

MANAGEMENT AGREEMENT BETWEEN
THE CITY OF SAINT PAUL AND
ARTS-US

This Agreement, entered into this __ day of January, 2021, 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 ARTS-US, a 501(c)(3) non-profit corporation ("ARTS-US").

WHEREAS, the City is the owner of Dunning Recreation Center, ("Dunning") located at 1221 Marshall Avenue, Saint Paul, MN 55104; and

WHEREAS, ARTS-US is a registered non-profit organization 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 Dunning 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 begins upon the date of execution of this Agreement and continues for a period of five (5) years thereafter, unless earlier terminated pursuant to paragraph 10 of this Agreement.

Renewal Term. This Agreement may be renewed by mutual consent of the parties on the same terms for one additional five-year term.

- 2) **Use of Site.**

- a) ARTS-US shall staff, program and manage the Dunning 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 ARTS-US programs the facility. Access to meeting rooms must be made available during regular park hours, which are 8:00 a.m. to 11:00 p.m. Parties will meet annually, or if necessary, more often, to monitor the public accessibility to the building. ARTS-US shall post its hours of operation in a location visible to the public.
- b) Arts-US may utilize the community garden located within the park for ongoing programming and enrichment opportunities. If any modifications to the garden, installations, or improvements are proposed, they must be submitted in writing to the Parks and Recreation Department for consideration.
- c) The premises subject to this Agreement include only the building. All other use of the surrounding parkland will be subject to permission of the City. It is agreed that the basement and outside equipment storage remain subject to the exclusive use by the Dunning Boosters. ARTS-US may designate four (4) reserved spaces in the parking lot for use by staff and/or visitors. Vehicles are not permitted to be driven or parked on any sidewalks, grounds, or paths.

- 3) **Payment.**

- a) ARTS-US is responsible for the payment of all utilities, excluding water, at Dunning

during the term of the Agreement. ARTS-Us must ensure direct billing by the utilities throughout the term of this Agreement.

- b) ARTS-Us shall, at the beginning of the term, provide \$5,000 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 ARTS-Us will contribute the difference between the balance and the annual \$5,000 amount. 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) ARTS-Us is 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 ARTS-Us fails to maintain or repair the premises, City may elect to perform such maintenance and repair and bill ARTS-Us for the costs.
- b) Any damages caused by the action of ARTS-Us, its employees, agents, or invitees will be the sole responsibility of ARTS-Us to pay for.
- c) The cost for repairs or replacements not covered in 4.A or 4.B will be distributed as follows:
 - i. ARTS-Us will be responsible for the cost of all repairs up to a total of \$5,000 each year. Payment will be made from the account established above for that purpose
 - ii. The City will be responsible for repair costs once the account threshold has been met.
 - iii. The City will conduct routine boiler inspections and perform required maintenance on the furnace at the Dunning Recreation Center. Repair costs for the boiler will be included in the costs to be shared as outlined above.
- d) ARTS-Us is responsible for putting trash in the dumpster provided by the City. ARTS-Us 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 ARTS-Us, 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 ARTS-Us during the term of this agreement. ARTS-Us shall not be required to replace any item listed in the exhibit unless the damage requiring replacement is due to the negligence of ARTS-Us or its invitees. ARTS-Us 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. ARTS-Us 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 ARTS-Us if the accumulation is less than two (2) inches. ARTS-Us is responsible for clearing and shoveling the walk from the building's front door to the main sidewalk at the parking lot curb regardless of the amount of snowfall.

5) ARTS-Us Responsibilities.

- a) ARTS-Us is responsible for scheduling the interior space located at ARTS-Us 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 ARTS-Us 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) ARTS-Us 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) ARTS-Us 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 ARTS-Us 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) ARTS-Us 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. ARTS-Us must train facility staff and volunteers on use of the EAP and SDS at least once a year.
- e) ARTS-Us 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, ARTS-Us must provide the City with notification of all scheduled facility rentals and events use. At a minimum, notifications will 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, ARTS-Us 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 ARTS-Us of any deficiencies, which ARTS-Us shall remedy in a timely manner.
- b) Parks and Recreation and ARTS-Us will conduct a management agreement compliance assessment and site review annually. Any issues must be promptly remedied.

- 7) Alterations.** ARTS-Us will not make any alterations to the premises without the written consent of the City. If ARTS-Us 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 ARTS-Us. 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. ARTS-Us 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 ARTS-Us 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

ARTS-Us
1221 Marshall Avenue
Saint Paul, MN 55104
Attn: Executive Director

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

- 9) **Indemnification.** ARTS-Us 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 ARTS-Us use of the premises, except to the extent such claims may be caused by the negligence of the City. ARTS-Us 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. ARTS-Us will provide the following insurance during the term of the agreement:
- i. ARTS-Us 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.
 - ii. 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 ARTS-Us. 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.
 - iii. 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. Physical/sexual abuse coverage with limits no less than \$1,500,000 aggregate or \$500,000 per occurrence.

- iv. ARTS-Us shall supply to the City current insurance certificates for policies required in this agreement. The certificates shall certify whether or not ARTS-Us has errors and omissions insurance coverage.
- b) Nothing in this agreement shall constitute a waiver by the City of any statutory limits or immunities.
- c) 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. ARTS-Us 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. ARTS-Us 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 ARTS-Us for the purposes of termination:
 - i. Failure to maintain non-profit status. In the event that ARTS-Us 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 ARTS-Us 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 ARTS-Us 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 ARTS-Us 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 ARTS-Us 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 ARTS-Us 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,

e) 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) Counterparts. The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

18) Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

19) 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.

20) 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

ARTS-Us

Director of Parks and Recreation

Executive Director

Director of Financial Services

Board Chair

Mayor's Office

City Clerk

Approved as to Form

Assistant City Attorney