

LEASE AGREEMENT
BETWEEN THE
CITY OF SAINT PAUL, PARKS AND RECREATION
AND
KidsPark, Inc.

THIS AGREEMENT, dated this 1 day of January, 2013, by and between the City of Saint Paul, Minnesota, a municipal corporation organized and existing under the laws of the State of Minnesota, hereinafter referred to as "CITY", and KidsPark, Inc. hereinafter referred to as KidsPark.

WHEREAS, the CITY is the owner of certain real property known as Desnoyer Recreation Center, ("Desnoyer") located at 525 Pelham Blvd, Saint Paul, MN 55104, and due to budget restrictions is forced to cease programming at Desnoyer; and

WHEREAS, KidsPark is committed to improving the lives of the residents of St. Paul by serving families, and has provided hourly childcare services at Desnoyer (KidsPark); and;

WHEREAS, parties wish to enter into a lease agreement which will house the KidsPark program at Desnoyer;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, parties agree as follows:

1. TERM

A. The term of this agreement shall be for one (1) year, January 1, 2013 through December 31, 2013.

2. USE OF SITE.

KidsPark shall lease the Desnoyer Recreation building during the term of this Agreement, and shall provide and manage the staff and programs at the facility. Public use of the building in the form of access to the meeting room and restrooms will be maintained at a level to be agreed upon by the CITY and KidsPark. If the City and KidsPark cannot agree, the City shall determine access.

Use of the premises is to be for the primary purpose of providing drop-in child care and related activities. Any use by KidsPark which results in the premises' tax exempt status being affected shall be prohibited, and KidsPark shall be responsible for any tax liability resulting from such use.

B. KidsPark will have the first right to schedule the interior space located at Desnoyer for their own programs, with the exception of up to 2 voting days during local, state or national election years, when KidsPark agrees to make one room available for voting. The CITY will have the first right to schedule the exterior space at the site. Both parties agree to share scheduling information on a monthly basis. When unscheduled, the fields will first be available

to KidsPark for programming and then to the public for general use. When the interior space is unscheduled, it will be available to the CITY during specific seasonal sports for restroom use and may be available to DPIA (Desnoyer Park Improvement Association) for occasional meetings and special events as appropriate, at no charge to DPIA at this site as agreed upon by both parties. When the CITY provides programs at this site, the restrooms will be made available and the CITY shall be responsible for staffing of the building and restrooms and for the general housekeeping of the restrooms during these activities.

3. PAYMENT.

The parties have agreed that in lieu of payment KidsPark shall be responsible for up to \$2,500 for utilities (gas and electric) during the term of this contract, the entire cost for interior maintenance, and shall at its own cost, staff and schedule the use of the center. The CITY shall invoice KidsPark quarterly for utility costs.

The CITY will be responsible for payment for water and sewer utility costs at Desnoyer.

4. MAINTENANCE & REPAIR

A. The CITY shall be responsible for interior carpet cleaning once during the contract period to be arranged with KidsPark. KidsPark agrees to conduct housekeeping as needed to include: sweeping, mopping, cleaning restrooms and emptying trash containers on a daily basis. KidsPark will provide supplies required to accomplish the interior maintenance. KidsPark will be responsible for the first \$1000 of repairs at the Desnoyer site. If repair costs total \$1001 - \$4999, the CITY and KidsPark shall share equally in those costs, except in the event that the repairs are necessitated by actions or inactions of KidsPark or its invitees. The CITY shall be responsible for all repair costs once they have exceeded \$5000, except for those repairs necessitated by the actions or inactions of KidsPark or its invitees. Notification of repair costs exceeding \$1000 shall be provided to the CITY as soon as possible once knowledge of the repair costs is known, but no later than five (5) days.

KidsPark will be responsible for putting trash in the dumpster that will be provided by the CITY. The CITY will be responsible for emptying the dumpster on a routine schedule.

KidsPark shall be responsible for clearing and shoveling the walk from the building door to the sidewalk on a daily basis as needed.

B. All grounds maintenance will be the responsibility of the CITY. Fields will be maintained at the same level as other City facilities. Other than the walk from door to sidewalk, the CITY shall be responsible for all snow and ice removal on steps, walkways and parking lots. Snow removal shall take place after each accumulation of more than two (2) inches of snow. KidsPark shall be responsible for snow and ice removal on steps, and walkways when accumulation is less than two (2) inches.

5. 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 KidPark's own expense. All such work shall be done under the CITY'S supervision and any

improvements shall become the property of the CITY and the end of the agreement term. KidsPark agrees that any alterations shall 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.

6. REPRESENTATIVES. The City's representative for this agreement will be the Recreation Services Manager or his/her designee. The Kids Park representative for the purposes of this agreement will be the Executive Director, or his/her designee. Correspondence regarding the Agreement should be sent to:

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

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

6. INDEMNIFICATION. KidsPark agrees to indemnify, defend, save and hold harmless, 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 use of the premises by KidsPark except to the extent that such claims arise out of the CITY'S failure to maintain the premises in accordance with this agreement. 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.

7. INSURANCE. The CITY shall insure the CITY'S building for fire and comprehensive property damage coverage. KidsPark will provide the following insurance during the term of the agreement.

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.

- a) Comprehensive general liability insurance including blanket contractual liability coverage and personal injury liability coverage with a combined single limit of not less than \$1,200,000 aggregate, or \$400,000 per occurrence shall be purchased by KidsPark. Such insurance shall 1) Name the City of Saint Paul as "additional insured" 2) be primary with respect to the CITY'S liability insurance or self-insurance and 3) not exclude explosion, collapse, or underground property damage.
- b) 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.

- c) Physical/sexual abuse coverage with limits not less than statutory minimum limits, currently \$1,200,000 aggregate, or \$400,000 per occurrence.
- d) 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.
- e) Nothing in this agreement shall constitute a waiver by the CITY of any statutory limits or exceptions on liability.
- f) KidsPark shall place insurance with responsible insurance companies authorized and licensed to do business in the State of Minnesota and approved by the CITY, and shall deliver copies of the policies to the CITY on or before the date of the full execution of this agreement if required. The policies shall be endorsed to indicate that the insurer cannot cancel or change the insurance without first giving the CITY 30 day's written notice.
- 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.
- h) Should KidsPark fail to purchase or maintain the insurance required herein, the CITY may at its option purchase said insurance in the commercial market and KidsPark shall reimburse the CITY for all premiums and costs whatsoever for said insurance.

In the event that the Desnoyer building becomes unusable during the term of this lease due to unforeseen circumstances (flood, fire, tornado), the City is not obligated to find KidsPark another location for its program.

8. **NON-DISCRIMINATION:** KidsPark will not discriminate against any employee or participant 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 affection 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.

9. **RIGHT OF ENTRY** At all times during the term of this lease, 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, with reasonable notice and done so as not to interrupt services being provided. The CITY has the right of entry in the event of an emergency, or at anytime for any legitimate purpose.

10. **TERMINATION.**

- A. Either party may terminate this agreement by giving written notice to the other party ninety (90) days prior to cancellation or termination. Upon termination by

the CITY, KidsPark shall be permitted to complete any classes or instructional programs that had begun prior to the notice of termination.

- B. In the event the CITY terminates this agreement for any reason other than just cause, the CITY will attempt to find suitable space at comparable costs to operate the KidsPark program.
- C. 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.

11. AMENDMENTS. No amendments to this Agreement shall be effective without being reduced to writing and executed by both parties.

12. ASSIGNMENT. The CITY and KidsPark each binds itself and its successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement; and neither the CITY nor KidsPark will assign or transfer their interest in this Agreement without the written consent of the other.

13. 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.

14. 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 including addendum that lists upgrades and improvements to Desnoyer Park.

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

APPROVED AS TO FORM:

CITY OF SAINT PAUL

Assistant City Attorney

Mayor



KidsPark
Executive Director

City Clerk

Director of Financial Services

Director of Parks and Recreation