

USE AND FACILITY MANAGEMENT AGREEMENT BETWEEN THE CITY OF LA CROSSE and RIVER CITY YOUTH HOCKEY, INC.

This Use and Facility Management Agreement (herein "Agreement") is made and entered into by and between the City of La Crosse, a Wisconsin municipal corporation through its Board of Park Commissioners (herein "Board" or "City") and River City Youth Hockey, Inc., a Wisconsin non-stock and IRS Section 501(c)(3) tax exempt corporation (herein "RCYH") and effective July ____, 2021.

WHEREAS, RCYH intends to operate assorted hockey leagues, clinics, curling leagues and ice skating based classes during the term (herein "events and programming") and, for that purpose, desires to use the City's Green Island Hockey Arena (herein "GIHA"); and

WHEREAS, the parties wish to formalize an agreement under which RCYH is authorized to use and manage the GIHA during the term.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, IT IS AGREED that during the term RCYH is granted the exclusive privilege to use the GIHA and exclusive concession privileges and facility management for the GIHA subject to the following terms and conditions:

1. Term.

- A. This Agreement, unless earlier terminated as provided for herein, shall be effective for the time period 12:01 a.m. on October 1, 2021 through 5:00 p.m. on March 31, 2022 (herein "term").
- B. RCYH may terminate this Agreement, with or without cause, upon thirty (30) days advance written notice to City.

- 2. Premises.** The City grants the exclusive use of the GIHA, more particularly described in **Exhibits A and B** (floor plans) which are attached hereto and incorporated herein by reference, including all existing structures. This exclusive use applies to and includes the ice making system (interior and rooftop components), ice maintenance equipment, rental ice skates, PA system, stereo, scoreboard systems, nets, boards/glass, dividers, concession equipment and such additional equipment owned by the City, located at GIHA and utilized for events and programming. This exclusive use does not extend to any parking areas and lands or athletic facilities surrounding the GIHA. RCYH is granted non-exclusive use of the parking areas.

3. Scheduling and Use of the GIHA.

- A. Provided RCYH is not in default of its obligations pursuant to this Agreement, RCYH shall have during the term the quiet use and enjoyment of the GIHA including the right to schedule all events and programming.
- B. RCYH will be allowed to store personal property specific to its events and programming and ice related operations at the GIHA during the term of this Agreement. RCYH shall insure its personal property against loss. RCYH releases the City from any future claims of personal property damage or loss.

4. RCYH Responsibilities.

- A. RCYH, at its sole cost and expense, shall provide all staff necessary for all GIHA events, programs and use pursuant to this Agreement. This may include, but is not limited to rink manager, ushers, ticket takers, scorekeepers, public address announcers, equipment persons, attendants, trainers, officials, concessions, security, medical personnel, maintenance personnel and marketing personnel.
 - B. RCYH shall clean the interior of GIHA for all events or programs.
 - C. The RCYH shall keep the GIHA in a state that is safe and suitable for any and all activities that are being held in the GIHA.
 - D. RCYH shall be responsible for all interior building maintenance expense and all daily operation's expenses at the GIHA. RCYH shall pay all costs and expenses for all supplies necessary for the operation of GIHA and provision of the events and programming conducted therein. RCYH shall maintain all interior heating, plumbing, electrical, HVAC, ice making system (both interior and rooftop components), ice maintenance equipment, PA system, stereo, scoreboard systems, nets, boards/glass, dividers and concessions equipment utilized in providing the events and programming.
 - E. RCYH shall supply all necessary cleaning supplies and labor to maintain in a safe, clean and sanitary condition all seating areas, space beneath the bleachers, any public or private areas, concession stand and adjacent area public restrooms, and any other area used for events within the GIHA.
 - F. During the term RCYH shall have all utilities transferred into their names and shall pay when due the following utility charges: sanitary sewer service, electric, gas, storm water, telephone and internet consumed or used at GIHA during the term.
- 5. City shall provide and be responsible for, at its sole cost and expense, the following maintenance and operation items related to GIHA.**
- A. Exterior rubbish and recycling removal.

- B. Lawn care for the GIHA grounds.
- C. Snow removal for the GIHA grounds.
- D. Rink tech contract/license.
- E. Exterior structural maintenance and repair, including, but not limited to, foundation, roof, siding, windows, doors, electrical supply lines, parking lot lights, security lighting, tennis court lighting, water supply lines and plumbing/sanitary sewer laterals and mains.
- F. Website domain name and hosting services. RCYH shall have all website access, content, editing and use rights.

6. Fees, Revenue and Related Financial Matters.

- A. *Rent.* RCYH shall pay the City One Dollar (\$1.00) per month during the term of this Agreement, commencing October 1, 2021. Rent will be paid to the City of La Crosse. In addition to any other remedy available to the City, delinquent payments shall be charged a late fee of one and one-half percent (1.5%) per month.
- B. Revenues and Licenses.
 - 1) RCYH shall have the exclusive right to sell concessions of any type, except for tobacco or e-cigarettes in any form, and to keep all proceeds from these concession sales. RCYH may sublease the concession rights for events and programming conducted by third parties. RCYH shall ensure that all applicable state and local laws and health regulations are complied with in the exercise of its concession rights.
 - 2) RCYH is granted the right to sublease advertising and marketing space on the interior and exterior of the GIHA, excluding building naming rights. The rights of advertisers and others obtained through RCYH shall end with the expiration or termination of this Agreement, and such termination shall be contained in all agreements between RCYH and advertisers.
 - 3) RCYH shall have all radio and TV rights and privileges for any RCYH events or programs at GIHA.
 - 4) Subject to applicable law, RCYH may apply for a seasonal beverage license on an annual basis for RCYH events and programming held at the GIHA.
 - 5) Subject to applicable law, RCYH shall sell state or locally manufactured or distributed fermented malt beverages.
 - 6) RCYH agrees to obtain and keep in good standing all licenses and permits related to its operation.
 - 7) The City retains all naming rights to the GIHA.

8) RCYH shall establish and collect user fees for all events and programming.

7. Assignment and Subcontracting. Except as provided herein, RCYH shall not assign this Agreement or any interest therein, nor let or underlet the GIHA, or any part thereof, or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof for any other purpose without the advance written consent of the Board.

8. Indemnification.

A. To the fullest extent allowable by law, RCYH hereby indemnifies and shall defend and hold harmless the City, its elected and appointed officials, officers, employees, authorized representatives and volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, reasonable attorneys' fees, costs and expenses of whatsoever kind or nature whether arising before, during or after the usage of the GIHA and in any manner directly or indirectly caused, occasioned, or contributed to or claimed to be caused, occasioned, or contributed to, by reason of any act, omission, fault, or negligence, whether active or passive, of RCYH or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement. RCYH's aforesaid indemnity and hold harmless obligations shall not be applicable to any liability caused by the fault, negligence, or willful misconduct of the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

B. In any and all claims against the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of RCYH, any RCYH, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 8 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for RCYH under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.

C. No provision of this indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the GIHA is located.

D. RCYH shall reimburse the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all reasonable legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. RCYH's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

- 9. Insurance.** Unless otherwise specified in this Agreement, RCYH shall, at its sole expense, maintain in effect at all times during the usage of the GIHA, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.
- A. RCYH shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. RCYH shall provide statutory coverage for work-related injuries and employer's liability insurance with limits of at least for employer's liability of One Hundred Thousand (\$100,000.00) each accident, One Hundred Thousand (\$100,000.00) each employee and Five Hundred Thousand (\$500,000.00) total policy limit.
 - B. RCYH shall provide and maintain the following commercial general liability and automobile liability insurance:
 - 1) Coverage. Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:
 - a. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
 - b. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle)
 - 2) Limits commencing October 1, 2021. RCYH shall maintain limits no less than the following commencing on March 31, 2022:
 - a. *General Liability.* One Million and 00/100 Dollars (\$1,000,000.00) per occurrence (\$2,000,000.00 general aggregate, if applicable) for bodily injury, personal injury and property damage.
 - b. *Automobile Liability.* One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence limit covering all vehicles to be used in relationship to the Agreement.
 - c. *Umbrella Liability.* Six Million and 00/100 Dollars (\$6,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. Coverage is to duplicate the requirements as set forth herein.
 - d. *Liquor Liability.* One Million dollars (\$1,000,000.00) per occurrence.
 - C. The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - 1) The City, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of RCYH;

products and completed operations of RCYH; premises occupied or used by RCYH; and vehicles owned, leased, hired or borrowed by RCYH. The coverage shall contain no special limitations on the scope of protection afforded to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers compensation policy, each policy shall contain a waiver of subrogation endorsement in favor of the City.

- 2) For any claims related to this Agreement or usage of the GIHA, RCYH's insurance shall be primary insurance as respects to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
 - 3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its elected and appointed officers, employees or authorized representatives or volunteers.
 - 4) RCYH's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 5) Each insurance policy required by this Agreement shall state, or be endorsed to the state, that coverage shall not be canceled by the insurance carrier or RCYH, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to the City.
 - 6) Such liability insurance shall indemnify the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, RCYH for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
 - 7) The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability and completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
 - 8) All of the insurance shall be provided on policy forms and through companies satisfactory to the City and shall have a minimum AM Best's rating of A-VIII.
- D. Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.
- E. Prior to execution of the Agreement, RCYH shall file with the City a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured

endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

- F. Any third party that uses GIHA under any agreement with RCYH must provide to the City insurance under the minimum standards set forth herein, naming the City as an additional insured. RCYH is responsible for ensuring that each sub-user meets the insurance requirements specified herein.

10. Default and Termination.

- A. In the event RCYH shall default on any of the amounts due to the City as set forth in this Agreement or in the observance of any of the covenants, agreements, commitments or conditions herein contained, and any such default shall continue unremedied for a period of fifteen (15) days after written notice thereof to RCYH, or (a) RCYH shall make an assignment of its property for the benefit of creditors, or (b) RCYH shall petition a court to be adjudged bankrupt, or (c) if a petition in bankruptcy shall be filed in any court against RCYH for more than thirty (30) days, or (d) if RCYH be judicially determined to be insolvent, or (e) RCYH shall be adjudged bankrupt, or (f) if a receiver or other officer shall be appointed to take charge of the whole or any part of RCYH's property or to wind up or liquidate its affairs, or (g) if RCYH shall seek a reorganization under any of the terms of the National Bankruptcy Act, as amended, or under any other insolvency law, or (h) RCYH shall admit in writing its inability to pay its debts as they become due, or (i) if any final judgment shall be rendered against RCYH and remain unsatisfied for a period of thirty (30) days from the date on which it becomes final; or (j) if RCYH shall abandon the facility, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against RCYH, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of RCYH hereunder. Cancellation shall not constitute a cancellation or a waiver by the City of the remainder of the total amounts payable to City or for any damages or losses for the unexpired portion of the demised term which may be sustained by the City on account of such default, assignment, insolvency, adjudication, or other default as provided hereinabove in this Section, including any expenses incurred in exercising its rights in this Agreement.
- B. In the event of lapse of insurance policies or coverage and protection as required by this Agreement, the City may, without notice of default, declare this Agreement terminated. RCYH shall have no access rights to or use of GIHA unless all insurance policies required by this Agreement are in full force and effect.
- C. In the event of termination of this Agreement for default, RCYH may make no claim for compensation for the capital improvements furnished and the City shall retain title and ownership of the said GIHA, together with all buildings and improvements thereon, without any payment whatsoever to RCYH. No improvements or buildings shall be removed from the above-described GIHA during the term of this Agreement without the written consent of the City, except any equipment, trade, and/or personal property of

RCYH which RCYH lawfully removed prior to the termination of this Agreement.

- 11. Force Majeure.** A party may terminate this Agreement, without incurring any liability, if either party fails to or is delayed in fulfilling or performing any term of this Agreement due to acts beyond the party's control, including, without limitation, the following force majeure events (herein "Force Majeure Event"): (a) acts of God; (b) flood, fire, earthquake, epidemic, pandemic, quarantine or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockage in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; (i) any other events or circumstances beyond the control of either party.
- 12. Damage and Destruction at the GIHA.** In the case of the destruction or any substantial damage of the GIHA resulting from fire or other casualty, either City or RCYH may terminate this Agreement upon written notice to the other. If the GIHA cannot be repaired or rebuilt by City within thirty (30) days.
- 13. Ownership and Control.** RCYH states that as of the date of signing of this Agreement, all officers and directors of RCYH are disclosed on the attached **Exhibit C** which is incorporated herein by reference as if set forth in full.
- 14. Accounting.** RCYH shall keep, or cause to be kept, full, complete and proper books, records and accounts of the gross sales and credits of such separate department, RCYH or division at any time operated in or on the GIHA; such books, records and accounts, including any sales tax reports that RCYH may be required to furnish to any governmental agency, for the purpose of verifying compliance with the terms and conditions of this Agreement, shall, at all reasonable times, be open to the inspection of the City, its auditor or other authorized representative or agent at no cost to City or its agents. If RCYH fails to supply any and all records when asked by the City for the purpose of verifying compliance with the terms and conditions of this Agreement or attempts to charge a fee or cost of any kind for inspection, reproduction, review or duplication of these records, it will be an immediate default under the terms and conditions of this Agreement. All books shall be maintained on a cash accounting basis.
- 15. Compliance with All Laws.** RCYH shall at its own cost and expense, be responsible to promptly comply and conform with all present and future laws, ordinances, rules, requirements and regulations of the federal, state, county and municipal governments and of any and all other governmental authorities or agencies affecting the GIHA or its use, and RCYH shall, at their own cost and expense, make all additions, alterations or changes to the GIHA or any portion thereof as may be required by a governmental authority or agency.
- 16. Code Compliance.**

 - A. Without limitation, the following codes or their successor codes must be met annually, or the Agreement will be in default:

- 1) City of La Crosse permits;
- 2) Health Department & City permits for food and beverage operations; and
- 3) Fire department inspection requirements

B. *Environmental.*

- 1) RCYH shall, during the entire term of this Agreement, comply with all applicable federal, state, and local environmental laws, ordinances and amendments thereto and rules and regulations implementing the same, together with all common law requirements, which relate to discharge, emissions, waste, nuisance, pollution control, hazardous or toxic substances and other environmental matters as the same shall be in existence during the term hereof. All of the foregoing laws, regulations and requirements are hereinafter referred to as Environmental Laws.
- 2) RCYH shall obtain all environmental licenses, permits, approvals, authorizations, exemption classifications, certificates and registrations (herein collectively referred to as Permits) and make all applicable filings required of RCYH under the Environmental Laws to operate at the GIHA. The Permits and required filings shall be made available for inspection and copying by City at RCYH's offices upon reasonable notice and during business hours. RCYH shall not cause or permit any flammable explosive, oil, contaminant, radioactive material hazardous waste or material, toxic waste or material or any similar substance (hereinafter collectively referred to as Hazardous Substances) to be brought upon, kept or used in or about the GIHA except for small quantities of such substances as is necessary for the business conducted upon the GIHA provided that RCYH shall handle, store, use and dispose of any such Hazardous Substance in compliance with all applicable laws and in a manner which is safe and does not contaminate the GIHA.
- 3) If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of any Hazardous Substance on or about the GIHA by any occupant of the GIHA during the Agreement, then the reasonable costs thereof shall be reimbursed by City to RCYH upon demand. RCYH shall deliver to City Material Safety Data Sheets describing all Hazardous Substances stored, used or disposed of on the GIHA. RCYH shall also, from time to time, at City's request, execute such other affidavits, representations and the like concerning RCYH's best knowledge and belief regarding the presence of Hazardous Substances on the GIHA. RCYH agree to indemnify and hold the City harmless from any liability, claim or injury, including attorney fees and the cost of any required or necessary repair, clean-up, remediation or detoxification, arising out of (i) the use, manufacture, handling, storage, disposal or release of any Hazardous Substances by RCYH, its agents and employees and any subtenant and its agents and employees on, under or about the GIHA during the term, or (ii) an actual or alleged violation of Environmental Laws in.1 connection with the occupancy of the GIHA by RCYH or any occupant of the GIHA or the operation of RCYH's business on the GIHA during the term of the Agreement. The foregoing indemnification shall survive the expiration or earlier termination of this Agreement.

It is agreed that the City shall also indemnify RCYH for any payment RCYH are required to make with regard to necessary testing, repair, cleanup, remediation, or detoxification with regard to any environmental damage which existed prior to RCYH's occupancy of the GIHA.

17. City's Right of Entry and Inspection.

- A. City shall have the right to enter the GIHA at all reasonable times for the purpose of verifying compliance with the terms and conditions of this Agreement.
- B. The City may also request any and all records from RCYH, at no cost, upon ten (10) days advance notice for the purpose of verifying compliance with the terms and conditions of this Agreement.
- C. RCYH understands and acknowledges that City is subject to the Public Records Law of the State of Wisconsin. As such, RCYH agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. RCYH agrees to assist the City in complying with any public records request that the City receives pertaining to this Agreement. Additionally, RCYH agrees to indemnify and hold harmless the City, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from RCYH's actions or omissions which contribute to the City's inability to comply with the Public Records Law. In the event that RCYH decides not to retain its records for a period of seven (7) years, then it shall provide written notice to the City whereupon the City shall take custody of said records assuming such records are not already maintained by the City. This provision shall survive the termination of this Agreement.

18. Alterations and Improvements.

- A. RCYH shall not make, or suffer to be made, any structural alterations or improvements of the real property without prior review and the written consent of both the Board and City. All such alterations or improvements shall be made in accordance with any applicable local, state and federal laws and regulations. Any additions to, or alterations of, the real property improvements shall become at once a part of the realty and belong to the City. If written consent of the City to any proposed alterations shall have been obtained, RCYH agrees to advise the Board in writing of the date upon which such alterations will commence in order to permit the City to post notice of no responsibility. RCYH shall be consulted in any discussions pertaining to alterations proposed to be made by the City to the GIHA. RCYH shall further provide verification of the alterations' or improvements' value to the City Engineer, City Assessor and City Finance Director.
- B. RCYH shall keep the GIHA free from any and all liens arising out of any work performed, materials furnished or obligations incurred by RCYH. Upon request, RCYH shall provide verification, certification and proof that no liens or other encumbrances exist on any part of the GIHA or portion thereto. In the event such liens or encumbrances exist, then RCYH

shall obtain a release of the same or other appropriate documentation extinguishing such lien or encumbrance following receipt of a fifteen (15) day noticed from the City.

19. Abandonment. RCYH agrees not to vacate or abandon the GIHA at any time during the Agreement. Should RCYH vacate or abandon the GIHA or be dispossessed by process of law or otherwise, such abandonment, vacation or dispossession shall be a breach of the Agreement; and, in addition to any other rights which the City may have, the City may remove any personal property belonging to RCYH which remains in the GIHA and store and dispose of the same, such removal, storage and disposal to be at the expense of RCYH.

20. Notices. All notices to be given to the City and RCYH shall be in writing, and either personally delivered or deposited in the United States Mail, certified or registered, with postage prepaid, and addressed as follows:

To RCYH: River City Youth Hockey, Inc.
c/o President
P.O. Box 2463
La Crosse, WI 54602

To the City: Attn: City Clerk
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

With a copy to: Attn: Director of Parks and Recreation
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

21. No Third-Party Beneficiary. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

22. Independent Contractor. The parties hereto agree they are acting as independent contractors, and nothing in this Agreement is intended to create, nor shall anything herein be construed or interpreted as creating, a partnership, joint venture, or any such mutual relationship between the parties. Each party shall be responsible for its own separate debts, obligations and other liabilities.

23. Construction. This Agreement shall be construed and interpreted under the laws of the State of Wisconsin. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be

deemed to include any other number and any other gender as the context may require. This Agreement may not be amended except in writing and approved by both parties.

- 24. Governmental Approvals.** RCYH acknowledges that several of the specific undertakings of the City described in this Agreement may require approvals from the City of La Crosse governing bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. RCYH further acknowledges that this Agreement, if it requires the expenditure of any funds is subject to appropriation by the La Crosse Common Council. The City's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. The City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain such approvals on a timely basis.
- 25. Patents, Trademarks, Copyrights and Royalties.** RCYH assumes all costs arising from the use of patented, trademarked or copyrighted materials, equipment devices, processes or dramatic rights used in their conduct and agree to indemnify and hold harmless the City from all damage, costs and expenses on account of the use of any such materials, equipment, devices, processes or dramatic rights by RCYH or its employees, agents, or licensees. RCYH agrees to pay all royalties, license fees and other charges accruing or becoming due by reason of any music, live or recorded, or other entertainment of any kind played, staged or produced by RCYH, its agents, employees or licensees in the GIHA.
- 26. Jury Trial Waiver.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
- 27. Governing Law.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.
- 28. Severability.** If any of the terms or conditions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to person or circumstances other than those to which it is declared invalid or unenforceable shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law.
- 29. Title to be Retained by City.** City shall retain title and ownership of the GIHA together with all buildings, and improvements thereon without any payment whatsoever to RCYH.
- 30. Non-Discrimination.** In the performance of the services under this Agreement, RCYH agrees not to discriminate against any employee, subcontractor or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level or

source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status.

- 31. No Waiver.** No failure to exercise and no delay in exercising of any right, power or remedy hereunder on the part of the City shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
- 32. Authority.** The persons signing this Agreement warrant they have the authority to sign as, or on behalf of, the party for whom they are signing.
- 33. Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.
- 34. Entire Agreement.** The entire agreement of the parties is contained herein, and this Agreement supersedes any and all oral contracts and negotiations between the parties.

River City Youth Hockey, Inc.

**City of La Crosse
Board of Park Commissioners**

By: _____
Name: Matt Hansen
Title: President
Date: _____, 2021

By: _____
Name:
Title:
Date: _____, 2021