

THIS IS TO CERTIFY that the following is a true and attested copy of a resolution adopted by the Council of the City of Norwich at a meeting held on July 14, 2014, and that the same has not been amended or rescinded:

WHEREAS, the Council of the City of Norwich, by resolution adopted on July 7, 2014, approved a Management Services Agreement with the Norwich Rosegarden Ice Associates, LLC aka Norwich Rose Ice Associates Inc. aka Wonderland (“Norwich Rosegarden Ice Associates, LLC”) as set forth in an “Exhibit A” attached to said resolution; and

WHEREAS, the Norwich Rosegarden Ice Associates, LLC, has requested that such Management Services Agreement be amended to incorporate changes.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Norwich, that the changes requested to the Management Services Agreement approved on July 7th, 2014, as such changes are set forth and incorporated in an exhibit attached hereto as “Exhibit A-1” are hereby approved, and that the City Manager, Alan H. Bergren be and hereby is, authorized and directed to sign, execute and deliver copies of such amended Management Services Agreement, as described herein, to Norwich Rosegarden Ice Associates, LLC on behalf of the City of Norwich and to arrange the receipt of those items required of Norwich Rosegarden Ice Associates, LLC under this Management Services Agreement and the supervisions of the Capital Improvements to be made to the Ice Arena prior to the re-opening of the same.

MANAGEMENT SERVICES AGREEMENT

FOR THE OPERATION AND MAINTENANCE OF THE NORWICH ICE ARENA BETWEEN THE CITY OF NORWICH AND NORWICH ROSEGARDEN ICE ASSOCIATES, LLC.

This Agreement is made this [____] day of July, 2014, between the City of Norwich, as the owner of the premises known as the Norwich Ice Arena, by and through its City Manager, hereinafter referred to as the "City" and with a principal place of business at 100 Broadway, Norwich, CT and Norwich Rosegarden Ice Associates, LLC as the operator of the facility identified in this agreement hereinafter referred to as "Rink Operator".

Table of Contents

<p>ARTICLE I – Definitions2</p> <p>ARTICLE II – Purpose of Agreement3</p> <p>ARTICLE III – Term of Agreement4</p> <p>ARTICLE IV – City Oversight.....4</p> <p>ARTICLE V – Insurance and Performance Bond .4</p> <p style="padding-left: 20px;">5.1 Indemnification4</p> <p style="padding-left: 20px;">5.2 Compliance with Law4</p> <p style="padding-left: 20px;">5.3 Risk Management and Safety Program/Plan5</p> <p style="padding-left: 20px;">5.4 Certificate of Insurance5</p> <p style="padding-left: 20px;">5.5 Performance Bond5</p> <p>ARTICLE VI – Utilities5</p> <p>ARTICLE VII – Operator’s Duties.....6</p> <p style="padding-left: 20px;">7.1 Program and Staffing6</p> <p style="padding-left: 20px;">7.2 Capital Improvements7</p> <p style="padding-left: 20px;">7.3 Maintenance of the Premises.8</p> <p style="padding-left: 20px;">7.4 Financial Administration9</p> <p style="padding-left: 20px;">7.5 Snack Bar, Pro Shop, Related Facilities. 10</p> <p style="padding-left: 20px;">7.6 Equipment, Furniture and Fixtures. .11</p> <p style="padding-left: 20px;">7.7 Duties at Expiration/Termination.11</p>	<p style="padding-left: 20px;">7.8 Access of City for Inspection..... 11</p> <p style="padding-left: 20px;">7.9 Payment of City's Enforcement Expenses. 11</p> <p style="padding-left: 20px;">7.10 Negative Covenants. 12</p> <p style="padding-left: 20px;">7.11 Request for Proposal and Rink Operator Proposal Included as Part of Agreement 12</p> <p style="padding-left: 20px;">7.12 Initial Transition 12</p> <p>ARTICLE VIII – City’s Duties 13</p> <p style="padding-left: 20px;">8.1 Condition of Premises..... 13</p> <p style="padding-left: 20px;">8.2 City's Insurance..... 13</p> <p style="padding-left: 20px;">8.3 Limitation of City's Duties 13</p> <p>ARTICLE IX – Damage and Destruction 13</p> <p>ARTICLE X – Defaults and Remedies 14</p> <p style="padding-left: 20px;">10.1 Defaults..... 14</p> <p style="padding-left: 20px;">10.2 Right to Cure Defaults..... 14</p> <p style="padding-left: 20px;">10.3 Effect of Waiver of Default. 15</p> <p>ARTICLE XI – Miscellaneous Provisions..... 15</p> <p style="padding-left: 20px;">11.1 Energy Conservation..... 15</p> <p style="padding-left: 20px;">11.2 Notices from One Party to the Other .. 15</p> <p style="padding-left: 20px;">11.3 Transfer or Assignment of Contract. 15</p> <p style="padding-left: 20px;">11.4 Applicable Law and Construction 15</p> <p>INSURANCE EXHIBIT.....18</p>
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ARTICLE I – Definitions

“Adjusted Gross Revenue” shall mean, for each Fiscal Year during the term of this Agreement, Gross Revenue less amounts with respect to Excess Routine Capital Improvements. To the extent the amounts with respect to Excess Routine Capital Improvements for a given Fiscal Year exceed Gross Revenue in the applicable Fiscal Year, the excess shall be carried forward and applied against Gross Revenue for the subsequent Fiscal Year(s) until fully recouped.

“Annual Budget” shall mean the annual budget prepared by the Rink Operator and approved by the City in accordance with Section 7.4(B). Said budget shall include a detailed description of all estimated Gross Revenues, and all estimated expenses to be incurred, including but not limited to costs for salaries, utilities, insurance, maintenance and repairs and anticipated Capital Improvements.

“Audited Financial Statements” shall mean the Rink Operator’s audited financial statements showing the financial activity at the Premises, which statements shall be prepared on the June 30th fiscal year end using Generally Accepted Accounting Principles as set forth by the Financial Accounting Standards Board. The audit shall be conducted by a Certified Public Accountant or CPA firm selected by the Rink Operator using Generally Accepted Auditing Standards as prescribed by the American Institute of CPA’s Auditing Standards Board.

“Authority” shall mean the Norwich Ice Arena Authority or a successor as may be designated by the Norwich City Council.

“Capital Improvements” means all improvements to the Premises that will either enhance the Premises’ overall value or increases its useful life, which improvements have a useful life of five (5) years or longer.

“Excess Routine Capital Improvements” means all Capital Improvements in excess of \$5,000 per occurrence required or deemed reasonably necessary by the Rink Operator at the Premises during the term of this Agreement other than (a) those specifically listed in Sections 7.2(A) 1)-15), (b) the Initial Repairs, (c) Excess Non-Routine Capital Improvements, or (d) those that are the responsibility of the City pursuant to 7.3(A).

“Excess Non-Routine Capital Improvements” means all material Capital Improvements to the existing operational systems of the Premises in excess of \$30,000 per occurrence required at the Premises during the term of this Agreement that are not due to the negligence or misconduct of the Rink Operator. For the avoidance of doubt, Excess Non-Routine Capital Improvements do not include (a) Capital Improvements specifically listed in Sections 7.2(A) 1)-15), (b) the Initial Repairs, or (c) Capital Improvements that are the responsibility of the City pursuant to 7.3(A).

“Fiscal Year” shall mean the period commencing on July 1 and ending on the following June 30.

“Gross Revenue” shall mean, for each Fiscal Year during the term of this Agreement, all income received by the Rink Operator, from whatever source, generated in connection with or as a result of the operation of the Premises and any related facilities, including but not limited to income and fees derived from the snack bar, pro shop, skating school, rental of ice time and special events conducted by or upon the Premises.

“Initial Repairs” means those items listed on Exhibit A that are reasonably required for the operation of the Premises as evidenced by the inspections and testing performed by (or on behalf of) the Rink Operator and any repairs required by law (including without limitation the Americans with Disabilities Act (“ADA”)) and made by the Rink Operator.

“Initial Repairs Credit” means a credit the amount of which shall equal the cost of the Initial Repairs.

“Minimum Payment” means \$75,000, provided, however, that in the event the term of this Agreement is extended pursuant to Article III, the Minimum Payment, commencing with the first year of the extended term and each year thereafter, shall increase by the lesser of (a) the percentage increase in the CPI over the prior year (calculated at the end of March) or (b) two and one-half percent (2.5%). By way of example, if the CPI on March 31, 2023 is 100, and the CPI on March 31, 2024 is 103, then the Minimum Payment for the first year of the extended term shall be: \$77,250 (i.e., $\$75,000 \times ((103-100)/100) + \$75,000$). The term “CPI” means the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. – Consumer Price Index for All Urban Consumers – North East Region (1982 – 84 equals 100) as periodically published, or if such Consumer Price Index shall be discontinued or shall be published by another department or division of the U.S. Government, then any other comparable or similar index as shall be published periodically by the U.S. Department of Labor or any other Department or Division of the U.S. Government. If no CPI is published on a particular day, the date to be used shall be the next date for which the CPI is published.

“Premises” shall mean the ice skating facility known as the Norwich Ice Skating Arena located at 641 New London Turnpike, Norwich, CT, together with all appurtenant facilities including but not limited to all refrigeration and ice maintenance equipment, parking lot, driveways and access ways, grounds, snack bar, and pro shop. Said ice skating facilities shall hereinafter be referred to as the “Premises.”

ARTICLE II – Purpose of Agreement

This Agreement is intended to provide for the professional services necessary for the day-to-day operation and maintenance of the Premises in the best interests of the City of Norwich. The City hereby grants the Rink Operator the exclusive right, during the term of this Agreement, to provide such services together with the right for the Rink Operator to permit third parties to provide certain portions of those services as provided in Section 7.5 below. The City covenants that the Rink Operator, upon performing all of its obligations contained in this Agreement, shall peacefully and quietly have, hold and enjoy the Premises in its entirety throughout the term hereof without interference from the City or any other party.

It is the intent of the parties hereto that the operation and daily maintenance of the Premises shall be self-supporting and that all expenses incurred in the course of such operation shall be paid from the revenues derived from fees charged for programs, goods and services provided by the Rink Operator. In consideration of providing the management and operational services as defined in this agreement, any and all surplus revenue remaining after all expenses associated with the operation of the Premises, including the percentage of Adjusted Gross Revenue to be remitted to the City, have been paid shall become the property of the Rink Operator as a management fee. Additionally, any deficit in revenue associated with operational expenses shall be absorbed by the Rink Operator.

ARTICLE III – Term of Agreement

This Agreement shall be for an initial term of ten (10) years commencing on July 1, 2014, and ending on June 30, 2024. The Rink Operator may extend the term of this Agreement for three (3) consecutive ten (10) year extensions at its sole discretion by providing written notice to the City within 120 days prior to the expiration of the then current portion of the term indicating its intent to so extend the term hereof. Any extensions will operate under the same terms and conditions of the initial ten year term, except that the Rink Operator payments to the City will be calculated pursuant to Section 7.4(H)(3) below.

ARTICLE IV – City Oversight

The Authority shall oversee performance of this Agreement on behalf of the City. Any and all notices required to be given to the City pursuant to this Agreement shall be delivered to the City Purchasing Agent.

ARTICLE V – Insurance and Performance Bond

5.1 Indemnification

- A. The Rink Operator shall indemnify and save harmless the City against any and all liability related to damages to property or injuries or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City from any and all claims, demands, suits, actions or proceedings of any kind of nature including workmen's compensation claims, of or by anyone whomsoever, in any way resulting from or arising out of the operation of the Premises in connection herewith, including operations of subcontractors and acts or omissions of employees or agents of contractors or his subcontractors. Insurance coverage specified herein and in any special conditions listed in Exhibit B constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability of the Rink Operator under the terms of the contract. The Rink Operator shall procure and maintain, at its own cost and expense, any additional kinds and amounts of insurance which in its own judgment, may be necessary for operation of the Premises. The Rink Operator agrees to well and truly save and indemnify and keep harmless the City against all liability, judgments, costs and expenses which may in any wise come against the City in any way arising or resulting from the operation of the Premises in connection herewith or which may in any wise result from carelessness, omission or neglect of the Rink Operator or his/her agents, employees, or workmen in any way arising or resulting from the operation of the Premises in connection herewith.
- B. The Rink Operator shall defend, indemnify and save harmless the City of Norwich, Norwich Ice Arena Authority, and their respective officers, agents, servants and employees from any loss or claims arising from the Rink Operator and/or its respective agents, servants, employees and subcontractors failure to comply with any laws or regulations of the United States of America, the State of Connecticut, the City of Norwich, or their respective agencies.

5.2 Compliance with Law

The Rink Operator shall comply with all laws, ordinances, rules and regulations which

may pertain or apply to the skating rink and related equipment (including but not limited to the ice resurfacing machines, refrigeration system, snack bar and pro shop) its uses and accessory uses including state sales tax certificates and any necessary zoning and planning certificates which may arise from future operations which extend beyond the limits of the existing special use permit a copy of which is attached hereto as Exhibit C. Notwithstanding the aforementioned, the City agrees that, during the term of this Agreement, it shall not enact any law, ordinance, rule or regulation that would materially adversely impact the Rink Operator or otherwise frustrate the purpose of this Agreement (provided, however, that for purposes of clarification the foregoing shall not limit the adjustments of utilities pursuant to Article VI). For purposes of this Agreement, the selected Rink Operator shall not be considered a tax-exempt agency of the City for state or federal tax purposes. It is understood by the parties that since the Premises are owned by the City, the Rink Operator shall not be obligated to pay (a) real property taxes with respect to the Premises (or the fixtures located therein), and no such real property taxes will be due to the City or (b) sales tax in connection with any capital improvements made to the Premises and the City shall cooperate with the Rink Operator to enable the Rink Operator to obtain a tax exempt certificate or other requisite documentation to ensure that no such sales taxes will be due.

5.3 Risk Management and Safety Program/Plan

The Rink Operator agrees to maintain and update as necessary a Risk Management and Safety Program/Plan related to this Agreement. The Risk Management and Safety Program/Plan shall include and comply with all applicable Occupational Health and Safety Administration (OSHA) standards and insurance carrier engineering and loss control recommendations.

5.4 Certificate of Insurance

The Rink Operator shall provide a certificate of insurance acceptable to the City of Norwich in accordance with the Insurance Exhibit B, hereby made a part of this Agreement.

5.5 Performance Bond/Letter of Credit

The Rink Operator shall be required to either post a one-year irrevocable (a) performance bond or (b) letter of credit from a financial institution reasonably satisfactory to the City prior to the beginning of each year of the Agreement which the City may access to continue operations in the event the Rink Operator defaults on any of its obligations to perform services. Said performance bond or letter of credit shall be in a minimum amount equal to the applicable Minimum Payment.

ARTICLE VI – Utilities

Heat and Other Utilities: Notwithstanding anything herein to the contrary, the Rink Operator shall pay all charges for gas, electricity, light, heat, power, water, sewer, telephone and community services used, rendered or supplied upon or in connection with the Premises consistent with past practice (as may be adjusted by the following paragraphs).

All gas, electric, water, sewer or other utility services provided by Norwich Public Utilities (“NPU”) will be charged at the current NPU posted tariff rates as they change from time to time. Charges will be determined in accordance with the standard practices of NPU for commercial customers of similar size with respect to readings of associated meters and subsequent billing calculations. NPU will erase all demand history when the applicable accounts are transferred to the Rink Operator.

During the initial filling of ice rink and during any subsequent major resurfacing of the ice, defined as any single operation that consumes more than seven ccfs of water to replenish the ice surface, NPU will subtract the consumption of the actual water used during that single resurfacing operation, up to 20 ccfs, from the associated sewer use to account for the amount of water that will not be sent to the city sewer system during the event. The Rink Operator must notify the General Manager of NPU prior to each major resurfacing operation in order for this clause to take effect. It is anticipated by the parties that such major resurfacings and/or maintenance operation will occur no more than four times per year. This clause does not apply to water used during normal daily resurfacing operations necessary to maintain the quality of the ice condition.

The temperature in the ice skating rink portion of the Premises must be maintained between 53 degrees Fahrenheit and 45 degrees Fahrenheit.

ARTICLE VII – Operator’s Duties

7.1 Program and Staffing

The Rink Operator shall provide all aspects of managerial services, as described in the City of Norwich RFP for the Operation of the Norwich Ice Rink dated April 8, 2014 and the price and technical proposal as well as alternate proposal, if submitted, to the City of Norwich, dated May 13, 2014, to ensure operation of the Premises so as to maximize the production of revenues while at the same time ensuring the continuation of a well-balanced recreational program in a well maintained and safe environment. Such services shall include, without limitation, the following:

- A. The Rink Operator shall develop a program designed to maximize the use of the ice skating rink on a year-round basis. Such program shall include the rental and scheduling of ice time for ice skating school lessons for various levels of proficiency, the rental of ice time to schools, organizations, leagues and other private parties for hockey or recreational skating and the provision of public skating periods at which time residents of Norwich may utilize the skating rink at an approved reasonable rate (consistent with all applicable laws, rules, regulations and ordinances). The Rink Operator may charge reasonable fees for such programs, subject to the approval of the Authority, which approval will not be unreasonably withheld, conditioned or delayed, to cover the costs of operation and maintenance of the facilities. For the avoidance of doubt, in the event the term of this Agreement is extended pursuant to Article III, the Authority shall not disapprove of an increase in the rates or fees charged by the Rink Operator that is proportionate with and corresponds to the City’s increase in the Minimum Payment. In the event there is adverse public reaction to the increased fees or rates charged by the Rink Operator during the extended term (which increases are a result of the City’s increase in the Minimum Payment), the City and the Rink Operator shall meet and negotiate in good faith to

determine if such increase in the Minimum Payment is reasonable and appropriate. The Authority may review the programs and fees at any time, and shall review them at least annually, to ensure compliance with the terms and intent of this Agreement. Any violation of such terms and intent shall be corrected by the Rink Operator promptly after written notice from the City. The Rink Operator further agrees to pursue an aggressive (but commercially reasonable) marketing program to promote maximum utilization of available ice time, and shall negotiate and execute contracts for the rental of ice time.

- B. The Rink Operator shall hire and supervise all full and part-time staff, including but not limited to skating instructors, maintenance personnel with a basic knowledge of ice making and mechanical equipment, snack bar and pro shop operators, and clerical and financial staff. Employees of the Rink Operator shall not be deemed employees of the City of Norwich for any purpose. The Rink Operator shall be responsible for the supervision and scheduling of its employees and for the preparation and payment of the payroll for all such employees.
- C. The Rink Operator may operate the facility and set any hours of operation, which are acceptable to the City (acting reasonably and in good faith) and conform to the hours of operation as identified in the RFP, however, preference will be given to Local School hockey programs and Local Youth Hockey and non-profit programs in accordance with the schedule provided in Sec. V. Services Requested and Terms; Subsection I; Current Skating Schedule.
- D. The Rink Operator shall attend periodic meetings with the Authority not less than quarterly to discuss any plans and concerns that the City or Rink Operator have.
- E. The City may conduct a review of the Rink Operator's performance under this Agreement. If the Rink Operator fails to provide satisfactory services (in the commercially reasonable determination of the City), the City may terminate this contract with no liability to the City if the Rink Operator fails to remedy such failure after notice from the City to the Rink Operator and the opportunity to cure as provided in Section 10.1 below.

7.2 Capital Improvements

- A. The Rink Operator shall use commercially reasonable efforts to complete the following capital improvements on or before October 1, 2014 (it being understood and agreed by the parties, however, that the Rink Operator's failure to complete all of such capital improvements by such date shall not constitute a default under this Agreement so long as the Rink Operator has and is diligently pursuing the completion of such capital improvements):

- 1) Demolition and remove existing chiller equipment
- 2) Replace chiller with plate and frame ammonia-based cold floor heat exchanger with glycol as the secondary refrigerant
- 3) Replace cooling tower
- 4) Replace warm and cold floor refrigeration headers
- 5) Replace snow melt pit heating coil
- 6) Replace dehumidification system desiccant wheel, rollers and belts
- 7) Flush cold and warm floors and replace brine charge with glycol
- 8) Install Astro-Foil low emissivity ceiling
- 9) Install water treatment for cooling tower to prevent future scale build
- 10) Install infrared ice temperature control system

- 11) Computerized point-of-sale system
- 12) Install security camera system
- 13) Overhaul existing electric Zamboni
- 14) Purchase a second Zamboni as a backup
- 15) Aesthetic improvements to entry lobby and common area

Each capital improvement listed above shall be the responsibility of the Rink Operator and, with the exceptions of 11) and 14), shall become the property of the City of Norwich. For the avoidance of doubt, the costs of the foregoing capital improvements shall not be applied as an offset against Gross Revenues to reduce the payments due to the City under Section 7.4(H).

- B. The Rink Operator shall be responsible for the costs of all Excess Routine Capital Improvements. For the avoidance of doubt, the costs of Excess Routine Capital Improvements shall be applied as an offset to Gross Revenues to reduce the payments due to the City under Section 7.4(H) (as contemplated in the definition of Adjusted Gross Revenue). The Rink Operator shall use good faith efforts to obtain the City's prior written consent for each Excess Routine Capital Improvement, which consent will not be unreasonably withheld, conditioned or delayed, provided, however, that the failure of the Rink Operator to obtain the City's prior written consent shall not be a default hereunder if the Rink Operator acted in good faith and in a commercially reasonable manner.
- C. In the event the Rink Operator determines in its commercially reasonable discretion that an Excess Non-Routine Capital Improvement is required during the term of this Agreement, the parties shall meet and negotiate in good faith to discuss the making of such Excess Non-Routine Capital Improvement and the manner and extent to which the costs of such Excess Non-Routine Capital Improvement shall be applied to reduce the payments due to the City under Section 7.4.

7.3 Maintenance of the Premises.

- A. Damage by fire and unavoidable casualty (which are described in Article IX) excepted, the Rink Operator shall, at its expense, keep the interior and exterior of the Premises clean, neat and in good order, repair and condition. Except when damaged by fire or other casualty covered by the City's insurance, the Rink Operator shall keep all glass, including that in windows, doors and skylights, clean and in good condition, and shall replace any glass which may be damaged or broken with glass of the same quality. Anything herein to the contrary notwithstanding, the City shall, at its expense, be responsible for all repairs and replacements to the structural components of and infrastructural services of the Premises.
- B. The Rink Operator shall remove all snow and ice from the exterior of the Premises, including but not limited to, all of the parking areas, driveways, truck ways, delivery passages and common truck areas. Once snow and ice have been removed, the Rink Operator agrees to maintain all such exterior areas in a condition which will assure safe public access to the premises and shall promptly treat any ice areas with deicing agents so as to maintain safe access. The Rink Operator shall remove snow and ice from the ice rink building to reduce the potential for property damage and bodily injury. The Rink Operator shall respond in a reasonable period of time after the accumulation of snow and/or ice, when it is determined the snow/ice load on or hanging from the building, creates a substantial threat of property damage or potential for bodily injury.
- C. The Rink Operator shall employ staff trained in the basics of ice making and knowledgeable about the daily maintenance of the mechanical equipment involved in the ice making process. The Rink Operator may, in addition, enter into a contract with an outside company for the

periodic maintenance and servicing of all refrigeration and mechanical systems. The Rink Operator shall provide copies to the City Purchasing Agent of the maintenance logs for the refrigeration and mechanical systems by July 31st for the previous Fiscal Year.

- D. The Rink Operator shall store all trash and refuse within the Premises and shall attend to the daily disposal thereof in the manner designated by the City, shall keep all drains inside the Premises clean; shall service and deliver goods and merchandise only in the manner and areas designated by the City; and shall conform to all reasonable rules and regulations which the City may make in the management and use of the building, requiring such conformance by the employees.
- E. The Rink Operator agrees to pay promptly when due the entire cost of any work to the Premises undertaken by the Rink Operator so that the Premises shall at all times be free of liens for labor and material. The Rink Operator also agrees to procure all necessary permits before undertaking such work and to do all such work in a good and workmanlike manner, employing materials of good quality and complying with all governmental requirements. Anything herein to the contrary notwithstanding the City shall waive all applicable municipal permit fees and municipal inspection fees (but not any permit or inspection fees for the benefit of the State of Connecticut) with respect to capital improvements conducted by the Rink Operator at the Premises.
- F. The Rink Operator shall immediately notify the City in writing if it becomes aware of any maintenance need or problem or any capital repair need or problem, which does, or could create a legal liability for either the City or any authorized representatives of the City.

7.4 Financial Administration

- A. The Rink Operator shall provide for all bookkeeping services and shall be responsible for the collection of all fees and the payment of all bills, charges, rates and other sums which by the terms of this Agreement are to be paid by the Rink Operator, including the preparation and payment of any and all state and federal taxes.
- B. The Rink Operator shall prepare an annual budget and shall submit the same to the City for review and comment at least three months prior to such date as shall be established from time to time by the City for its adoption (provided the City shall give the Rink Operator reasonable notice of such date). The City shall promptly review and either provide the Rink Operator with comments on the budget or approve the same. The City agrees that it will not unreasonably withhold, condition or delay its approval of the budget. This budget shall include any request for fee increases. Fee increases are subject to the approval of the Authority. Such approval shall not be unreasonably withheld, conditioned or delayed.
- C. The Rink Operator shall deliver Audited Financial Statements to the City no later than September 1st following each Fiscal Year end.
- D. All banking and accounting functions including all deposit of funds, expenditure of funds and financial management shall be the sole responsibility and expense of the Rink Operator. The Rink Operator shall be required to account for all revenues and expenses for the Premises on a July 1st to June 30th fiscal year.
- E. The Rink Operator shall remit to the City the amounts required under Section H below no

later than the September 1st following the applicable Fiscal Year, provided, however, that for the Fiscal Year ending June 30, 2018 and each Fiscal Year thereafter, the Rink Operator will make minimum quarterly payments of one-quarter of the Minimum Payment on or before each of the following dates: July 15th, October 15th, January 15th, and April 15th.

- F. The Rink Operator shall deliver to the City copies of invoices and evidence of payment for all capital improvements to the Premises within 30 days after making such payment.
- G. If the City's share of Adjusted Gross Revenue under Section H exceeds the Minimum Payment for a given year, the Rink Operator shall remit to the City the balance of the City's share of Adjusted Gross Revenue for such Fiscal Year to the City no later than the September 1st following such Fiscal Year.
- H. The calculation of the City's share of Adjusted Gross Revenue is as follows:
 - 1) Fiscal Years ending June 30, 2015 through June 30, 2017: 5% of Adjusted Gross Revenue.
 - 2) Fiscal Years ending June 30, 2018 through June 30, 2019: the greater of the Minimum Payment or 5% of Adjusted Gross Revenue.
 - 3) Fiscal Years ending June 30, 2020 and each Fiscal Year thereafter: the greater of the Minimum Payment or the sum of the following percentages of Adjusted Gross Revenue:
 - a) 5% of Adjusted Gross Revenues up to \$600,000;
 - b) 7% of Adjusted Gross Revenues over \$600,000 up to \$700,000;
 - c) 9% of Adjusted Gross Revenues over \$700,000 up to \$800,000; and
 - d) 10% of Adjusted Gross Revenues over \$800,000.

Notwithstanding anything herein to the contrary, the Rink Operator shall be entitled to offset the amounts payable to the City under Section 7.4 during each of the first three Fiscal Years by an amount not to exceed one-third of the Initial Repairs Credit. Any portion of the Initial Repairs Credit that is unrecouped by the Rink Operator after the third Fiscal Year shall be applied to amounts payable to the City under Section 7.4 during each subsequent Fiscal Year until recouped by the Rink Operator.

7.5 Snack Bar, Pro Shop, Related Facilities.

- A. The Rink Operator shall have the option either to provide appropriate space to a third party operator, or to operate a snack bar (and/or full service restaurant, if the City has approved the development of such full service restaurant) on the Premises, for the benefit and convenience of the patrons thereof, and the Rink Operator shall be responsible for the maintenance of all fixtures, equipment and appliances utilized in such operation.
- B. The Rink Operator shall have the option either to provide appropriate space to a third party operator, or to operate a pro shop on the premises. Any such pro shop shall provide services in support of the ice skating operation including but not limited to servicing and repair of ice skating equipment and the sale of ice skating and hockey equipment and apparel.
- C. The Rink Operator shall be responsible for the purchase and maintenance of adequate supplies and inventories to support the efficient operation of the snack bar and pro shop.

- D. Should the Rink Operator decide to provide any space in the Premises for the operation of a snack bar, pro shop, or other operations as may be permitted, the operator must provide the City with a certificate of insurance with limits of liability acceptable to the City Purchasing Agent.
- E. Any agreements entered into by the Rink Operator for any of the facilities in the Premises, including those with related parties, must be made using fair market rates commensurate with the agreements with arms-length transactions in other ice arena operations in the State of Connecticut.

7.6 Equipment, Furniture and Fixtures.

The Rink Operator shall have the right to install at its own expense such equipment, furniture and fixtures as it considers necessary or desirable, and all such equipment, furniture and fixtures shall remain the property of the Rink Operator and shall be clearly labeled as property of the Rink Operator. The Rink Operator shall provide the City with an inventory punch list of its equipment, furniture, and fixtures. Upon the expiration or other termination of this Agreement the Rink Operator shall have the right to remove all such equipment, furniture and fixtures provided that the Rink Operator shall do so without damage to the Premises and if any damages result from such removal, shall be liable to the City for such damages and shall promptly pay the City for such damages. Notwithstanding anything herein contained to the contrary, no equipment, furniture, or fixtures which present an unreasonable risk of harm or which will cause the violation or breach the provisions of Section 8.2 of the Agreement shall be placed upon the Premises.

7.7 Duties at Expiration/Termination.

At the expiration or termination of this Agreement, the Rink Operator shall remove all of the goods and effects, alterations and additions that are not permanently affixed to the Premises as the City may request; shall repair any damage caused by such removal, and peaceably shall yield up the Premises and all alterations and additions thereto (except such as the City has requested the Rink Operator to remove) and except as provided in Section 7.6, all fixtures, furnishings, floor coverings and equipment which are permanently affixed to the Premises, which shall thereupon become the property of the City. Any removable items not removed by the Rink Operator within 30 days following the termination shall become property of the City at its option.

7.8 Access of City for Inspection.

The Rink Operator agrees to permit the City, its employees or agents to examine and inspect the Premises, and every part thereof, when requested, to determine the conditions of the facilities and to assure compliance with the terms of this Agreement. The Rink Operator will provide a staff person to access any and all areas and answer any questions in regard to operation of the Premises.

7.9 Payment of City's Enforcement Expenses.

The Rink Operator agrees to pay on demand the City's reasonable expenses, including, but not limited to court costs and legal fees, incurred in enforcing any obligation under this Agreement or incurred on account of any default by the Rink Operator under this Agreement.

7.10 Negative Covenants.

- A. The Rink Operator agrees not to assign or otherwise transfer its duties and obligations under this Agreement without obtaining on each occasion the prior written approval of the City in accordance with Section 11.3.
- B. The Rink Operator agrees not to injure, overload, deface or otherwise harm the Premises; not to commit any nuisance; not to permit the emission of any objectionable noise or odor; not to burn any trash or refuse; not to sell, display, distribute or give away any alcoholic liquors or beverages, nor to permit any alcoholic liquors or beverages to be brought onto the Premises or to be consumed therein (provided, however, the foregoing shall not prohibit the sale of alcoholic liquors or beverages at the snack bar or at a restaurant at the Premises (or the consumption of the same therein) in the event the Rink Operator (or permitted third party authorized to operate such snack bar or restaurant) obtains (i) the City's prior approval for the sale of alcohol at the Premises and (ii) a liquor license); not to make any use of the Premises which is improper, offensive or contrary to any law or ordinance or which will invalidate or increase the cost of any of the City's insurance; not to use any advertising medium which may constitute a nuisance, such as loudspeakers, sound amplifiers, phonographs or radio or television broadcasts in a manner to be heard outside the Premises; not to do any act tending to injure the reputation of the Premises or the City; not to sell or display merchandise on, or store or dispose of trash or refuse on, or otherwise obstruct, the driveways, walks, or parking areas outside the building, which consent will not be unreasonably withheld, conditioned or delayed.
- C. The Rink Operator further agrees not to make any material alterations or additions to the Premises without on each occasion obtaining prior written consent of the City, which consent will not be unreasonably withheld, conditioned or delayed.

7.11 Request for Proposal and Rink Operator Proposal Included as Part of Agreement

The Rink Operator has submitted a price and technical proposal as its response to the City's Request for Proposals. The entire proposal and the City's request for proposals are attached hereto and incorporated herein. The provisions of the Agreement shall take precedence over any inconsistent provisions of the proposal.

7.12 Initial Transition

- A. Within seven (7) days from the execution of this Agreement, the City shall assign to the Rink Operator, and the Rink Operator will assume, the City's rights and obligations under that certain Employment Agreement dated September 1, 2013 (a copy of which is attached hereto as Exhibit D) with respect to Douglas W. Roberts, Jr., the current Director of Operations, pursuant to an assignment and assumption agreement in the form satisfactory to the Rink Operator and consented to by the current Director of Operations (the "Assignment"). In the event the City is unable to provide the Assignment within such seven (7) day period, the Rink Operator shall have the right to hire another Director of Operations and shall have no obligation or liability to Douglas W. Roberts, Jr.
- B. While the Premises is closed for business when the capital improvements described in 7.2 are being accomplished, the Rink Operator will accommodate Norwich Ice Arena patrons by:

- 1) Offering such patrons who are 2014 Ice Skating Institute Worlds competitors free ice time at the Wonderland of Ice facility in Bridgeport, Connecticut; and
 - 2) Making arrangements with Connecticut College in New London, Connecticut and/or the Jahn Hockey Rink in Pomfret, Connecticut to offer ice time for such patrons who are involved in youth hockey.
- C. The Rink Operator will honor the approximately \$500 of Norwich Ice Arena gift cards which are outstanding as of the date of this agreement.
- D. The Rink Operator or its lessor of the Pro Shop shall purchase the Norwich Ice Arena's existing Pro Shop inventory at a price to be agreed upon with the Authority.

ARTICLE VIII – City's Duties

8.1 Condition of Premises

With the exception of the Initial Repairs and the items to be replaced or repaired as provided in Section 7.2(A), the City shall deliver the premises to the Rink Operator in a safe, clean and dry condition and in good order and repair, including electrical and all other facilities serving the Premises. The City represents and warrants that the Premises, including fixtures, conform to all applicable laws, rules, regulations, codes and ordinances, including without limitation the ADA and all applicable environmental, health and safety laws and a certificate of occupancy has been issued with respect to the Premises in their current condition. The City also represents and warrants that there are no third party service agreements affecting the Premises that cannot be terminated on thirty days' notice.

8.2 City's Insurance.

The City agrees that during the term of this Lease it will maintain liability and property damage insurance in accordance with the agreement with commercially reasonable deductibles and from commercially reasonable insurance provider. The City shall be responsible for insuring the building on a replacement cost basis (which shall be adjusted to take into account the capital improvements made by the Rink Operator). Upon the Rink Operator's written request (not to occur more than once per year), the City shall provide the Rink Operator with evidence of such insurance.

8.3 Limitation of City's Duties

The City shall not be required to supply any service to the Premises except as expressly stipulated in this Agreement, and shall not be liable to anyone for interruption of an agreed service due to any accident, to the making of repairs alterations or additions, to labor difficulties, to trouble in obtaining fuel, electricity, service or supplies or to any other cause beyond the City's reasonable control.

ARTICLE IX – Damage and Destruction

In case the Premises or any part thereof shall be damaged or destroyed by fire, or ordered to be demolished by the action of any public authority in consequence of a fire, or damaged or

destroyed by other casualty, this Agreement shall remain in full force and effect and the City shall, at its expense, proceeding with all reasonable dispatch, repair or rebuild the Premises so as to restore them (not including the Rink Operator's furniture, furnishings, floor coverings and equipment, unless and to the extent actually covered by such insurance) to the condition they were in immediately prior to such damage or destruction, but the City:

(a) shall not be responsible for any delay which may result from governmental regulations, inability to obtain labor or any other materials or any other cause beyond the City's reasonable control, and (b) shall not be required to expend in such repair or rebuilding more than the proceeds of insurance, if any, recovered or recoverable with respect to the damage or destruction. The Rink Operator shall at its expense, proceeding with all reasonable dispatch, repair or replace such of its fixtures, furniture, furnishings, floor coverings and equipment as may have been damaged or destroyed.

ARTICLE X – Defaults and Remedies

10.1 Defaults.

This Agreement is made on the condition that if any default by the Rink Operator continues for more than thirty (30) days after written notice from the City to the Rink Operator notifying the Rink Operator of such default, provided, however, that if the nature of such default is one that cannot reasonably be cured within such thirty (30) day period the Rink Operator shall not be in default if it commences to cure the default within the thirty (30) day period and thereafter diligently and in good faith pursues the cure of the default, or if the Rink Operator makes any assignment for the benefit of creditors, commits any act of bankruptcy or files a petition under any bankruptcy or insolvency law, or if such a petition filed against the Rink Operator is not dismissed within ninety (90) days, or if the interest in this Agreement is taken on execution or other process of law in any action against the Rink Operator, then the City may immediately or at any time thereafter and without demand or further notice enter and assume operation of the Premises, without prejudice to any other remedies, and thereupon this Agreement shall terminate. In the case of such termination, or termination by legal proceedings for default, the City may remove all the property from the Premises forcibly if necessary and without being deemed guilty of any manner of trespass and may store them in any public warehouse, all at the expense and risk of the Rink Operator and the Rink Operator shall pay to the City upon termination as liquidated damages the greater of (a) the amount owing to the City under Section 7.4(h) for the applicable Fiscal Year in which such termination occurs, prorated up to the date of such termination or (b) the performance bond or letter of credit under Section 5.5.

10.2 Right to Cure Defaults.

Either party may, but shall not be obligated to, cure, at any time, any default (after the expiration of any applicable notice and cure period) by the other party under this Agreement; and whenever either party so elects, all reasonable costs and expenses incurred by said party, in curing a default shall be paid by the other party on demand.

10.3 Effect of Waiver of Default.

No consent or waiver express or implied, by either party to or of any breach of any covenant, condition or duty of the other shall be construed as a consent or waiver to or of any other breach of the same or any other covenant condition or duty.

ARTICLE XI – Miscellaneous Provisions

11.1 Energy Conservation.

The Rink Operator agrees to apply and utilize commercially reasonable energy conservation measures requested by the City, and the Rink Operator will diligently pursue opportunities for energy conservation which it may discover or become aware of in the day-to-day operation of the rink facility. The Rink Operator will coordinate with Norwich Public Utilities directly on any potential rebates related to efficiency initiatives. Nothing in this Agreement shall be construed to guarantee the granting of efficiency rebates, incentives, or in-kind support from Norwich Public Utilities to the Rink Operator.

11.2 Notices from One Party to the Other

Any notice from the City to the Rink Operator or from the Rink Operator to the City shall be deemed duly served if mailed by registered or certified mail addressed as follows:

If to the Rink Operator: 123 Glenwood Avenue, Bridgeport, CT, 06610 or such other address as the Rink Operator shall have last designated by notice in writing to the City, with a copy to Brody Wilkinson PC, 2507 Post Road, Southport, CT 06890 (Attn: Brian T. Silvestro); and

If to the City, to the City Purchasing Agent, at 100 Broadway, Norwich, Connecticut 06360 or such other address as the City shall have last designated by notice in writing to the Rink Operator. The customary receipt shall be conclusive evidence of such service.

11.3 Transfer or Assignment of Contract

Any transfer or assignment of this Agreement by the Rink Operator shall be subject to the written approval of the City which will not be unreasonably withheld, conditioned or delayed. The withholding of approval is deemed reasonable if the City has reason to believe that such transferee or assignee is not sufficiently experienced in the operation of ice rinks or financially viable, as determined by the City in its commercially reasonable discretion.

11.4 Applicable Law and Construction

This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut and, if any provisions of this Agreement shall to any extent be invalid, the remainder of this Agreement shall not be affected thereby. There are other no oral or written agreements between the City and the Rink Operator affecting this Agreement. This Agreement may be amended only by instruments in writing executed by the City and The City shall not be deemed, in any way or for any purpose, to have become, by the execution of this Agreement for any action taken thereunder, a partner of the Rink

Operator in its business or otherwise or a joint venture or a member of any joint enterprise with the Rink Operator. The titles of the several articles and sections contained herein are for convenience only and shall not be considered in construing this Agreement. The words "City " and "Rink Operator" appearing in this agreement shall be construed to mean those named above, their respective heirs, executors, administrators, successors and assigns, and those claiming through or under them, respectively.

11.5 Authority; Etc.

Each party represents and warrants to the other party that (i) it has the full right, power and authority to execute and deliver this Agreement and to grant the rights and perform its obligations hereunder; (ii) the grant of rights and performance by it of its obligations hereunder have been duly authorized by all requisite corporate, company or municipal action; (iii) this Agreement will be the legal, valid and binding obligations of it, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the rights of creditors generally; and (iv) the execution, delivery and performance of this Agreement, and the grant of rights and performance of its obligations hereunder, do not and will not conflict with or result in a violation or a default under applicable law or any other contract or agreement to which it is a party. The City further represents and warrants that it owns the Premises.

11.6 Further Actions.

Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

City of Norwich

**Norwich Rosegarden Ice Associates,
LLC**

By: _____
Name:
Its:

By: _____
Name:
Its:

Consented to by:

**Norwich Ice Arena Authority
a/k/a Norwich Ice Rink Authority**

By: _____
Name:
Its:

EXHIBIT A - Initial Repairs

Test existing fire alarm, verify sufficient sound levels and visual notification and any improvements required as a result thereof. CDA can be witness

Existing emergency lighting is not adequate, additional emergency lighting would need to be provided average of 1FC during a power failure in all egress areas

Add additional EXIT signage

Provide emergency lighting at all egress and EXIT doors

Provide additional lighting around building, needed to allow egress to public way during night time operations

Upgrade purge fan/system, as needed further investigation needed

Replace existing gas fired MAU-1 –currently no flue evident and air not sufficient puts building into negative

Replace existing gas fired MAU-2 –currently no flue evident and air not sufficient puts building into negative

Replace existing gas fired MAU-3 –currently no flue evident and air not sufficient puts building into negative

Balance RF-1 (circulation fan in Ice Rink)

Rebalance RTU-1 diffusers

Infrared test electrical switchgear and any improvements required as a result thereof

Review connections at existing 75kVA transformer in electrical room provide alt to replace and any improvements required as a result thereof

Provide childproof plugs for all public areas receptacles

Provide new makeup air and exhaust for storage room converted to locker room

Provide new RTU for gym (no ventilation has been provided)

Clean all floor and trench drains, snake all sanitary lines and camera all exterior laterals and any improvements required as a result thereof

EXHIBIT B - Insurance

NORWICH ICE ARENA

MANAGEMENT SERVICES AGREEMENT

For the purpose of this exhibit: the term "Rink Operator" shall also include their respective agents, representatives, employees or subcontractors; and the term "City of Norwich and Norwich Ice Arena Authority" (hereinafter called the " City ") shall include their respective officials, boards and commissions, officers, representatives, agents, servants, employees and volunteers.

The Rink Operator shall obtain and maintain at its own cost and expense all the insurance described below continuously for the duration of the contract, including any and all extensions. Rink Operator shall assume any and all related costs, including but not limited to, deductibles, retentions, losses, claim expenses, premiums, taxes, and audit charges earned and payable under the required insurance.

A. Minimum Scope and Limits of Insurance:

The required insurance shall meet the minimum scope and limits of insurance specified in this exhibit, or required by applicable federal, state and/or municipal law, regulation or requirement, whichever coverage is greater. Providing proof of the minimum scope and limits described in this exhibit shall not exclude the City from additional limits and coverage provided under the Rink Operator's policies.

1) **Commercial General Liability:**

\$2,000,000 combined single limit per occurrence for bodily injury, personal injury, property damage, contractual liability and products /completed operations.

2) **Automobile Liability and Physical Damage Coverage:**

\$1,000,000 combined single limit per occurrence for any auto, including statutory uninsured/underinsured motorist coverage and \$1,000 medical payments. Policy shall include collision and comprehensive property damage coverage. If vehicles are not used in the execution of the contract then automobile coverage is not required.

3) **Umbrella Liability:**

\$5,000,000 per occurrence. All excess/umbrella policies shall be in the following form and amount and list the existing underlying insurance policies. Excess/umbrella liability coverage may be included to meet minimum requirements.

4) **Workers' Compensation and Employer's Liability:**

Statutory coverage in compliance with the Workers' Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 disease/policy limit, \$100,000 disease/each employee.

The Rink Operator represents that it is currently in compliance with all requirements of the State of Connecticut regarding Workers' Compensation, Connecticut Statutes Section 31-275 et seq., and that it shall remain in compliance for the duration of this Agreement. The Rink Operator agrees that Workers' Compensation is their sole remedy and shall indemnify and hold harmless the City of Norwich and their respective officials, boards and commissions, officers, representatives, agents, servants, employees and volunteers from all suits, claims, and actions arising from personal injuries to Rink Operator, their agents, representatives, employees or subcontractors sustained during the course of providing services to the City, however caused. This indemnity shall not be affected by a lapse of Workers' Compensation coverage and/or if the Rink Operator failed, neglected, refused or is unable to obtain Workers' Compensation insurance.

5) **Personal Property:**

"All risk" property insurance on a replacement cost basis to cover the value of personal property belonging to the Rink Operator and others (including but not limited to the personal property of subcontractors). All personal property of the Rink Operator and its agents are the sole risk of the Rink Operator. To the extent permitted by law, the Rink Operator agrees to indemnify, defend and hold harmless the City from any and all losses or damages, however caused, to any and all personal property belonging to the Rink Operator, its agents, representatives, employees and/or subcontractors.

B. Additional Insured Endorsement:

All liability policies (with the exception of Worker's Compensation) shall include the City of Norwich, and the Norwich Ice Arena Authority, and their respective officials, boards and commissions, officers, representatives, agents, servants, employees and volunteers as an Additional Insured. The policy shall not contain any special limitations on the scope of protection afforded to the City. Any **Insured vs. Insured** language shall be amended to eliminate any conflicts or coverage restrictions between the respective Insureds.

C. Acceptability of Insurers:

Contractor's policies shall be written by insurance companies authorized to do business in the State of Connecticut, with a Best's rating of no less than A:VII, or otherwise deemed acceptable by the City Purchasing Agent.

D. Subcontractors:

All subcontractors are required to comply with all the insurance requirements stated herein. The Rink Operator shall include all subcontractors as an Insured under its policies or shall furnish separate certificates and endorsements for each subcontractor.

E. Waiver of Subrogation:

All required insurance policies shall include a waiver of subrogation clause that states that it is agreed that in no event shall the insurance company have any right of recovery against the City. When the Rink Operator is self-insured, the Rink Operator agrees it shall not have any right of

recovery against the City.

F. Aggregate Limits:

When a general aggregate is used, the general aggregate limit shall apply separately to the project or shall be twice the occurrence limit. The certificate of insurance shall state the aggregate limits. The Rink Operator shall notify the City with reasonable promptness with information concerning the erosion of limits due to claims paid under the general aggregate during the contract term. When the aggregate limit is eroded, the Rink Operator shall reinstate or purchase additional limits to meet the minimum limit requirements at the Rink Operator's expense.

G. Deductibles and Self-Insured Retentions:

The certificate of insurance shall declare the deductibles and/or self-insured retentions for all required policies. The Rink Operator shall assume all costs related to the all deductibles or self-insured retentions.

H. Notice of Cancellation or Nonrenewal:

Each required insurance policy shall not be suspended, voided, cancelled or reduced except after prior written notice has been given to the City in compliance with Connecticut statutes Sec.38a-323 and Sec.38a-324.

I. Other Insurance Provisions:

- 1) Rink Operator's insurance coverage shall be primary and non-contributory with respect to the City. Any City insurance or self-insurance shall be excess of the Rink Operator's insurance and shall not contribute with it.
- 2) Required policies shall not contain any special limitations on the scope of protection afforded to the City.
- 3) Required policies shall state that the insurance coverage shall apply separately to each insured against whom a claim is made or suit is brought.
- 4) Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the City.

J. Verification of Coverage:

The Rink Operator shall provide the City with certificates of insurance, declaration pages, policy endorsements or provisions confirming compliance with this exhibit before work commences. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. Renewal of expiring certificates shall be filed thirty (30) days prior to expiration. The City reserves the right to require complete, certified copies of all required policies, at any time.

All insurance documents required by this exhibit should be mailed to: City of Norwich, Purchasing Agent, 100 Broadway, Norwich, Connecticut 06360.

K. Failure to Purchase or Maintain Insurance:

If the City or the Rink Operator is damaged by failure of the Rink Operator to purchase or

maintain the required insurance, the Rink Operator shall bear all reasonable costs including, but not limited to, attorney's fees and costs of litigation, properly attributable thereto.

Initials/ Rink Operator

Initials / City of Norwich

Date

Date

Exhibit C - Special Use Permit

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VOL 1218 PAGE 134 Special Permit #SP-95-11
COMMISSION ON THE CITY PLAN
CITY OF NORWICH

NOTICE OF SPECIAL PERMIT RECORDED
PURSUANT TO PUBLIC ACT NO. 75-317 - CONNECTICUT STATUTES

Record owner of property City of Norwich

Property recorded in Norwich Land Records Vol. 481 Page 303

Location of property 641 New London Turnpike

DESCRIPTION: #SP-95-11 - Special Permit to construct ice rink facility in a Residential-10 district pursuant to Sec. 8.2.2 reference to Sec. 8.1.2(b) of the Zoning Regulations with conditions that (1) traffic concerns stated by the Police Chief are to be addressed in the site plan and (2) evergreens bordering the residential neighborhoods meet with the approval of the Planning Dept.
Effective date of decision: May 16, 1995

Kathy B. Warzecha
Kathy B. Warzecha
Planning Director

NOT TO BE FILED WITH
CITY CLERK BEFORE June 1, 1995

RECEIVED FOR RECORD AT NORWICH, CONN.
ON 6-26-95 AT 8:55 A.M.
BY: Beverly C. Muldowney, Town Clerk

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VOL 1218 page 134 Special Permit #SP-95-10
COMMISSION ON THE CITY PLAN
CITY OF NORWICH

NOTICE OF SPECIAL PERMIT RECORDED
PURSUANT TO PUBLIC ACT NO. 75-317 - CONNECTICUT STATUTES

Record owner of property City of Norwich

Property recorded in Norwich Land Records Vol. 481 Page 303

Location of property 641 New London Turnpike

DESCRIPTION: #SP-95-10 - Special Permit to place fill and for other necessary construction within the floodplain of Great Plain Brook in connection with construction of an ice rink facility; compensatory flood storage waiver granted.
Effective date of decision: May 16, 1995

Kathy B. Warzecha
Kathy B. Warzecha
Planning Director

NOT TO BE FILED WITH
CITY CLERK BEFORE June 1, 1995

RECEIVED FOR RECORD AT NORWICH, CONN.
ON 6-26-95 AT 8:56 A.M.
BY: Beverly C. Muldowney, Town Clerk

Exhibit D - Employment Agreement with Director of Operations

23.

Dated at Norwich, Connecticut this 15th day of July 2014.

ATTEST: *Betsy M. Barrett*
Betsy M. Barrett
City Clerk