

**AMENDED FACILITY USE AGREEMENT
CITY OF MITCHELL
MITCHELL SKATING AND HOCKEY ASSOCIATION**

This agreement (“Agreement”) entered into this ____ day of January, 2021 between the City of Mitchell a municipal corporation, by and through its Park and Recreation Board, (the “City”) and the Mitchell Skating and Hockey Association, a non-profit corporation (“MSHA”), as follows:

WITNESSETH

1. Subject to the terms, provisions and mutual obligations of the parties as provided in this agreement, the City shall allow the MSHA the use of the Toshiba Rink (North Rink) and/or the Innovative Rink (South Rink), including access to the ice arena lobby, locker rooms, restrooms and all pertinent property for parking purposes for the skating and youth hockey program purposes of the MSHA for the duration of the 2020-2021 MSHA Seasonal Use Period (“MSHA Seasonal Use Period” being defined as the hockey season term commencing on the third (3rd) Monday of September, 2020 through April 30, 2021; times outside of the said MSHA Seasonal Use Period are defined as the “Off Season”). This agreement is renewable annually upon mutual agreement by both parties.

1. MSHA agrees to pay to the City:
 - a. An Athlete Fee of nineteen dollars (\$19.00) per athlete ages 13 and up, and nine dollars (\$9.00) per athlete ages 12 and under.
 - b. An Ice Time Fee of seventy five dollars (\$75) per rink, per hour. The Ice Time Fee includes all hours that a rink is scheduled for use, regardless of whether it is actually used or if resurfacing is required or requested during that time period. MSHA will not be billed separately for resurfacing occurring before or after a scheduled session and such resurfacing will not be considered ice time for purposes of calculating the Ice Time Fee.
 - c. No refunds will be given for cancellations within fourteen (14) days of the scheduled time. The City may allow refunds if the reason for cancellation is beyond the reasonable control of MSHA.
 - d. Billing and payment shall be made in lump sum for the entire Seasonal Use Period on December 1, 2020. In the event that hours vary after the schedule is completed by December 1, or other changes to the invoice are necessary, City will provide an updated invoice at the end of the Seasonal Use Period which will be paid by MSHA within 14 days after issuance.

3. MSHA agrees to abide by all rules and guidelines in the Sports Complex policy manual.

4. The City shall retain the final management and control authority in respect to the Facility. MSHA shall have no management or control authority in respect to the Facility except as permitted by the City.

5. The City shall provide and/or perform the following functions within the Facility:
 - a. Oversee and coordinate the scheduling of the Facility and maintain a master schedule regarding the use of the Facility.
 - b. Provide supplemental manpower as required for the daily maintenance and upkeep for the ice surface and other necessary maintenance duties in the building during the MSHA Seasonal Use Period.
 - c. Provide on an annual basis, preventative maintenance on compressors, electrical, natural gas, water, heating units and other equipment, by trained & licensed HVAC and Electrical Service Professionals to ensure the compressors and utilities are in working order.
 - d. Skate sharpening services conducted by MSHA staff, on equipment provided by MSHA, shall be the sole responsibility of the MSHA. Any sharpening fees generated by MSHA staff will be retained by the MSHA. All sharpening fees generated by city employees will be retained by the City of Mitchell.
6. The MSHA shall, on an annual basis, prior to or on December 31 of each year, reimburse the City for, or pay as the case may be, the following:
 - a. All non-insured expense incurred in respect to the repair of any property damage to the Facility which may occur during an MSHA Seasonal Use Period and which is attributable to MSHA use of the Facility; including such repair expenses of the hockey rink, bleachers, scoreboards and any other items or equipment associated with operation of the MSHA Programs.
 - b. The City shall be responsible for structural or equipment repair and maintenance for the Facility. If there are repairs and or maintenance required that are not due to normal wear due to Facility use and are agreed upon by the City and MSHA, the City and MSHA will negotiate a shared cost for such agreed upon repairs.
7. Ice time shall be scheduled at the discretion of the Parks and Recreation Department staff. Times to be scheduled shall be determined and finalized no later September 15th for the fall schedule and no later than December 1st of each year for the winter and spring schedule.
8. Notwithstanding the expected Seasonal Use Period dates or the expected total allowance of ice time, the City reserves the right to close down and remove the ice sheet/s if internal or external climate conditions would make such an action advisable for maintaining the condition of the Facility. Such a closure shall not be a material breach of this Agreement.
9. The City shall procure and keep in force the following insurances:

- a. Comprehensive general liability insurance, including products, bodily injury and property damage with combined single limits of \$1,000,000 for each occurrence.
 - b. Fire, Vandalism, Malicious Mischief and extended coverage insurance covering the building.
10. During the term of each MSHA Seasonal Use Period, or any time the MSHA shall be operating within the Facility, MSHA shall have in force the following insurances:
 - a. Comprehensive general liability insurance, including products, bodily injury and property damage with combined single limits of \$1,000,000 for each occurrence. Insurance policies required by this paragraph shall name MSHA as insured and the City of Mitchell as an additional insured.
 - b. A copy of additional insured endorsements required hereunder shall be delivered to the City prior to commencement of an MSHA Seasonal Use Period or other MSHA occupation of the Facility. Such policies or certifications shall provide that the insurance coverage may not be cancelled or materially changed unless thirty (30) days advance notice is given to the City.
 - c. The MSHA shall be responsible for insuring any equipment that is used by the MSHA that is stored in the building that is not permanently affixed or is not a part of the building. MSHA agrees to indemnify and hold harmless the City from any and all liability arising from the use of the Facility for programs carried on by the MSHA. The MSHA agreement to indemnify and hold harmless does not include any recreational skating program that the City would sponsor and supervise, or which may be operated within the Facility by any person or entity other than the MSHA.
 - d. The parties shall reassess insurance needs at least once per contract year to determine whether or not the coverage required by this agreement is adequate.
11. For activities within the Facility sponsored solely by the MSHA, all revenue generated in connection with the activity shall be retained by the MSHA.
12. Revenue generated by the City for the letting of the Facility to persons or parties other than MSHA at any time while this agreement is in effect shall be retained by the City. MSHA shall have no authority to rent the Facility to other parties.
13. Revenues generated by MSHA as a result of selling advertising panels which are affixed to the Facility building shall be retained by the MSHA. The placement and size of advertising panels within the Facility building must be approved by the City prior to sale and placement. Cost of panel sales will be addressed in an advertisement plan approved by the City.

- a. Per previous agreement with the Park and Recreation Board, MSHA shall have no advertisement regarding specific alcoholic beverages or tobacco products, via signage sponsorship or in ice advertising.
14. The MSHA agrees to use the Facility in a responsible manner for the purpose of conducting youth and recreational skating programs in cooperation with the City, and shall not allow the Facility to be misused. Upon the termination of each MSHA Seasonal Use Period, MSHA shall abandon its use of the Facility with the Facility in a condition as good as existed at the beginning of each MSHA Seasonal Use Period, with normal wear and tear accepted. During the Off Season MSHA may, as the parties shall agree to be appropriate, store within the Facility, its rink boards, plexiglass, matting, ice maintenance equipment, and other items and equipment owned by MSHA and associated with the operation of the Facility as an indoor ice arena or otherwise associated with MSHA programs.
 15. Nothing in this Agreement shall limit MSHA from cooperating with the City in caring for, maintaining, supervising, and/or constructing improvements, in the furtherance of this Agreement. MSHA shall make no alteration, addition, or improvement to the Facility without the advance consent and approval of the City.
 - a. Scoreboards and timing equipment may be purchased – at MSHA’s sole expense – and installed by the MSHA upon prior approval by the City. MSHA shall be solely responsible for the maintenance of said scoreboards and timing equipment at MSHA’s sole expense.
 - b. All improvements to the premises, upon completion of construction, shall be deemed to be property of the City.
 16. The MSHA shall not allow any lien to be placed against said building for any unpaid labor or materials and agrees to indemnify the City for any amounts of said liens and to hold the City harmless from any improvements that are made pursuant to this Agreement by MSHA.
 17. The City and MSHA shall make good faith efforts to accommodate the needs of each respective entity in order to maximize the overall use of the Facility. The Mitchell Parks and Recreation Director and President of the MSHA shall each designate a person to coordinate use of the facility.
 18. This Agreement may be amended or supplemented from time to time by action of both the City Park and Recreation Board and the MSHA.
 19. The MSHA shall have no right to assign any of the rights or benefits under this Agreement without prior written consent of the City.
 20. The Sports Complex Supervisor shall establish and maintain a master schedule for the facilities and MSHA agrees to engage in useful communication with the City and other User Groups to coordinate schedules through the Sports Complex Supervisor.

- a. Hockey tournaments on weekends shall have first priority to the use of the Facility to the extent required to accommodate such event. Use of the Facility during hockey tournaments by other groups may be allowed to the extent it does not conflict with tournament activities. If other activities are displaced due to a hockey tournament, the City shall use reasonable efforts to accommodate such other activities at times that do not conflict with the hockey tournament and MSHA shall fully cooperate with such accommodation.

21. MSHA shall indemnify and hold the City, its officials, employees, and agents, harmless from and against any and all liabilities, claims, demands, damages, actions, lawsuits, judgments, penalties, losses, costs, or expenses, of any kind or nature, including but not limited to costs of investigation, attorneys' fees, experts' fees, and costs through trial and appeal, arising out of, incidental to, or in any way connected with Tenant's possession, use, occupancy, operation, or maintenance of the Premises, and any act or omission of Tenant or Tenant's members, officers, directors, employees, volunteers, agents, representatives, participants, guests, contractors, subcontractors, and other invitees.

22. In the event of a material breach of this Agreement, the non-breaching party shall provide written notice of the breach to the breaching party. The breaching party shall then have an opportunity to cure the breach within Seven (7) days of receiving the notice. If the breach is not cured, the agreement may be terminated by the non-breaching party. The non-enforcement of this provision by either party shall not constitute a waiver as to future or subsequent breach.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Approved and adopted by the Park & Recreation Board of the City of Mitchell, South Dakota, this ____ day of January, 2021.

CITY OF MITCHELL, SOUTH DAKOTA
PARK AND RECREATION BOARD

By: _____
_____: President

Approved and adopted by the Mitchell Skating and Hockey Association, this ____ day of January, 2021.

MITCHELL SKATING AND HOCKEY ASSOCIATION

By: _____
Title: President