

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

This agreement (“Agreement”) entered into this _____ day of January, 2019 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 Mitchell Activity Center indoor ice area (the “Facility”), including access to the ice arena, lobby, locker rooms, restrooms, concession area and all pertinent property for parking purposes for the skating and youth hockey program purposes of the MSHA for the duration of the 2018-2019 MSHA Seasonal Use Period (“MSHA Seasonal Use Period” being defined as the hockey season term commencing October 1, 2018 through May 31, 2019; 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. This Agreement shall automatically renew on a year to year basis unless a party hereto intending to terminate this agreement gives notice to the other party on or before thirty (30) days prior to the commencement of the next MSHA Seasonal Use Period that it does not intend to renew the agreement. Each such renewal shall be upon the same terms and conditions as set forth in this agreement or as the same shall be amended from time to time. This Amended Facility Use Agreement is intended to supersede the Facility Use Agreement between City and MSHA dated September 19, 2018.
2. MSHA agrees to pay to the Lessor as rent for use of the Facility the sum of seventy thousand dollars (\$70,000).
 - a. As part of this agreement, MSHA may spray weeds in areas designated by the Mitchell Parks Division. If MSHA chooses to undertake weed spraying, it does so as an independent contractor. MSHA will provide their own chemicals, conduct relevant training, and maintain all weed spraying certifications as required by State Law. After the weed spraying season has ended, MSHA may request a credit against their account balance of up to \$6,690.00 per seasonal use period. The City may reduce the credit amount proportionately based on the quality of MSHA’s weed spraying efforts.

3. 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.
4. 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.
5. 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.

6. The MSHA shall be entitled to schedule up to One Thousand, One Hundred and Forty Two (1,142) scheduled hours of ice time during the MSHA Seasonal Use Period. 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 than November 1 of each year.
7. 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.
8. 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.
9. 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.

10. For activities within the Facility sponsored solely by the MSHA, all revenue generated in connection with the activity shall be retained by the MSHA.
11. 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.
12. 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.
13. 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.

- a. Locker rooms must be supervised at all times by a SafeSport certified adult authorized by MSHA. Locker room keys will be available to any MSHA authorized adult meeting the requirements above.
- b. MSHA will be responsible for leaving the dressing rooms in a reasonably tidy condition. Locker Rooms are not scheduled by the City and the City is not responsible for any stolen or lost items as a result of using the facility.
- c. MSHA must vacate the Facility within sixty (60) minutes after each day's final activity has ended. An overtime staff fee shall be added to MSHA's fee for any overtime incurred as a result of a breach of the terms of this paragraph. Such overtime staff fee shall be charged in fifteen (15) minute increments until MSHA is off the premises.
- d. Responsible locker room behavior is required and is of the upmost importance. No fighting, boxing, wrestling, bullying, throwing equipment, shooting pucks, etc. is allowed in the locker room at any time.
- e. MSHA is solely responsible for locker room behavior and issues while MSHA is using the facility.
- f. During MSHA events, children under the age of Ten (10) must be accompanied by an adult (18 years or older) at all times. Any unattended children found on the premises by City personnel will be delivered to an MSHA representative to be returned to the child's parent/guardian.

14. 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. It is anticipated that MSHA will construct multiple permanent improvements on the premises. The parties acknowledge that any permanent improvements to be placed on the premises shall have prior approval from the City and shall meet all applicable City codes and ordinances, including any planning and development requirements of City for such improvements. MSHA will be responsible for obtaining

all necessary permits and approvals and for providing any required paper work, fees and/or exhibits required to obtain the permits or approvals or to otherwise complete the planning and development review process. Any construction of buildings or any other improvements at or on the premises shall be in conformity with the regulatory codes of the City and subject to the written approval of the Parks and Recreation Director or his designee prior to issuance of building permits for construction.

All improvements to the premises, upon completion of construction, shall be deemed to be property of the City.

15. 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.
16. 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.
17. This Agreement may be amended or supplemented from time to time by action of both the City Park and Recreation Board and the MSHA.
18. The MSHA shall have no right to assign any of the rights or benefits under this Agreement without prior written consent of the City.
19. 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.

20. 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.
21. 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, 2019.

CITY OF MITCHELL, SOUTH DAKOTA
PARK AND RECREATION BOARD

By: _____
Title: Mitchell Park & Recreation Director

Approved and adopted by the Mitchell Skating and Hockey Association, this _____ day of January, 2019.

MITCHELL SKATING AND HOCKEY
ASSOCIATION

By: _____
Title: President