AGREEMENT

THIS AGREEMENT (“Agreement”) is made as of the _______ of __________________, 2022, (“Effective Date”) between the City of West St. Paul, a Minnesota municipal corporation, (“City”), Sibley Area Youth Hockey Association d/b/a West St. Paul Youth Hockey (“Association”), a Minnesota nonprofit corporation and Sibley Hockey Booster Club, Inc. d/b/a Two Rivers Hockey Boosters (“Boosters”), a Minnesota nonprofit corporation, individually “party” or collectively “the parties.”

RECITALS

WHEREAS, the City owns certain real property at 60 West Emerson Avenue, West St. Paul, Dakota County, Minnesota, legally described on Exhibit A, attached hereto, upon which the John V. Hoene Ice Arena (“Ice Arena”) is located; and

WHEREAS, the Ice Arena serves the purpose of providing students and adult skating and hockey needs for Two Rivers High School and other youth hockey programs; and

WHEREAS, there is a need for dry land training space, additional locker rooms, offices and other amenities at the Ice Arena (the “Project”); and

WHEREAS, the construction of such additional space is estimated to cost $1,650,000, (“Construction Cost”) which does not include furnishing or finishing the additional space or the Parking Lot Improvements; and

WHEREAS, the City does not currently have the funding to undergo Project without financial assistance from other sources; and

WHEREAS, the Association and the Boosters each desire to financially contribute to the construction costs in order to facilitate the Project; and

WHEREAS, the parties wish to enter into this Agreement for the purpose of specifying their respective obligations and responsibilities for the Project.

NOW THEREFORE, FOR MUTUAL CONSIDERATION HEREIN EXPRESSED, THE PARTIES AGREE AS FOLLOWS:

SECTION 1
TERM

1.1 **Term.** The term of this Agreement shall be from the Effective Date until December 31, 2025, or upon completion of the Parking Lot Improvements, whichever occurs first, unless terminated earlier pursuant to Section 5.
SECTION 2
THE PROJECT

2.1 Definition of Project. The Project includes the following components:

a. An addition to the Ice Arena of approximately 8,500 square feet which will include locker rooms, offices, dryland training area, hallways and laundry area (“Construction Improvements”), as depicted on the plans attached as Exhibit B.

b. Furnishings and finishes required to furnish and finish the interior of the Construction Improvements, which include, but are not limited to paint, painting, lockers, flooring and specialty items of the Construction Improvements (“Furnishings and Finishes”).

2.2 Ownership of Project and Improvements. Any alteration, addition or improvements made or contributed to the Ice Arena as part of the Project, including movable equipment, furniture and other trade fixtures or furnishings donated by the Association or the Boosters shall become the property of City and the Association and Boosters shall have no ownership in it.

SECTION 3
CONSTRUCTION ADMINISTRATION

3.1 Construction Management. The City shall perform appropriate construction administration services, including, without limitation, periodic observations of the work at the construction site, initiate appropriate action to present or have corrected as appropriate, any work observed not to be in accordance with the construction plans, process Change Orders, and process contractor pay request. The City shall prepare final design plans and specifications, award the Project, and manage and oversee the administration of the Project according to the City’s rules and regulations. The City’s Project management shall include oversight and inspection of the installation of the Furnishings and Finishes by the Boosters and the Association.

3.2 Payments to 3rd Parties for the Project. The City shall pay all consultant and contractors and administer all change orders in a timely manner so as not to delay construction of the Project.

3.3 Mutual Cooperation. The Association and Boosters shall fully cooperate with the City’s administration and management of the Project in a timely manner.
SECTION 4
FINANCIAL CONTRIBUTIONS

4.1 **Financial Donations to the City.** The Boosters agree to donate $757,820 to the City. The Association agrees to donate $892,180 to the City. Donations shall be made according to the donation schedule below. The Boosters and Association may, at their discretion, make donations in excess of the scheduled amounts. Under no circumstances shall the Boosters or Association make donations less than the scheduled amounts. The City agrees to use the donations made by the Boosters and Association pursuant to this Section 4.1 for the Construction Improvements.

4.2 **Financial Donation Schedule.**

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<tr>
<th>Payment Plan</th>
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<td>20-Nov-26</td>
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<tr>
<td><strong>Total</strong></td>
<td>(757,820)</td>
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<td><strong>Total</strong></td>
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4.3 **Furnishing and Finishes Donations.** The Association, Boosters and/or other donors shall donate all Furnishings and Finishes for the interior of the Construction Improvements, including time and materials by October 1, 2022. The City is not required to provide for or fund the Furnishings and Finishes, but may do so, at the discretion of the City Council.

4.4 **Parking Lot Improvements.** The City agrees, at its sole cost, to complete the Parking Lot Improvements at the Ice Arena no later than October 20, 2025, provided the Association and Boosters have met all terms and conditions of this Agreement. Parking lot improvements include, but are not limited to repaving, installing curb and stripping the existing the parking lot and other elements approved by the City (“Parking Lot Improvements”).

4.5 **Excess Donations.** If the total Construction Cost, including general conditions, Project management and contracts is less than the total donated amounts of the Boosters and Association, the City will use any excess funds for Furnishings and Finishes or other
improvements to the Ice Arena.

4.6 **Association to Make Payments on Behalf of Boosters.** The Association shall make payments on behalf of the Boosters to ensure that the entirety of the Construction Cost has been repaid to the City no later than November 20, 2023.

4.7 **Ice Time Credits to Association.** After the City has received a total of $1,650,000 in donations from both the Boosters and the Association, the Association shall be provided a credit for ice time, in the amount of the payments received from the Boosters, as those payments from the Boosters are received.

4.8 **Letter of Credit Required.** The Association shall provide a letter of credit to the City no later than December 1, 2022 in the amount of $1,200,000 less the total amount of donations received as of the date of the letter of credit.

**SECTION 5**
**DEFAULT, REMEDIES, TERMINATION**

5.1 **Default.** Absent Uncontrollable Circumstances, any of the following events shall constitute a default (“Default”):

   a. Association or Boosters fail to comply with the obligations for payments and donations as required in Section 4.

   b. City fails to complete its obligations for the Construction Improvements or Parking Lot Improvements.

   c. Any party is adjudicated as bankrupt or insolvent.

5.2 **Time to Cure.** Any party’s failure to perform or observe any of their obligations under this Agreement after a period of thirty (30) calendar days from the date of the party’s receipt of written notice of its failure to perform an obligation, shall constitute an event of Default. If such obligation cannot reasonably be cured within thirty (30) calendar days, the defaulting party shall not be considered to be in Default if the defaulting party takes affirmative steps to address the problem in a reasonable time period. If the Association or Boosters are in Default, the City shall send the notice of Default and copy the non-defaulting party, if any; if the City is in Default, the Association and the Boosters must jointly agree to send and sign the notice of Default.

5.3 **Remedies.** In addition to the remedies given in this Agreement or as allowed by law, after notice to cure that goes unresolved, the parties may do any one or more of the following in the event of a Default:
a. If the Association and Boosters are in Default, the City may terminate this Agreement, retain all donations received up to the date of Default and have no further obligation to perform under this Agreement.

b. If the City is in Default, the Association and Boosters may request reimbursement for their respective portion of the contributed Construction Costs that have been paid to the City up to the date of Default.

c. Pursue any remedies at law, including mediation.

5.4 **Uncontrollable Circumstances.** Uncontrollable Circumstances shall mean the occurrence or non-occurrence of acts or events beyond the reasonable control of the party relying thereon, and not the result of willful or negligent action or inaction of the party claiming the event as an Uncontrollable Circumstance, that materially and adversely affects the performance of the party claiming the event as an Uncontrollable Circumstance including but not limited to the following:

a. Acts of God, including, but not limited to floods, ice storms, blizzards, tornadoes, landslides, lighting and earthquakes (but not including reasonably anticipated weather conditions for the geographic area), riots, insurrections, pandemics, war or civil disorder affecting the performance of work, blockades, power or other utility failure, and fires or explosions.

b. A suspension, termination, interruption, denial, or failure of renewal of any permit, license, consent, authorization, or approval essential to the construction of the Project or the Parking Lot Improvements.

c. Orders and/or judgments of any federal, state, or local court, administrative agency, or governmental body, provided, however, that the contesting in good faith by such party of any such order and/or judgment shall not constitute or be construed to constitute a willful or negligent action or inaction of such party.

d. Strikes or other such labor disputes involving persons with whom the parties have no employment relationship and for whom, despite using best efforts, the parties cannot obtain substitute performance.

**SECTION 6**

**GENERAL PROVISIONS**

6.1 **Amendments.** Any amendments to this Agreement will be effective only after approval by each governing body and execution of a written amendment document by duly authorized officials of each body.
6.2 **Authorized Representatives**, The named persons, in the positions stated below, or their successors in title, are designated the Authorized Representatives of the parties for purposes of this Agreement:

If to the **City**:  
City of West St. Paul  
Attn: Nate Burkett  
1616 Humboldt Ave.  
West St. Paul, MN 55118

If to the **Association**: 

If to the **Boosters**: 

6.3 **Governing Law.** This Agreement shall be interpreted and construed according to the laws of the State of Minnesota.

6.4 **On-Going Ownership and Operation of Ice Arena.** The City shall continue to own, operate and manage the Ice Arena, and nothing in this agreement shall be construed to limit the City’s ability to manage, operate, finance, staff and schedule use of the Ice Arena as the City deems appropriate. Generally, the City will manage the Ice Arena in accordance with the Ice Arena Operations plan, attached as Exhibit C.

6.5 **Data Practices Compliance.** All data created, collected, received, stored, used, maintained, or disseminated for any purpose in connection with this Agreement is governed by the Minnesota Data Practices Act, Minnesota Statutes, Chapter 13.

6.6 **Assignment.** No party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other parties and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

[REMAINDER OF PAGE INTENTIONALLY BLANK]
SIBLEY AREA YOUTH HOCKEY ASSOCIATION D/B/A
WEST ST. PAUL YOUTH HOCKEY

By: ____________________________

Its: ____________________________
EXHIBIT A
LEGAL DESCRIPTION

The Southeast Quarter of the Northeast Quarter of the Northeast Quarter (SE ¼ of NE ¼ of NE ¼) of Section 19, Township 28, Range 22, except that part thereof lying North of Emerson Avenue.
EXHIBIT C
ICE ARENA OPERATIONS PLAN

(Attached)
West St Paul
John V. Hoene
Ice Arena

Operational Plan

March 2022
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1. Background

West St. Paul - John V. Hoene - Ice Arena is located at 60 West Emerson in West St. Paul. The arena is a classic rink erected in 1971 for the historic Sibley Area youth hockey association Warriors Boy's and Girl's hockey teams. The rink itself is really squeezed within the walls of the building with no room to walk from the player’s benches/scorekeepers box. Additionally, the net-ends of the rink meet brick walls for either end of the structure so there is no walking room to circle around the ice sheet.

The arena itself is named after John V. Hoene (1914-2001) whom devoted his adult life to youth hockey; spearheading the effort in the early 1970's to get an ice arena built in the city. Being an old-time hockey player/coach himself in both Duluth and West St. Paul until age 72, he was a lifelong promoter of youth hockey and other sports. An incorporator of the youth hockey association of West St. Paul in 1965, Hoene won the West St. Paul 1970 "Man of the Year" award in recognition of his efforts for young people. John was the original inductee in the West St. Paul Hockey Hall of Fame, and he provided the foundation for the West St. Paul arena to exist.

The arena underwent renovation in 1997, which added the front lobby, concessions, bathrooms, offices and locker rooms that were not part of the original structure. Another renovation in 2015, replaced the refrigerated floor and the original Freon refrigeration system, along with some minor cosmetic work. The 2015 work was funded through a JPA (Exhibit 1) with the City of West St Paul, City of Mendota Heights, and Independent School District 197, along with a State Mighty Ducks Grant.
2. Proposed Improvements

In 2019, additional improvements were proposed by the West St Paul Youth Hockey (WSPYH) and Two Rivers Hockey Booster Club (TRHBC) and include new high school varsity locker rooms and dryland training space. (Exhibit 2) These two groups will fund these additional improvements with the City leading the project. Funding will be split between the two groups, with TRHBC funding the locker room portion and WSPYH funding the dryland training portion of the project. Payment/repayment of donated funds are laid out in the attached JPA (Exhibit 3)

Additional improvements will be led and funded by the City of West St Paul upon completion of above improvements. These will include a new expanded parking lot, and new siding on the original arena building.

3. Operational Season

The Ice Arena will continue to operate with two distinct seasons: peak and non-peak.

Peak*: October 1 – March 31

Non-Peak: April 1 – September 30

*Within the Peak season there will be prime and non-prime rental times (for the purpose of rental rates). Non-peak times will include weekdays before 11:00am and after 10:15pm daily.
4. Scheduling

WSPYH and Two Rivers High School (TRHS) are the two main users during the Peak season. They will therefore have priority scheduling of ice-time during the Peak season. Both groups will work together with the Arena Manager, to fill in the whole season ice-time schedule prior to July 1 each year. This includes all practices, games and tournaments, knowing that some minor changes may need to occur mid-season. In general, the peak season schedule will be as follows:

Monday: TRHS – 3:30-6:20pm  WSPYH – 6:30-10:00pm
Tuesday: TRHS – 3:30-5:50pm  WSPYH – 6:00-10:00pm
Wednesday: TRHS – 3:30-6:20pm  WSPYH – 6:30-10:00pm
Thursday: TRHS – 3:30-5:50pm  WSPYH – 6:00-10:00pm
Friday: TRHS – 3:30-5:20pm  WSPYH – 5:30-10:00pm
Saturday: WSPYH – 7:50am-10:00pm
Sunday: WSPYH – 7:50am-10:00pm

- TRHS games will be scheduled on weeknights and Saturday afternoons and will try to be held to no more than 3 home games per week.
- TRHS may also schedule early morning (before school) practices during the week at the reduced non-peak rental rate
- TRHS will have access to the new dryland training space (at no charge): For 1 hour prior to their scheduled practice ice time (for late practice times); For 1 hour after their scheduled practice ice time (for early/right after school practice times); and on game nights (only TRHS, not visiting teams). Additional dryland needs may be scheduled through the Arena Manager.
- WSPYH will also have a 1 for 1 access to the dryland training space or schedule additional time through the Arena Manager

During the Non-Peak season, the primary user is Map South Hockey. They will have primary use of the facility and first right to schedule ice time, prior to the start of the non-peak season each year. Any unused time will be scheduled through the Arena Manager and will not include use of the dryland space unless requested, and approved by the Arena Manager. TRHS is a secondary user and may schedule available time for regular summer practices as well as preseason captain’s practices. These ice times will be scheduled prior to the start of the non-peak season.

*Once a seasonal schedule is established (i.e. after 2022 non-peak season) users will have first right to retain the same scheduled hours the following season.

Use of summer dryland training space will be available for use by fee. Scheduling of use will be done by the Arena Manager.
During the Non-Peak season, TRHS will have access to a secure storage space, at no charge, for any equipment that cannot be stored in the locker room (uniforms, training aids, etc.)

5. Staffing and Maintenance

Staffing is at the discretion of the City. Currently staff consists of two full-time City employees and multiple seasonal employees.

Maintenance of the ice will be performed by arena staff on a regular basis as needed, and directed by the fulltime City employees.

Maintenance and cleaning of the rest of the facility will also be performed by the arena staff on a regular basis as needed, and directed by the fulltime City employees.

Twice per year the High School locker rooms will be fully cleaned at the end of each users designated use period, at the users own expense:

WSPYH: Will clean locker rooms within 7 days of the beginning of Two Rivers HS season or October 1, whichever is later.

Two Rivers HS: Will clean locker rooms within 7 days of the end of its season, or March 1, whichever is later.

6. Fees and Charges

PEAK (October-March)

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NON-PEAK (April-September)

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<td>$145+tax</td>
<td>$150+tax</td>
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TRHS will have access to the new dryland training space (at no charge) for 1 hour after/prior to each scheduled practice ice time and on game nights (only TRHS, not visiting teams). Additional dryland needs may be scheduled through WSPYH.
7. Use and Lease of New Locker Rooms

The City of West St Paul, WSPYH and Two Rivers Hockey Booster Club will enter into a JPA for payment and construction of the new addition. The JPA will expire on December 31, 2025.

During the term of the JPA, the newly constructed locker rooms will be used exclusively by Two Rivers High School during the high school hockey season; October 1 through March 1 or the end of the high school season. During the high school off-season the locker rooms may be scheduled the City for use by West St Paul Youth Hockey or others; Approximately March 1 through September 30. During the high school off-season, TRHS will have access to secure storage if they wish to store equipment on-site.

Upon expiration of the JPA, the City of West St Paul may establish a rental rate for the use of the additional locker room and dryland training space. This rent will be charged to all users of the space, including TRHS and any non-prime/summer user such as WSPYH or Map South Hockey. This rent will cover the cost of additional maintenance, utilities and improvements needed for the space.
EXHIBIT 1
JOINT POWERS AGREEMENT FOR THE RENOVATION OF THE
JOHN V. HOENE ICE ARENA

This Joint Powers Agreement (“Agreement”) is between the City of West St Paul (“West St. Paul”), the City of Mendota Heights (“Mendota Heights”) and Independent School District 197 (“School District”), collectively referred to as the “Parties.”

1. GENERAL PURPOSE

Under Minn. Stat. §471.59, the Parties are empowered to enter into agreements for the joint exercise of powers with other governmental units. The John V. Hoene Ice Arena, which is located in West St. Paul, serves students and adult skating and hockey needs for Henry Sibley High School and other youth hockey programs. The Ice Arena is in need of upgrades, repairs, replacement of the refrigeration system and an extensive renovation in order to provide a facility that will serve the needs of the Parties for the next 20 years.

2. TERM OF AGREEMENT

The term of this Agreement shall commence on November 1, 2014, or the date all required signatures are obtained, whichever is later, (“Effective Date”) and shall remain in full force and effect for 240 months from the Effective Date (“Term”) unless terminated by the Parties as provided in this Agreement, whichever occurs first.

3. DEFINITIONS

In this Agreement the following terms shall be defined as follows unless the context requires otherwise:

3.1. Agreement: This Agreement, as it may be amended, supplemented, or restated from time to time.

3.2. Change Order: A written order to the Contractor approved by the Parties to this Agreement and signed by the West St. Paul Representative on behalf of the Parties authorizing a change in the work included within the Contract Documents and/or an
adjustment in the price and/or an adjustment in the construction schedule, issued after execution of the contract for the construction of the Project.

3.3. **Contract Documents:** Drawings, specifications, general and special conditions, addenda, if any, Change Orders, and the construction contract for the Project, approved by the Parties, or their respective representatives.

3.4. **Contractor:** The person or entity that is awarded the contract for the construction of the Project. The Contractor’s construction contract for the Project shall be with West St. Paul.

3.5. **Ice Arena:** The John V. Hoene Ice Arena, located at 60 West Emerson Avenue, West St. Paul, Dakota County, Minnesota.

3.6. **Mendota Heights:** The City of Mendota Heights, a Minnesota municipal corporation.

3.7. **Mendota Heights Representative:** The Mendota Heights City Administrator, or his designee.

3.8. **Project:** The renovation of the John V. Hoene Ice Arena, further described on Exhibit A, attached hereto and incorporated herein.

3.9. **Project Construction Costs:** All costs for and associated with Project construction.

3.10. **School District:** Independent School District 197, a Minnesota public corporation.

3.11. **School District Representative:** The School District Superintendent or designee.

3.12. **Uncontrollable Circumstances:** The occurrence or non-occurrence of acts or events beyond the reasonable control of the Party relying thereon, and not the result of willful or negligent action or inaction of the Party claiming the event as an Uncontrollable Circumstance, that materially and adversely affects the performance of the Party claiming the event as an Uncontrollable Circumstance including but not limited to the following:

(a) Acts of God, including, but not limited to floods, ice storms, blizzards, tornadoes, landslides, lighting and earthquakes (but not including reasonably anticipated weather conditions for the geographic area), riots, insurrections, war or civil disorder affecting the performance of work,
blockades, power or other utility failure, and fires or explosions.

(b) The adoption of or change in any federal, state, or local laws, rules, regulations, ordinances, permits, or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits, or licenses by a court or public agency having appropriate jurisdiction after the date of the execution of this Agreement.

(c) A suspension, termination, interruption, denial, or failure of renewal of any permit, license, consent, authorization, or approval essential to the construction of the Project.

(d) Orders and/or judgments of any federal, state, or local court, administrative agency, or governmental body, provided, however, that the contesting in good faith by such Party of any such order and/or judgment shall not constitute or be construed to constitute a willful or negligent action or inaction of such Party.

(e) Strikes or other such labor disputes shall not be considered an Uncontrollable Circumstance, unless such strike or labor dispute involves persons with whom the Parties have no employment relationship and for whom, despite using best efforts, the Parties cannot obtain substitute performance.

3.13. **West St. Paul**: The City of West St. Paul, a Minnesota municipal corporation.

3.14. **West St. Paul Representative**: The West St. Paul City Manager, or his designee.

4. **PROJECT DEVELOPMENT, DESIGN, CONTRACT AWARD, CONSTRUCTION**

4.1. **Development and Design**: The Parties will jointly develop and design the scope of the Project.

4.2. **Contract Award**: The Contract Documents shall be approved by the Parties prior to the solicitation of bids. In accordance with the applicable provisions of Minnesota Statutes Ch. 429, West St. Paul will cause bids to be received by it for the construction of the Project and, subject to approval by the Mendota Heights and School District Representatives, shall award the contract for the construction of the Project to the lowest responsible bidder.

4.3. **Project Construction**: Subject to Uncontrollable Circumstances, West St. Paul shall
cause the Project to be constructed in accordance with the Contract Documents.

4.4. **Construction Administration.** West St. Paul shall perform appropriate Project construction administration services, including, without limitation, representation of the Parties hereto with regard to activities of the Contractor at the construction site, periodic observations of the work at the construction site, initiate appropriate action to present or have corrected as appropriate, any work observed not to be in accordance with the Contract Documents, process Change Orders, and process Contractor pay request. West St. Paul shall not be responsible for the acts or omissions of the Contractor nor shall West St. Paul be responsible for construction means, methods, techniques, sequences, procedures or safety precautions at the construction site.

4.5. **Change Orders.** The Parties acknowledge that Contract Documents will be entered into by West St. Paul on behalf of the Parties with respect to the Project, and that Change Orders or other documents may be entered into by the Parties, or by West St. Paul on behalf of the Parties, with respect to the Project. To the extent any Change Order increases the cost of the Project described in Exhibit A which would result in an increase in the contribution of one or both of the other Parties, West St. Paul must not approve such a Change Order without the approval of the governing body of the Party or Parties affected by the increased cost of the Project. This Agreement shall be construed so as to give the fullest effect to its provisions, consistent with the provisions of the other contracts and documents referred to above.

### 5. PROJECT COSTS

5.1. **Allocation.** The expenses associated with the Project shall be allocated amongst the Parties as follows:

(a) West St. Paul shall contribute $555,333.00 through general obligation bonds issued on or before July 1, 2015.

(b) School District shall contribute $555,333.00 by paying West St. Paul by check or wire transfer on or before May 15, 2015.

(c) Mendota Heights shall contribute $555,333.00 by paying West St. Paul by check or wire transfer as follows:

1. $277,666.50 on or before May 15, 2015
2. $277,666.50 on or before January 15, 2019

5.2. **Payments to Contractor.** West St. Paul shall make progress payments to the
Contractor for the construction of the Project, and upon prior approval of the Parties, shall make the final payment to the Contractor in accordance with the Contract Documents as agent for the other Parties and on its own behalf.

6. REPRESENTATIVES

To assist the Parties in the day-to-day performance of this Agreement and to ensure compliance with the specifications and provide ongoing consultation, representatives shall be designated by the Parties. The Parties shall inform the others, in writing, of any change in the designated representative. At the time of execution of this Agreement the designated representatives are identified in Section 3, the Definitions Section of this Agreement.

7. LIABILITY AND INSURANCE

Each Party to this Agreement shall be liable for its own acts or omissions and those of its own employees and the results thereof to the extent authorized by law, and shall not be responsible for the acts of the other Party, its agents or employees.

It is understood and agreed that liability and damages arising from the Parties’ acts and omissions are governed by the provisions of the municipal Tort Claims Act, Minn. Stat. Ch. 466, the Minnesota Tort Claims Act and other applicable laws. Each Party warrants that it is able to comply with the aforementioned liability and insurance requirements through an insurance or self-insurance program and that each has minimum coverage consistent with the liability limits contained in Minn. Stat. Ch. 466.

This Agreement shall not be construed as and does not constitute a waiver by any Party of any conditions, exclusions or limitations on the Party’s liability provided by Minnesota Statutes, Chapter 466, or other applicable laws. This clause will not be construed to bar any legal remedies that each Party may have for another’s failure to fulfill its obligations under this Agreement.

8. GOVERNMENT DATA PRACTICES

The Parties must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by each Party under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by any Party under this Agreement.

9. VENUE
Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate court of competent jurisdiction in Dakota County, Minnesota.

10. TERMINATION

10.1. **Termination.** This Agreement may be terminated by any Party for Cause. “Cause” is defined as a breach of this Agreement by a Party or a Party’s habitual neglect in the performance of its obligations pursuant to this Agreement. Cause will not be deemed to exist unless and until the Party asserting that a breach or habitual neglect has occurred provides the Party in breach or habitual neglect with written notice providing specific notice of the breach or habitual neglect and a sixty (60) calendar day opportunity to cure the breach or habitual neglect and the Party in receipt of the notice of breach or habitual neglect fails to remedy such breach or habitual neglect within sixty (60) calendar days. Upon termination of this Agreement for Cause, School District or Mendota Heights may request reimbursement for their respective portion of the contributed Project Construction Costs that have been paid to West St. Paul, on a pro-rated basis.

10.2. **Termination for Insufficient Funding.** Any Party may immediately terminate this Agreement if West St. Paul fails to successfully issue general obligation bonds to fund its portion of the Project. A Party is not obligated to pay for any services that are provided after notice and effective date of termination. A Party will not be assessed any penalty or damages if the Agreement is terminated due to lack of funding under this paragraph. West St. Paul must provide the other Parties notice of the lack of funding within a reasonable time of receiving that notice.

10.3. **Termination for Closing Prior to 20 years.** If the Ice Arena closes before December 31, 2019, School District or Mendota Heights may terminate this Agreement and may request reimbursement for their respective portion of the contributed Project Construction Costs that have been paid to West St. Paul, on a pro-rated basis. However, if the Ice Arena closes after January 1, 2020, due to any of the following:

(a) Local youth hockey programs rents less than 65% of the ice time at the Ice Arena than the youth hockey programs rented the previous year;

(b) School District discontinues its hockey program or rents less than 65% of the ice time at the Ice Arena than the School District rented the previous year; or

(c) Uncontrollable Circumstances,
then no Party shall be entitled to reimbursement for any portion of the contributed Project Construction Costs.

10.4. **On-Going Ownership and Operation of Ice Arena.** At the end of the Term of this Agreement or upon its termination as described in this Article 10, West St. Paul will continue to own and operate the Ice Arena at its own expense, for a period of at least 20 years.

11. MISCELLANEOUS PROVISIONS

11.1. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by the Parties hereto on separate counterparts, each of which counterparts when so executed and delivered shall be deemed to be an original, and all of which counterparts when taken together shall constitute but one and the same Agreement.

11.2. **Assignment.** No Party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other Parties and a fully executed Assignment Agreement, executed and approved by the same Parties who executed and approved this Agreement, or their successors in office.

11.3. **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same Parties who executed and approved the original Agreement, or their successors in office.

11.4. **Waiver.** If any Party fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.

11.5. **Contract Complete.** This Agreement contains all negotiations, understandings and agreements between the Parties. No other understanding, agreement or revision regarding this Agreement, whether written or oral, may be used to bind any Party unless stated in writing and signed by all Parties.

11.6 **Severability.** In case any one or more of the provisions of the Agreement will be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.
11.7 Notices. All notices or communications required or permitted pursuant to this Agreement shall be either hand delivered or mailed to the Parties, certified mail, return-receipt requested, to the following address:

**WEST ST. PAUL:**
West St. Paul
Attn: City Manager
1616 Humboldt Avenue
West St. Paul, MN 55118

**MENDOTA HEIGHTS:**
Mendota Heights
Attn: City Administrator
1101 Victoria Curve
Mendota Heights, MN 55118

**SCHOOL DISTRICT:**
ISD 197
Attn: Director of Operations
1897 Delaware Avenue
Mendota Heights, MN 55118

IN WITNESS WHEREOF, the undersigned governmental units have caused this Agreement to be executed by its duly authorized officers.

**WEST ST. PAUL**
David Meisinger
Mayor

Matthew Fulton
City Manager

Date: ____________________________
CITY OF MENDOTA HEIGHTS

Name:________________________________________

Title:________________________________________

Name:________________________________________

Title:________________________________________

Date:________________________________________
INDEPENDENT SCHOOL DISTRICT 197

Nancy Allen Mastro
Superintendent

________________________________________

Mark Spur
Board Chair

Date: ________________________________
**EXHIBIT A**

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<thead>
<tr>
<th></th>
<th>Total Project Estimate</th>
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<th>2019</th>
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<tr>
<td>Exterior issues</td>
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*2015 Project elements will be completed between March 15 and September 15, 2015*