

Midway City Council
17 September 2019
Regular Meeting

Ice Rink /
Management Agreement



MIDWAY ICE RINK FACILITY MANAGEMENT AGREEMENT

This Midway Ice Rink Facility Management Agreement (“Agreement”) is made this ____ day of _____, 2019 (“**Effective Date**”), by and between Midway City, a municipal corporation and political subdivision of the State of Utah (the “**City**”) and Midway Boosters, Inc., a Utah non-profit corporation (“**MBI**”). City and MBI shall at time be collectively referred to herein as the “**Parties**,” and each a “**Party**.”

WHEREAS, the City owns an ice rink facility located at 75 North 100 West, Midway, UT 84049 and commonly known as the Midway City Town Square Ice Rink (the “**Ice Rink**”);

WHEREAS, MBI is a non-profit entity consisting of volunteers who strive to maintain and enhance the cultural, social, and spiritual traditions and economic, geographic, environmental, architectural, and educational aspects of the City;

WHEREAS, the Ice Rink has been an important cultural and social tradition and attraction in the City for many years;

WHEREAS, the prior management agreement relating to the Ice Rink has been terminated, and MBI desires to assist the City in operating and managing the Ice Rink so that the Ice Rink tradition may continue; and

WHEREAS, MBI desires to operate the Ice Rink with the City’s assistance, and wishes to accept such responsibility upon the terms, provisions, and conditions hereinafter contained.

NOW THEREFORE, in consideration of the mutual promises, terms, conditions, and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between the City and MBI as follows:

1. **Duties of City.** During the Term of this Agreement, City shall have the following duties:
 - a. **Property.** City shall make available the Ice Rink, including restroom areas, and shall furnish to MBI, without charge for the use thereof, such space, furniture and equipment, as shall, in the opinion of City, be necessary to reasonably provide the service contemplated by this Agreement. An inventory of the property owned by the City and which shall be made available to MBI is attached hereto as Exhibit A and incorporated herein by reference.
 - b. **Employees.** City shall be responsible for supplying adequate City employees for the Ice Rink during the Term of this Agreement as MBI may reasonably direct. City shall be responsible for workers compensation and also for the payment of all compensation,

including wages, salaries, unemployment taxes and benefits, with respect to its employees, and any required withholdings and filings for tax or benefit purposes. City shall be reimbursed for these expenses from MBI out of its Operating Revenue.

- c. **Maintenance and Operation.** City shall be responsible for the cost of maintenance and repair of the items listed in Exhibit B, and the operation costs of the Ice Rink set forth in Exhibit C (which will be reimbursed from Operating Revenue, as explained below).
- d. **Utilities.** City shall be responsible for providing and paying for utilities (including electricity and water) for the Ice Rink, and will be reimbursed for these expenses from MBI out of its Operating Revenue.

2. **Duties of MBI.** During the Term of this Agreement, MBI shall have the following duties:

- a. **Revenue Collection.** MBI shall collect all Operating Revenue (as defined in Exhibit D hereto and incorporated herein by reference).
- b. **Management.** MBI shall be responsible for the on-site, day-to-day management of the Ice Rink, subject to the direction and control of City. The Ice Rink shall be managed in an efficient and economical manner to provide funding for the long term operation of the facility. Using City employees, MBI shall operate and be responsible for all activities conducted at the Ice Rink and agrees to perform all the management services in a diligent manner and in accordance with the highest standards for health and safety considerations in the industry and to comply with all terms and conditions contained herein. The specific duties of MBI shall include, but not be limited to, those set forth on the attached Exhibit E, which is incorporated herein by reference.
- c. **Books and Records of Accounts.** MBI shall keep and maintain the books and records relating to the Ice Rink in accordance with (i) sound business practice; (ii) generally accepted accounting principles; (iii) applicable law; (iv) information as City may require; and (v) in formats as City may require. The books and records relating the Ice Rink and their operation shall be kept on site. MBI is aware that these books and records may be public records as well as documents used in the course of this Agreement. MBI shall make such documents available during the course of this Agreement and copies of same shall be turned over to City at the conclusion of this Agreement.

3. **Term.** The term of this Agreement shall be from the Effective Date until _____, 2021 (the “**Term**”). The Ice Rink shall annually operate from at least November 24 through and including March 15, seven (7) days per week, with limited operating hours on Sunday (the “**Skating Season**”). The season may begin or end earlier or later depending upon weather, with City’s written consent, which consent shall not be unreasonably withheld. MBI may set the hours of operation, but in no case may the hours of operation be later than 10:00 p.m., unless approved in advance by City in writing. At or before the end of the Term, the Parties shall meet and confer in good faith regarding extending this Agreement or negotiating a new arrangement for operation of the Ice Rink.

4. **Hours of Operation/Fees.** Normal hours of operation will be:

2pm – 9pm Monday through Thursday
2pm – 10pm Friday
12pm – 10pm. Saturday
12pm – 4pm. Sunday

MBI may offer holiday hours with prior written approval of City. MBI will be responsible for making the decision to open or close the Ice Rink for reasons of inclement weather. Admission and rental fees shall be approved in advance by City. City reserves the right to change the hours of operation and determine fees.

MBI shall also be allowed to schedule special events or private group rentals outside of normal business hours, so long as they do not go later than 10:00 p.m.

5. **Reimbursement and Compensation.**

- a. **City Expenses.** During the Term of this Agreement, MBI shall reimburse City from Operating Revenue all operating expenses that City reasonably incurs relating to the Ice Rink, including, without limitation, salary, wages and benefits for City employees, equipment maintenance, utilities, and other maintenance and operational expenses (collectively, the “**City Expenses**”).
- b. **Repair and Replacement Reserve.** During the Term of this Agreement, MBI shall reimburse City annually from Operating Revenue an amount to be determined at the beginning of each season based on the depreciation schedule of capital equipment. This amount will reflect an annualized amount for repair and replacement of capital equipment at the Ice Rink, including, without limitation, the chiller, dasher boards, piping system, concrete slab, skates, trailers, buildings and Zamboni (collectively, the “**Repair and Replacement Reserve**”). This payment shall be made no later than May 1 of each year. The Repair and Replacement Reserve shall be deposited in a separate account held by City and maintained and used solely for the purpose of maintaining, repairing and replacing, when necessary, the capital equipment at the Ice Rink. A depreciation schedule for 2019 establishing the annual requirement for Repair and Replacement Reserve is attached hereto as Exhibit F and incorporated herein by reference. Exhibit F shall be updated each year and agreed to by the parties.
- c. **Reconciliations and Payments.** The parties agree that they shall have one reconciliation annually no later than May 1 once the Skating Season is finished. At the reconciliation the City shall submit to MBI a written accounting of all City Expenses incurred through the date of the reconciliation and MBI shall submit a written accounting of Operating Revenue through the date of the reconciliation. The Parties shall meet and confer in good faith to assess the operations of the Ice Rink and to reconcile accounts. As soon as reasonably practicable, and in no case later than ten (10) days thereafter, MBI shall reimburse City for the City Expenses incurred prior to the date of the reconciliation. In the event there is insufficient Operating Revenue to pay City Expenses at the time of any reconciliation, City shall be entitled at its election to defer payment of City Expenses until such time as there shall be sufficient Operating Revenue. MBI agrees to make available any information requested by the City at any time during the skating season.
- d. **Net Profit.** MBI shall be entitled to retain, as compensation for its services, net profit, if any, remaining after the final reconciliation on May 1. Net profit shall mean and include Operating Revenue less City Advance Funds, City Expenses and Repair and Replacement Reserve. MBI agrees that it shall maintain a minimum of \$25,000 in its operating account after the final reconciliation on May 1 to be used for start-up costs and marketing for the coming Skate Season.

6. **Equipment Purchases and Termination of the Contract.**

- a. The parties agree that MBI may use any of the net profit to purchase equipment needed to operate the Ice Rink. If MBI chooses to purchase equipment, it will be held in its name, subject to the following: 1) a depreciation schedule will be established on the equipment that the parties agree to at the time of purchase; 2) MBI shall pay all on-going maintenance for the equipment so long as it is held in MBI's name; 3) should MBI choose to terminate or not renew this agreement, City shall have first right of refusal on the equipment, and shall be allowed to purchase it based on the depreciated value established in the depreciation schedule.
- b. Should the City choose to discontinue operation of the Ice Rink, the parties agree that MBI shall be entitled to sell any equipment held in its name and keep the proceeds, as well as keep all monies held in its operating account at the time the decision to discontinue is made by the City.

7. **Compliance with Laws.** MBI shall the services described herein in compliance with all federal, state, county and municipal laws, ordinances and regulations, and all employment and environmental laws, including those regarding noise, light or other nuisances.

8. **Insurance.** During the Term, MBI must carry Commercial General Liability ("CGL") Insurance written on ISO form CG 00 01 10 01 (or its equivalent) with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. City (including its directors, officers, affiliates, and employees) must be named as an additional insured on the CGL for liability arising out of the acts or omissions of MBI. The coverage afforded to City shall be primary to any other insurance carried by the City, and City's coverage shall contribute on an excess basis to any loss paid under MBI's CGL policy on behalf of City. MBI shall also provide an Additional Insured/Primary and Non-Contributory Endorsement indemnifying City. All policies of liability insurance required to be maintained by MBI shall name City as an additional insured with primary/noncontributory coverage; shall be issued by insurers with an A.M. Best rating of not less than "A-, IX"; and shall provide that coverage shall not be canceled or non-renewed without reasonable advance notice to City. MBI shall annually provide City a certificate of insurance as evidence of the above coverage.

9. **Waiver of Subrogation.** Each of the parties hereto waives any and all rights of recovery against the other or against the elected and appointed officials, officers, employees, agents, and representatives, of the other party for loss of or damages to such waiving party or its property or the property of others under its control arising from any cause insured against under insurance policy(ies) hereunder or under any other policy of insurance carried by such waiving party in lieu thereof.

10. **Audit.** City shall have the right to review the books and records of MBI associated with the operation of the Ice Rink at any time upon request and to have them audited on an annual basis.

11. **Force Majure.** Neither City nor MBI shall be held liable for the failure to perform their respective obligations under this Agreement when such failure is caused by fire, explosion, water, act of God or inevitable riot, sabotage, weather and energy related closing, governmental rules or regulations, nor for real or personal property, destroyed or damaged due to such cause listed herein.

12. **Assignment.** This Agreement and the duties and obligations hereunder, shall not be assigned by MBI without the prior written approval of City.

13. **Notice.** Any notice to be given under this Agreement shall be in writing, and shall be deemed to have been effectively given when mailed by registered or certified mail, postage pre-paid, addressed to the Parties as follows:

Midway City
Attention: Mayor
75 N 100 W PO Box 277
Midway, UT 84049

with a copy to:

Gordon Law Group, P.C.
Attention: Corbin B. Gordon
345 W 600 S, Suite 108
Heber City, UT 8032

and

Midway Boosters, Inc.
Attention: Executive Director
85 W Farm Rd., PO Box 557
Midway, UT 84049

Any notice given pursuant to this Agreement may be given by the Parties, or their legal counsel. Either Party may change its address for purposes of this Agreement by giving notice of the change to the other Party pursuant to the terms of this Paragraph.

14. **Relationship of Parties.** City shall at all times retain the right to control the manner and means of MBI's management and operation of the Ice Rink, and MBI and its agents and employees shall, while engaged in the services described herein, have the status of employees of City for purposes of the Governmental Immunity Act of Utah, Utah Code Ann. § 63G-7-101 *et. seq.* Nothing in this Agreement is intended to or shall be deemed to constitute a partnership, association or joint venture between City and MBI in the conduct of the provisions of this Agreement.

15. **Miscellaneous.** The terms, provisions, covenants and conditions herein contained constitute the entire Agreement between MBI and City regarding the operation of the Ice Rink and may not be altered, modified or amended except by a subsequent writing signed by all Parties. In the event any clause, term or condition of this Agreement is deemed invalid or contrary to law, this Agreement shall remain in full force and effect as to all other clauses, terms and conditions. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto and their respective permitted successors and assigns, including without limitation, any corporation, partnership or other entity which may, by merger or otherwise, acquire control of City or MBI. This Agreement shall be construed in accordance with the laws of the state of Utah. Waiver of either party of any breach of this Agreement shall not be construed as a continuing waiver or a waiver of any other breach of this Agreement. Except as expressly set forth herein, MBI shall have no right or authority, either actual or implied, to incur any liability or obligation on behalf of City, via contract or otherwise. MBI shall not institute any legal proceedings or suit relating to the Ice Rink without City prior written approval.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MIDWAY BOOSTERS, INC.

MIDWAY CITY

BY: _____
DATE _____

BY: _____
DATE _____

I have reviewed this contract in its entirety and agree to the terms contained herein.

Riley Risto, Controller – Midway Ice Rink

Date

EXHIBIT A

INVENTORY OF CITY PROPERTY

ITEM	QUANTITY	NOTES/VALUE	DEPRECIATION SCHEDULE
SKATES	APP. 200		
CHILLER	1		
GAZEBO	1		
DASHERBOARDS AND GLASS	120		
ZAMBONI	1		
CONCRETE AND PIPING	1		
TRAILERS	2		
SPORTS COURT	3 PALLETS		
STEEL WALKWAYS	7 SECTIONS		
STANCHIONS CONCRETE			
SKATE SHARPING EQUIPMENT	1		

INVENTORY OF MBI PROPERTY

ITEM	QUANTITY	NOTES/VALUE	DEPRECIATION SCHEDULE
SKATES			
CHILLER			
GAZEBO			
DASHERBOARDS AND GLASS			
ZAMBONI			
CONCRETE AND PIPING			
TRAILERS			
SPORTS COURT			
STEEL WALKWAYS			
STANCHIONS CONCRETE			
SKATE SHARPING EQUIPMENT			

EXHIBIT B
MAINTENANCE AND REPAIR

City is responsible for maintenance and repair of the following:

1. Chiller
2. Piping and Concrete
3. Dasher Boards and Glass
4. Gazebo
5. Trailers and Buildings

EXHIBIT C
OPERATING EXPENSES

City shall be responsible to pay the following Operating Expenses associated with the Ice Rink, subject to MBI's obligation to reimburse these expenses from its Operating Revenue:

1. Salary and wages for City employees who work for the Ice Rink
2. Benefits for City employees who work for the Ice Rink
3. Cost of starting the chiller and shutting down the chiller each season
4. Maintenance and operation of all chilling facilities and mechanical equipment
5. Phone and internet service

City shall also be responsible for the following operational aspects of the Ice Rink:

1. Setting up and taking down the Dasher Boards and Glass
2. Delivery, placement, and hook-up of the trailers
3. Making the ice at the beginning of the season
4. Snow removal on the rink (the parties understand that roads and sidewalks take priority on heavy snow days and that City employees will only be available once plowing of roads and sidewalks is complete)
5. Painting of rink with durable, permanent ice rink paint
6. Plowing of Parking Lots

EXHIBIT D
OPERATING REVENUE

“Operating Revenue” will be defined as monies and revenues received by MBI from or in connection with the operations, use and services of the Ice Rink, including without limitation, admission fees, rental fees, gross concessions sales, merchandise sales, skate lessons, locker fees, special event admissions and fees, any other monies, paid or due, resulting from MBI’s operation of the Ice Rink and other operating revenue as defined by the Governmental Accounting Standards Board (GASB). City Advance Funds (if any) shall not be included as Operating Revenues.

EXHIBIT E
MBI'S MANAGEMENT DUTIES

MBI's management duties shall include the following:

1. Operating concessions
2. Ticket sales
3. Programming
4. Proper storage, maintenance and distribution of the existing inventory of rental ice skates
5. Servicing all skates, including sharpening, lace replacement and buckle repair
6. Training all Ice Rink employees and staff, with an emphasis on safety, CPR and first aid
7. Maintaining the general appearance and safety of the ice rink premises in operable and safe condition, including trash removal in food concessions and rental areas
8. Maintenance of the ice sheet
9. Providing music and music systems, if and when needed
10. An on-site manager or assistant manager, who is 18 years or older and certified in CPR, on-site
AT ALL TIMES
11. Bank and credit card processing fees
12. Cleaning supplies
13. Office supplies
14. Cost of goods sold
15. Sales tax (if applicable) and other tax liabilities
16. Marketing as seen fit by MBI
17. Gasoline for the Zamboni

EXHIBIT F
REPAIR AND REPLACEMENT RESERVE

The attached depreciation schedule establishes the amount needed to be placed in the Repair and Replacement Reserve on an annual basis, so that necessary funds are available for needed repair and/or replacement of capital equipment. MBI agrees to pay these amounts annually to Midway City from Operating Revenue.