control.

7. INSURANCE. During the term of this Agreement, Contractor will maintain the following insurance: (1) commercial general liability insurance with coverage in the minimum coverage amount of \$1,500,000 per occurrence and \$2,000,000 annual aggregate that shall cover liability arising from premises, operations, products completed operations, personal injury, advertising injury, and contractually assumed liability; and (2) workers compensation insurance; and 3) if the Contractor utilizes an automobile to perform the duties under this agreement, automobile insurance with liability limit of \$1,000,000 combined single limit. All policies of insurance shall name the City as an additional insured and shall require the insurance provider to provide the City with written notice at least thirty (30) days prior to any reduction or termination of such insurance coverage. Upon the execution of this Agreement, and any time thereafter upon

demand of the City, Contractor shall provide a certificate of insurance showing the required coverage.

8. INDEMNIFICATION. To the fullest extent permitted by the law, the Contractor agrees to defend, indemnify and hold harmless the City, and its employees, officials, and agents from and against all claims, actions, damages, losses, and expenses including reasonable attorney fees, arising out of the Contractor's negligence or the Contractor's performance or failure to perform its obligations under this Agreement. The Contractor indemnification obligations shall apply to the Contractor's subcontractor(s), or anyone directly or indirectly employed or hired by the Contractor, or anyone for whose acts the Contractor may be liable. The Contractor agrees this indemnity obligations shall survive the completion or termination of this Agreement.

9. REMEDIES. In the event of the breach of this Agreement by Contractor, the City shall be entitled to seek all remedies available at law, in equity, or otherwise. Contractor shall pay the City's costs and expenses, including reasonable attorneys' fees, incurred by the City in order to enforce this Agreement. Contractor expressly agrees that any remedies available to the City are cumulative and in no way exclusive. The seeking or exercising by the City of a particular remedy does not constitute a waiver or relinquishment by the City of its right to seek or exercise any other remedy available to it at law, in equity, or otherwise.

10. MISCELLANEOUS.

- (A) Governing Law. This Agreement has been executed in the State of Minnesota and shall be governed by the laws of said state, without regard to the conflict of laws rules thereof.
- (B) Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no warranties, representations or agreements among the parties in connection with the subject matter hereof, except as set forth or referred to herein.
- (C) Amendment. No amendment or modification of this Agreement shall be deemed effective unless made in writing and signed by both parties.
- (D) Waiver. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing.
- (E) Assignment. Except as otherwise provided for herein, no party may assign this Agreement without the consent of the other party. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective transferees, successors and permitted assigns.
- (F) Severability. In the event any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, such provision will be deemed stricken. The remaining provisions of this Agreement will continue to be valid

and binding and the Agreement will be reformed to replace the stricken provision with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- (G) Captions and Headings. The captions and paragraph headings used in this Agreement are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement or any of the provisions thereof.
- (H) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Agreement as of the date first above written.

CITY:

CITY OF ST. FRANCIS

By: _____
Its: _____

CONTRACTOR:

ST FRANCIS HOMERUN CLUB

By: J. J. S. J.
Its: Varsity Baseball Coach

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