

**EAGLE RIDGE DRYFLOOR ARENA ADDITION  
OPERATING AND MANAGEMENT AGREEMENT**

THIS AGREEMENT dated for reference the \_\_\_\_ of August 2022

BETWEEN:

**CITY OF LANGFORD**, a municipal corporation having its offices at 877 Goldstream Avenue, Victoria, B.C., with a facsimile number of (250) 478-7864 and an email address of [parks@cityoflangford.ca](mailto:parks@cityoflangford.ca)

(the “City”)

AND:

**PERFORMANCE PLUS HOCKEY INC.** (Inc. No. BCO747682), a corporation having its registered office at 1089 Langford Parkway, Victoria, BC V9B 0A5, with an email address of [Gerrys37@gmail.com](mailto:Gerrys37@gmail.com) and [Kristin37@gmail.com](mailto:Kristin37@gmail.com) and with a telephone number of (250) 391-1738

(the “Operator”)

WHEREAS:

- A. The City is the registered owner in fee simple of the land and premises located at 1089 Langford Parkway, Victoria, B.C. on land legally described as:

**Parcel Identifier: 026-234-939**

**Lot C, Sections 80, 81, 86 and 87, Esquimalt District, Plan VIP78546**

(the “Land”);

- B. The City has constructed on the Lands a 3,304 square metre dry floor arena facility known as the Eagle Ridge City Centre Arena (the “Arena”) which facility includes a dry floor playing surface and ancillary change rooms, washrooms, licensed lounge and concession area, community use rooms, a weight training room, administrative offices, a custodian’s room, outdoor patio area and related service rooms and equipment;
- C. The City and the Operator entered into an Operation and Management Agreement for the Arena on June 16, 2019, contract number CON18-0070, that governs the operation and management relationship of the Arena (the “Head Agreement”);

- D. The Operator plans to construct inside that portion of the Arena outlined in heavy black on the sketch attached as Schedule A an addition (the "Addition").
- E. The City agrees to permit the Operator to construct, operate and manage the Addition, and the Operator agrees to construct, operate and manage the Addition, on the terms and conditions of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the mutual covenants and agreements herein contained (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree as follows:

### **Construction**

- 1. The Operator will construct the Addition, at its own cost, and according to the drawings and specifications included at schedule A.

### **Operation**

- 2. The Operator shall operate, maintain, supervise and manage the Addition on the terms and conditions of this Agreement.

### **Term**

- 3. The term of this Agreement is for a period of fifteen (15) years (the "Term"), beginning on the date this Agreement is fully executed by the parties (the "Commencement Date") and expiring fifteen (15) years from the Commencement Date.
- 4. Following the end of the Term, the Addition shall be added to the Head Agreement, and will be subject to the terms and conditions contained therein. The parties agree that any changes made to the Head Agreement shall be incorporated into this Agreement.

### **Permitted Uses**

- 5. The Operator shall operate the Addition such that it is used only for:
  - a. indoor recreational and community purposes;
  - b. school purposes;
  - c. private uses appropriate for a City facility in the opinion of the City, acting reasonably.
- 6. The Operator shall not permit the use of the Addition for any unlawful use or any obscene, prejudicial, immoral or otherwise unsuitable performance or activity, the determination of which shall be at the sole discretion of the City, acting reasonably.

7. The Operator shall not use or permit the use of the Addition in such a way as to create a nuisance.
8. The Operator acknowledges that the Lands are subject to certain charges registered in the Land Title Office and agrees to use and permit the use of the Addition only for those uses that are not prohibited by the charges.
9. The Operator shall have no rights under this Agreement in relation to the use or control of parking facilities on the Lands adjacent to the Arena, which facilities shall remain under the control of the City or its licensees.

### **Payment of Operating Costs**

10. Except as expressly stated within this Agreement and each Facility Schedule attached hereto, the Operator shall pay all costs arising directly from the operation and management of the Addition including all custodial maintenance costs.
11. The Operator shall remove graffiti and repaint surfaces and repair wall glazing as required. The Operator shall be responsible for any building maintenance and repair the need for which is caused by the performance of its custodial maintenance program in a careless or inefficient manner, or by the Operator's failure to perform the custodial maintenance program.
12. Except as expressly stated herein, the City shall at its cost be responsible for maintaining and repairing the Addition, including the heating, ventilating, air conditioning and fire systems.
13. The City shall pay 75% of water, sewer, garbage collection and natural gas charges related to the Addition and the Operator shall pay the remainder, and the City shall pay all electricity charges.
14. The parties acknowledge that the Operator's occupancy of the Addition, if taxable under the *Assessment Act*, may be eligible for a property tax exemption under the *Community Charter*, and that the Operator will be eligible to apply for such exemption. Should the City not provide a tax exemption, the Operator shall be entitled to deduct from amounts remitted to the City any amounts the Operator has paid in property taxes or school taxes.

### **Revenue Sharing**

15. In this section, Net Income is defined as the total gross revenue generated from the Addition less the expenses defined in Schedule "B".
16. The Operator shall provide to the City, no later than June 15<sup>th</sup> 2023, a report of all expenses associated with the Operator's construction of the Addition (Operator's Construction Costs").

17. The Operator shall provide to the City detailed reports of the gross revenue generated by the Addition, the operating costs, the Net Income, and the amount remaining on the Operator's Construction Costs, on a quarterly basis.
18. Until the Operator's Construction Costs are paid, the City agrees that it shall not be entitled to a revenue share of the Net Income. The Operator shall retain all Net Income from the Addition, which shall be applied in full as reimbursement against the Operator's Construction Costs. Once the Operator's Construction Costs are paid, the Operator must pay to the City the following amounts:
  - a. 60% of the Operator's gross revenue from commercial leases, defined as any rental with exclusive use of the space for a period in excess of thirty (30) days, within the Addition;
  - b. 10% of gross revenue from all other rentals or sales within the Addition.

The Operator must provide to the City all above amounts, which payment shall be due and payable to the City within thirty (30) days of the expiry of each quarter, based on the gross revenue generated in the previous calendar quarter. Revenues for Oct – Dec each year must be reported by the 25<sup>th</sup> of January the following year.

### **Rates**

19. The City may impose such rates for use of the Addition as the City may determine in the City's discretion.

### **Lease**

20. The City shall negotiate, arrange and administer leases within the Addition.

### **Storage of Materials**

21. As per WHIMIS regulations, storage of flammable and hazardous materials is not permitted within the Addition. All baseboard heaters and other HVAC equipment must be kept clear of any storage material and debris at all times.

### **Financial Records**

22. The Operator shall keep books of account, receipts, records, vouchers, cheques, papers and documents in relation to the Operator's management and operation of the Addition according to generally accepted accounting standards and in a manner acceptable to the City.
23. On or before March 30<sup>th</sup> of each year commencing 2023, the Operator shall provide to the City annual financial statements for the immediately preceding calendar year for the management and operation of the Addition and setting out the gross revenue, actual

expenses and profits in relation to the Addition calculated in accordance with this Agreement.

24. The Operator agrees that the City and its auditors, upon request, shall have access to the books of account, records, vouchers, cheques, papers and documents of and which may relate to the operations of the Addition.

### **Liens**

25. The Operator must not permit any builders' liens for work, labour, services or material ordered by the Operator or for the cost of which the Operator may be in any way obligated during the term of this Agreement, to attach to the Addition.
26. Should such a lien, claim of lien or related judgment or certificate of pending litigation be filed, the Operator, within 30 days of receiving notice from the City to discharge the lien, must procure the discharge by payment or by giving security or in such other manner as is or may be required or permitted by law.
27. The Operator acknowledges that the City may file notices against the title to the Lands pursuant to section 3(2) of the *Builders Lien Act*.

### **Communication with City**

28. The Operator will designate an individual, from time to time, as the contact person to report to and maintain contact with the City Administrator. At the time of entering into this Agreement, the Operator's contact person is Gerry St. Cyr, General Manager, telephone 250-896-7825, email: [gerrys37@gmail.com](mailto:gerrys37@gmail.com) or Kristin St. Cyr, telephone 250-589-0523 email: [kristin37@gmail.com](mailto:kristin37@gmail.com).
29. The Operator shall ensure that its contact person, or another person whose name is provided to the City, is available by telephone 24 hours per day and the Operator shall ensure that this person is available to attend at the Addition within one hour of request by the City.

### **Compliance With Laws**

30. The Operator shall carry out all of its operations and services at the Addition in strict compliance with all applicable laws, bylaws, regulations, orders and other statutory requirements.
31. The fact that the Operator is entering into this Agreement with the City does not relieve the Operator from obtaining a business license or otherwise complying with the ordinary requirements of the City.

### **Indemnity**

32. The Operator agrees to save harmless and effectually indemnify the City against and from all fines, suits, claims, liabilities, damages, costs, expenses, demands and actions of any kind or nature whatsoever for which the City may become liable, suffer or incur by reason of or related to or arising from:
- a. Any breach, violation, default or non-performance by the Operator of any provision of this Agreement, or
  - b. any wrongful act, omission or negligence of the Operator or its members, directors, officers, employees, agents, contractors or others for whom it is responsible;
  - c. any death, personal injury, property damage, property loss, economic loss or other loss or harm suffered by any person, including the City, on or in relation to the Addition and/or the construction of the Addition.

In this section, references to the City include its elected officials, officers, employees, agents, contractors and others for whom it is in law responsible. This indemnity survives the expiry or earlier termination of this Agreement.

### **Insurance**

33. The Operator shall obtain and maintain during the Term:
- d. commercial general liability insurance providing coverage for death, bodily injury, property loss and damage, and all other losses, arising out of or in connection with the operations, use and occupation of the Stadium in an amount of not less than \$5,000,000.00 per occurrence, and
  - e. any other form or forms of insurance that the City may reasonably require from time to time.
34. All policies of insurance required to be taken out by the Operator shall be with companies satisfactory to the City and shall:
- f. name the City as an additional insured;
  - g. state that the policy applies to each insured in the same manner and to the same extent as if a separate policy had been issued to each insured;
  - h. include that the City is protected notwithstanding any act, neglect or misrepresentation by the Operator which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;

- i. be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
  - j. be primary and non-contributing with respect to any policies carried by the City and that any coverage carried by the City is excess coverage;
  - k. not be cancelled without the insurer providing the City with thirty (30) clear days written notice stating when such cancellation is to be effective;
  - l. not include deductible greater than \$5,000.00 per occurrence;
  - m. preclude subrogation against the City;
  - n. include a cross liability clause; and
  - o. be on other terms acceptable to the City, acting reasonably.
35. The Operator shall provide the City with certificates evidencing issuance of all required policies of insurance prior to the Opening Date, and promptly thereafter on renewal or amendment of the policies.
36. If the Operator fails to insure as required, the City may, after thirty (30) days notice to the Operator, effect the insurance in the name and at the expense of the Operator and the Operator shall promptly repay the City all costs reasonably incurred by the City in doing so.
37. The City will maintain property insurance on the Arena including the Addition during the Term of this Agreement.

### **Termination**

38. Either the City or the Operator may give the other written notice of termination of this Agreement at any time, for no cause, with termination to be effective two (2) years after receipt of notice.
39. The City may terminate this Agreement by giving notice of immediate termination to the Operator:
- p. If the Operator fails to comply with any notice provided by the City under this agreement within the time specified in the notice; or
  - q. In the event of bankruptcy or insolvency or the taking of any proceedings towards dissolution or winding up of the Operator.
  - r. If the Operator fails to abide by any material term or obligation of this Agreement and fails to rectify the default within thirty (30) days of written notice from the City requiring rectification of the default;

- s. If upon termination of this Agreement, the Addition is in fair condition, the City shall pay to the Operator:

if this Agreement is terminated within X years of the Commencement date, the City shall pay to the Operator the following % of the Operator's Construction Costs:

| X = years | % of construction costs owing |
|-----------|-------------------------------|
| 3         | 85                            |
| 4         | 71                            |
| 5         | 59                            |
| 6         | 49                            |
| 7         | 40                            |
| 8         | 32                            |
| 9         | 26                            |
| 10        | 20                            |
| 11        | 15                            |
| 12        | 10                            |
| 13        | 7                             |
| 14        | 3                             |

### **Environmental Provisions**

#### 40. The Operator:

- t. will permit the City to investigate the Addition and the Operator's records at any time and from time to time to verify whether the Operator is in compliance with all environmental laws;
- u. not store, dispose, treat, use, release or transport any environmental contaminants on or from the Addition nor permit such;
- v. will promptly remove all environmental contaminants from the Addition which it has released or permitted to be released at the Addition;
- w. will notify the City if the Operator discovers any environmental contaminant or if any order, claim, action or proceeding is threatened or commenced in relation to environmental contaminants on the Addition;
- x. If the Operator or any of its personnel cause any such breach or contamination on or under or into the Addition, the Operator shall, as soon as it becomes aware of such breach or contamination, take or cause to be taken, all steps necessary to



remediate and clean-up such site, at its sole cost and expense, in a manner satisfactory to the City and applicable environmental authorities; and

- y. will provide the City with all necessary authorizations in order for the City to make enquiries about the Operator's compliance with environmental laws.

### **Corporate Status**

- 41. The Operator will abide by its Articles of Incorporation, Bylaws and other constating documents and will file annual reports, financial statements, and other documents required to be filed with the Registrar of Companies.

### **No Joint Venture**

- 42. Nothing in this Agreement makes the City and the Operator joint venturers or partners.

### **No Tenancy**

- 43. Nothing in this Agreement makes the Operator a tenant of the City and no relationship of landlord and tenant is created.

### **Agency**

- 44. The Operator is the agent of the City for the purposes of operating and managing the Addition, but the Operator does not have the authority to bind the City.

### **Independent Contractor**

- 45. In all respects, the Operator is an independent contractor entitled to use its own methods provided the result is the operation and management of the Addition according to this Agreement.

### **Notices**

- 46. All notices required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, sent by facsimile transmission or forwarded by first-class prepaid registered mail to the addresses set forth on the first page or such other address as may from time to time be notified in writing by the parties. Further, notice from the City to the Operator may be given by posting a notice on the Addition or by email to the address provided on the first page (or such subsequent email address provided by the Operator).
- 47. If the Operator gives notice to the City, it shall be to the attention of the Corporate Officer.
- 48. Any notice delivered or sent by hand or by facsimile or by email or posted shall be deemed to be given and received at the time of sending or posting. Any notice mailed

shall be deemed to have been given and received on the expiration of 3 days after it is posted, provided that if there shall be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice by the mails, then such notice shall only be effective once delivered.

**Operator's Cost**

49. All obligations to be performed by the Operator under this Agreement shall be performed at its own cost.

**Decisions by City**

50. Unless otherwise specified in this Agreement, all decisions and judgments which may be made by the City under this Agreement may be made on its behalf by the Corporate Officer.

**Operator's Authority**

51. The Operator represents and warrants to the City that it has the authority to enter into this Agreement and carry out its transactions and all necessary resolutions and procedural formalities have been completed and the persons executing this Agreement on its behalf are duly authorized to do so.

**Amendments**

52. No amendments to this Agreement shall be valid unless evidenced by written agreement executed by the City and the Operator.

**Assignment**

53. This Agreement shall not be assignable by the Operator.

**Enurement**

54. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors.

**Time of the Essence**

55. Time is of the essence respecting this Agreement.

**Further Assurances**

56. The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.

## **Entire Agreement**

57. This Agreement is the entire agreement between the parties and neither the City nor the Operator has given or made representations, warranties, guarantees, promises, covenants or agreements to the other except those expressed in writing in this Agreement, and no amendment of this Agreement, is valid or binding unless in writing and executed by the parties.

## **Interpretation**

58. In this Agreement:

- z. reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- aa. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- bb. reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- cc. if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- dd. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- ee. reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- ff. the provisions of s. 25 of the Interpretation Act with respect to the calculation of time apply;
- gg. all provisions are to be interpreted as always speaking;
- hh. reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
- ii. reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- jj. where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

**Interest**

59. All amounts unpaid by the Operator to the City will bear interest at 10% per annum.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the dates written below.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2022

**CITY OF LANGFORD** was hereunto  
affixed in the presence of:

\_\_\_\_\_  
Mayor:

\_\_\_\_\_  
Corporate Officer

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)  
)  
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)  
)  
)  
)

C/S

DATED the \_\_\_\_ day of \_\_\_\_\_, 2022

**PERFORMANCE PLUS HOCKEY  
INC.** was hereunto affixed in the presence  
of:

\_\_\_\_\_  
President

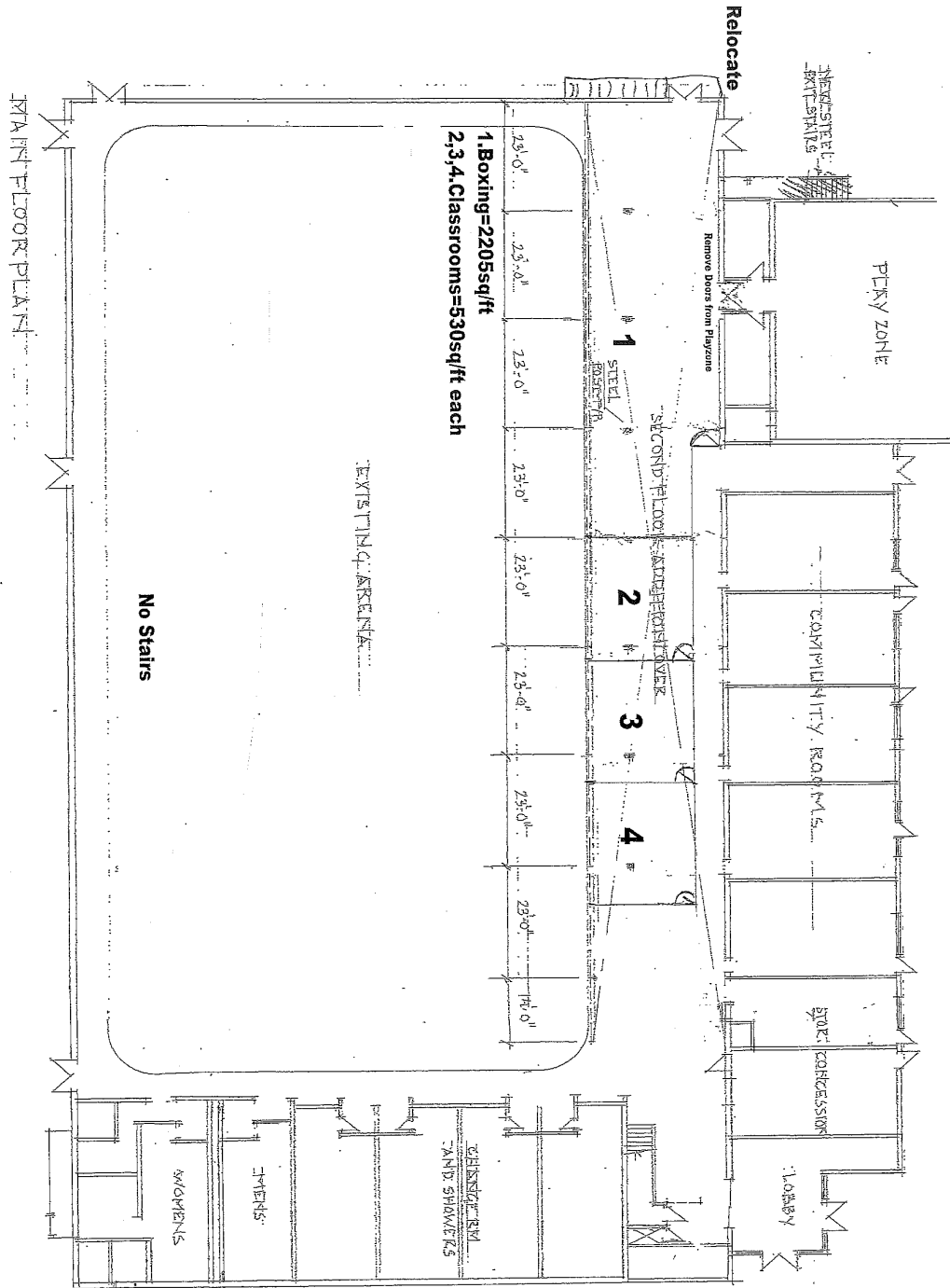
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C/S

### SCHEDULE "A"

### The Addition



**SCHEDULE B**

**Operating Expenses**

1. The Operator shall provide the following services as the Operator of the Addition.
2. The costs of the following services may be deducted as legitimate business expenses from the gross revenue of the Addition. Net Income is defined as the gross revenue less the following expenses:
  - a. Custodial services;
  - b. Minor repairs and maintenance;
  - c. Insurance premiums.