

MANAGEMENT AGREEMENT
BETWEEN
THE CITY OF SAINT PAUL
AND
KidsPark, Inc.

This Agreement, entered into this ____ day of March, 2015, by and between the City of Saint Paul, Minnesota, a municipal corporation organized and existing under the laws of the State of Minnesota, (“City”), and KidsPark, Inc., a 501(c) (3) non-profit corporation (“KidsPark”).

WHEREAS, the City is the owner of Desnoyer Recreation Center, (“Desnoyer”) located at 525 Pelham Boulevard, Saint Paul, MN 55104, and issued a Request for Proposals for the management of the building on April 17, 2014 ; and

WHEREAS, KidsPark submitted a response dated May 16, 2014 and is able to facilitate youth and adult programming in the recreation center building; and

WHEREAS, both parties wish to enter into an agreement for the management of programming for the spaces at Desnoyer which will provide benefits to the community in the form of continued recreational opportunities.

Now, therefore, parties agree as follows:

1. **Term.** The term of this Agreement shall be for a period of five (5) years, beginning upon the date of execution of this Agreement and ending on the date five (5) years thereafter, unless earlier terminated pursuant to paragraph 10 of this Agreement.
2. **Use of Site.**
 - A. KidsPark shall staff, program and manage the Desnoyer recreation building during the term of this Agreement, and shall manage the staff and programs it provides at the facility. Public use of the building in the form of access to meeting rooms and recreation center restrooms will be maintained. At a minimum, restroom access must be made available during the hours KidsPark programs the facility. Access to meeting rooms must be made available during regular park hours, generally 8:00 a.m. – 11:00 p.m. Parties will meet annually, or if necessary more often, to monitor the public accessibility to the building. KidsPark shall post its hours of operation in a location visible to the public.
 - B. The premises subject to this Agreement include only the building. All other exclusive use of the surrounding parkland will be subject to permission of the City. Use of the grounds by KidsPark enrollees or participants is not considered exclusive use.

3. **Payment.**

- A. KidsPark shall be responsible for the payment of all utilities except water at Desnoyer during the term of the Agreement. KidsPark must contact the utilities to ensure direct billing.
- B. KidsPark shall, at the beginning of the term, provide \$2,500 to be placed in an account which will be used for capital repairs and maintenance (including, but not limited to, annual fire extinguisher testing, emergency lights testing, fire sprinkler inspection, fire alarm inspection and monitoring costs for fire) to the recreation center building. For each subsequent year, a balance of \$5,000 is to be maintained in an account by January 1st for the same use. In the event that the full \$5,000 has not been used, the remainder will carry forward for the following year and Kids Park will contribute the difference between the balance and the annual \$5,000 amount. KidsPark may make two payments of \$1,250 during the first year to establish the reserve fund. Routine repairs and maintenance are defined as those repairs or maintenance required to bring the premises back to its regular condition or to keep it operating at its present condition.

4. **Maintenance and Repair.**

- A. KidsPark shall be responsible for all interior maintenance, housekeeping, and minor repairs for the building at its own cost. A list of maintenance responsibilities is attached as Exhibit A. If KidsPark fails to maintain or repair the premises, City may elect to perform such maintenance and repair and bill KidsPark for the costs.
- B. Any damages caused by the action of KidsPark, its employees, agents, or invitees will be the sole responsibility of KidsPark to pay for.
- C. The cost for repairs or replacements not covered in 4.A or 4.B will be distributed as follows:
 - 1) KidsPark will be responsible for the cost of all repairs up to a total of \$2,500 the first year and \$5,000 each year thereafter. Payment will be made from the account established above for that purpose
 - 2) The City will be responsible for repair costs once the account threshold has been met.
 - 3) The City will conduct routine boiler inspections and perform required maintenance on the furnace at the Desnoyer Recreation Center. Repair costs for the boiler will be included in the costs to be shared as outlined above.
- D) KidsPark shall be responsible for putting trash in the dumpster provided by the City. KidsPark must arrange for recycling at its own expense
- E) The mechanical and personal property of the City, set forth on the schedule attached to this Agreement as Exhibit B, are part of the premises managed by KidsPark, will be accepted “as-is” and at the termination of the agreement, must be returned to the City in substantially the same condition, absent normal wear and tear, and alterations occasioned by routine maintenance and/or repair. All of the detached furniture and equipment owned by the City shall remain the property of the City although it may be used by KidsPark during the term of this agreement. KidsPark shall not be required to replace any item listed in the exhibit unless the damage requiring replacement is due to the negligence of KidsPark or its invitees. KidsPark understands that the City is not obligated to replace

these items should they fail to be in operating condition, and will only do so at its own discretion.

- F) The City will perform all grounds maintenance around the building. KidsPark must perform daily litter pickup.
- G) The City will be responsible for all snow and ice removal on steps, walkways and parking lots when the snow accumulation is more than two (2) inches. Snow and ice removal is the responsibility of KidsPark if the accumulation is less than two (2) inches. KidsPark shall be responsible for clearing and shoveling from the building's main entrance to the sidewalk regardless of the amount of snowfall.

5. **KidsPark Responsibilities.**

- A. KidsPark is responsible for scheduling the interior space located at KidsPark for both its own programs and use by outside groups. When the space has been made available for use by the public, it is the responsibility of KidsPark to have staff onsite to open the building, prepare the space, and do any necessary clean up afterwards. The facility may only be used during regular park hours. Any use which extends past regular closing hours must have written permission of the Director.
- B. KidsPark may enter into agreements with other non-profit entities or individuals to provide recreation programming, or other programs which serve a public purpose. City reserves the right to approve such agreements in advance.
- C. KidsPark shall complete electronic participant accident and incident report forms in any instance where accidents or incidents on or near the facility are reported to or witnessed by KidsPark representatives. Completed reports must be provided to the City within two working (2) days following an accident or incident on or near the facility property, by U.S. mail, fax or a PDF scan attached to an email.
- D. KidsPark shall develop and maintain up-to-date, facility specific, Emergency Action Plans (EAP) and Safety Data Sheets (SDS), which must be updated annually, and be consistent with the City plans. KidsPark must train facility staff and volunteers on use of the EAP and SDS at least once a year.
- E. KidsPark must ensure that the recreation center, or a portion thereof, is open and properly staffed when site is designated as a public polling site. Such use will be free of charge.
- F. At least monthly, KidsPark shall provide the City with notification of all scheduled facility rentals and events use. At a minimum, notifications shall include the name of the group or individual responsible for the rental or event name, contact information, the date and time of the rental, and any additional services which might be required. If additional services such as garbage collection are required due to the event, KidsPark will be responsible for the cost of such services.

6. **City Responsibilities.**

- A. Parks and Recreation's Safety Office will conduct annual Safety and Security inspections of the facility and will notify KidsPark of any deficiencies, which KidsPark shall remedy in a timely manner.

B. Parks and Recreation and KidsPark will conduct a management agreement compliance assessment and site review annually. Any issues must be promptly remedied.

7. **Alterations.** KidsPark will not make any alterations to the premises without the written consent of the City. If KidsPark desires to make any such alterations, an accurate description of the project shall first be submitted to the City in writing and such alterations shall be done at the expense of KidsPark. All such work shall be done under the City's supervision and any improvements will become the property of the City at the end of the agreement term. KidsPark agrees that any alterations must be done in a workmanlike manner and in conformance with all applicable law, regulations and building codes; that the structural integrity of any and all building systems will not be impaired and that no liens will be attached to the premises by reason thereof.

8. **Notices.** The City's representative for this agreement will be the Recreation Services Manager or his/her designee. The KidsPark representative for the purposes of this agreement will be the Executive Director or his/her designee. Any notices or correspondence on this agreement shall be sent to:

Saint Paul Parks and Recreation
400 City Hall Annex
25 W 4th Street
Saint Paul, MN 55102
Attn: Recreation Services Manager

KidsPark
525 Pelham Boulevard
Saint Paul, MN 55104
Attn: Executive Director

All notices shall be deemed to have been given when served personally on City or KidsPark or by mail upon deposit in a United States mail box, postage pre-paid, addressed to Saint Paul Parks and Recreation or to KidsPark at the above address.

9. **Indemnification.** KidsPark agrees to defend and indemnify the City and all its agents, officers and employees thereof from all claims, demands, actions, judgments, suits or causes of action of any nature or character, arising out of KidsPark use of the premises, except to the extent such claims may be caused by the negligence of the City. KidsPark shall provide the City with notice of any injuries, claims, or suits submitted to them, within thirty (30) days of receipt of such notice, claim, or suit.

10. **Insurance.**

A. The City will insure the recreation center building for fire and comprehensive property damage coverage. KidsPark will provide the following insurance during the term of the agreement:

- a) KidsPark shall be responsible for the self-insurance of, or for the acquisition of Commercial Property insurance on its own personal property and the property of anyone using the facility.
- b) Comprehensive general liability insurance including blanket contractual liability coverage and personal injury liability coverage with a combined single limit of not less than \$1,500,000 per occurrence, or \$2,000,000 per occurrence shall be purchased by KidsPark. Such insurance must: i) name the City of Saint Paul as “additional insured”; ii) be primary with respect to the City’s liability insurance or self-insurance; and iii) not exclude explosion, collapse, or underground property damage.
- c) Worker’s Compensation insurance with not less than the statutory minimum limits, and employer’s liability insurance with minimum limits of at least \$100,000 per accident.
- d) Physical/sexual abuse coverage with limits no less than \$1,500,000 aggregate or \$500,000 per occurrence.
- e) KidsPark shall supply to the City current insurance certificates for policies required in this agreement. The certificates shall certify whether or not KidsPark has errors and omissions insurance coverage.
- f) Nothing in this agreement shall constitute a waiver by the City of any statutory limits or immunities.
- g) Waiver of Subrogation. The City waives its right of subrogation for damage to the premises, contents therein, loss of income, up to the amount of insurance proceeds collected. KidsPark waives its right of subrogation for damage to the premises, contents therein, loss of income, up to the amount of respective insurance proceeds collected. The parties shall notify their respective insurance companies, in writing, of the provisions of this paragraph, and if either cannot waive its subrogation rights, shall immediately notify the other party, in writing.

11. **Non Discrimination**. KidsPark will not discriminate against any participant or employee wishing to participate in its programs or any person wishing to use the recreation center or its fields because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that participants are treated without the same during their participation in programs or use of the facility.

12. **Right of Entry**. At all times during the term of this agreement, the City retains ownership of the premises and shall have the right, by itself, its agents and employees, to enter into and upon the Premises during reasonable business hours or, in the event of an emergency, at any time for any legitimate purpose.

13. **Termination**.

- A. Parties may mutually agree to terminate this Agreement at any time.

- B. If a party is claiming a material breach by the other party it may elect to terminate this Agreement by providing notice of such intent to terminate to the other party, stating the basis for the breach, and the amount of time the party has to cure. Failure to cure within the stated time will result in termination the day following the final cure date.
- C. Any of the following listed events will be considered a material breach by KidsPark for the purposes of termination:
- i. Failure to maintain non-profit status. In the event that KidsPark fails to maintain its status as a non-profit organization or no longer offers recreational programming.
 - ii. Failure to pay utilities. In the event that KidsPark fails to pay utility bills and such failure results in heat, electricity, water, or gas being shut off.
 - iii. Lapse in insurance. In the event KidsPark fails to continuously maintain proper insurance as required by the Agreement and the lapse continues for a period of five days after receipt of written notice of such failure.
 - iv. Breach without cure. In the event KidsPark breaches any obligation under this Agreement and such breach continues for a period of 45 days or more after receipt of written notice of such breach.
 - v. Persistent or repeated breaches. In the event KidsPark has a pattern of persistent and repeated breaches, whether or not such breaches have been cured. Breaches do not need to be of the same contract requirement in each case to establish a pattern of persistent and repeated breaches.
 - vi. Bankruptcy. In the event that KidsPark files a voluntary petition in bankruptcy, insolvency or a petition for reorganization, or a receiver is appointed for a substantial portion of Manager's property, or an order or decree of bankruptcy, insolvency, or reorganization is issued.
- D. It will be considered a material breach for the purposes of termination if the City repeatedly fails to perform its obligations under the Agreement,

At the termination of this agreement the premises shall be surrendered peacefully and returned to the City in the same condition as received, reasonable wear and tear notwithstanding.

14. **Amendments.** No amendments to this Agreement shall be effective without being reduced to writing and executed by both parties.

15. **Assignment.** This Agreement may not be assigned without the written consent of the other party, and any attempt to assign without such approval will render the Agreement void.

16. **Waiver.** Any fault of a party to assert any right under this Agreement shall not constitute a waiver or a termination of that right, this Agreement, or any of this Agreement's provisions.

17. **Entire Agreement.** It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

18. **Jurisdiction.** This agreement shall be construed under the laws of the State of Minnesota and any dispute regarding the interpretation or enforcement shall be venued in the Ramsey County District Court.

IN WITNESS WHEREOF, the parties have set their hands the date first written above.

CITY OF SAINT PAUL

KidsPark, Inc.

Director of Parks and Recreation

Executive Director

Director of Financial Services

Approved as to form:

City Clerk

Assistant City Attorney