

**AMENDED AND RESTATED
AGREEMENT FOR OPERATING AND MAINTAINING
OTSEGO COUNTY RECREATIONAL AND SPORTS FACILITY**

THIS AGREEMENT is made on this 15th day of December, 2015, by and between the County of Otsego, whose address is 225 W. Main Street, Gaylord, Michigan 49735 (hereafter "County" and "Commissioners") and the Otsego County Sportsplex, a Michigan non-profit corporation, whose address is 1250 Gornick Ave, Gaylord, Michigan 49735 (hereafter "SPORTSPLEX")

In consideration of the mutual agreement contained herein, the parties agree as follows:

I. GENERAL AGREEMENT

The Otsego County SPORTSPLEX, a nonprofit corporation, was established to provide a recreational and sports facility in Otsego County. The complex was constructed in 1995 and opened in early 1996.

II. TERMS AND AMENDMENT

A. TERMS

This Agreement contains the entire understanding and Agreement of the parties regarding the subject matter contained herein.

B. DURATION

The terms of this Agreement shall be for five (5) years commencing with the date of execution.

C. EXTENSION

- (i) Further, the terms of this Agreement shall be automatically extended, unless otherwise modified in accordance with the terms set forth herein, upon renewal of the SPORTSPLEX millage. This automatic extension shall be for the period of the millage renewal.
- (ii) Further, this Agreement may be extended for such lengths or periods of time as the parties may mutually agree upon in writing.

D. AMENDMENT

Further, the terms and conditions of this Agreement, as provided herein, may be amended at any time during the above stated period with the express mutual written consent of the parties who are then bound by the terms hereof.

III. FINANCIAL GOVERNANCE

A. ANNUAL BUDGET

- (i) SPORTSPLEX will present an annual budget to the Commissioners prior to October 1st of each year in the format required by the Finance Committee for the operations of SPORTSPLEX for the following year beginning January 1st.
- (ii) Prior to December 31st of each year, the Commissioners shall consider for approval the final budget for the operation of the SPORTSPLEX.
- (iii) BUDGET AMENDMENTS: Budget amendments must be approved by the SPORTSPLEX Board and then forwarded to the Otsego County Finance Department. SPORTSPLEX shall provide an updated copy of its annual budget to the Otsego County Finance

Department each time the SPORTSPLEX budget is amended, ensuring that the County has a current, updated budget at all times during the fiscal year.

B. FINANCIAL REPORTING

- (i) Beginning with the quarter ended **December 2015**, SPORTSPLEX shall provide the following quarterly accounting reports to the Otsego County Finance Department:
 - (1) Balance Sheet – including all assets, liabilities, and fund equity
 - (2) Budget Report – including the amended budget and actual amounts for all revenues and expenditures.
 - (3) Quarterly reports must be submitted no later than the 15th day of the month following quarter-end.
- (ii) Beginning with the month ended **October 2015**, SPORTSPLEX shall provide the following monthly accounting reports to the Otsego County Treasurer:
 - (1) Report reconciling the general ledger balances in the receiving fund to the balances in the operating fund.
 - (2) Monthly reports must be submitted no later than the 15th day of the next month.
- (iii) SPORTSPLEX shall attest to the completeness and accuracy of all financial information. The County will rely on the reports to be complete and accurate upon submission.
- (iv) All corporate and financial records of SPORTSPLEX shall be available to the County or its auditors upon reasonable request.
- (v) AUDITS – SPORTSPLEX will be audited under the umbrella of the County, as a discretely presented component unit. The County may, at its discretion, engage the auditors to perform additional procedures. SPORTSPLEX and the County may find it desirable for SPORTSPLEX to be audited under separate cover (still included in the County’s audit report as a discretely presented component unit). In such an instance, the County will choose the auditing firm.

C. CUSTODY OF CASH AND INVESTMENTS

- (i) All SPORTSPLEX monies shall be deposited with a bank or trust company designated by the County and approved by SPORTSPLEX. The monies may be kept in one bank account, and shall be invested as practical by the Otsego County Treasurer as authorized by law.
- (ii) All deposits must be accompanied by supporting documentation, in the format required by the Otsego County Treasurer.
- (iii) All transfers out for SPORTSPLEX disbursements must also be accompanied by supporting documentation, in the format required by the Otsego County Treasurer.
- (iv) SPORTSPLEX shall attest to the completeness and accuracy of the supporting documentation submitted for all deposits and disbursement transfers. The County will rely on the documents to be complete and accurate upon submission. SPORTSPLEX further attests that the deposits and disbursement transfers have been subject to the appropriate level of review before submission.

D. FUNDS

- (i) Operating Fund
 - a. Any amount of operating funds, which are appropriated to SPORTSPLEX by the Commissioners from the SPORTSPLEX operating millage, shall be expended for daily operations or capital improvements.
 - b. Such expenditures shall only be completed if they are included in the budget or approved by a specific resolution of the Commissioners.
 - c. All revenues raised by rates and charges of SPORTSPLEX shall be used solely for the operation and maintenance of SPORTSPLEX.

- d. The operating fund general ledger shall be maintained by SPORTSPLEX.
 - (ii) Capital Outlay Fund
 - a. Maintenance and Capital Improvements tax revenues shall be deposited in this Fund as follows:
 - (1) Prior to March 1st, and as soon as received by the County Treasurer such taxes as have been received by the County Treasurer shall be deposited in accordance with applicable Michigan Law, and
 - (2) On May 1st, or as soon thereafter as the County Treasurer receives such taxes from the delinquent tax revolving fund, the balance of such taxes.
 - b. Any and all equipment required, by law, will be purchased by SPORTSPLEX in the name of the Otsego County to insure proper licensing and insuring of such equipment.
- E. SURPLUS/DEFICIT
- (i) Surplus
 - a. Any surplus realized by SPORTSPLEX will be retained by SPORTSPLEX. During the budget process, SPORTSPLEX and the County will discuss potential uses of surplus monies (e.g. used for capital purchases, retained to enhance fund balance level, etc.).
 - (ii) Deficits
 - a. Should any year's operations result in a deficit (other than a planned reduction of fund balance that has been previously approved by the Commissioners), SPORTSPLEX agrees to:
 - i. Immediately meet with the Otsego County Budget and Finance Committee to develop a satisfactory deficit correction plan, which may include increased fees or reduced expenses.
 - ii. Should this action prove to be insufficient to correct the deficit operations, SPORTSPLEX agrees to revise the plan, and further increase fee revenue or cut expenditures to ensure that the deficit will be repaid in the next three quarters.
 - iii. Failure to operate without a deficit may result in termination of this agreement by the County.
- F. FIXING AND REVISING RATES; RATE COVENANT
- The SPORTSPLEX shall propose rates and charges to the COUNTY for the use of the Facility by residents of the County, and the general public. After approval of the County, rates shall be fixed and revised from time to time by the SPORTSPLEX to produce the foregoing amounts, and the SPORTSPLEX covenants and agrees to maintain at all times such rates for services furnished by the Facility as shall be sufficient to provide for the foregoing. The rates set for Otsego County residents shall be less than the rates set for non-resident visitors.
- G. ASSETS
- (i) All assets of SPORTSPLEX are the property of the County.
 - (ii) Accordingly, SPORTSPLEX shall follow the Otsego County Capital Asset Disposal Policy.
 - (iii) SPORTSPLEX will provide an updated list of all Capital Assets to the Otsego County Finance Department annually, each January for the preceding year.
 - (iv) SPORTSPLEX will provide an updated list of all Vehicles to the Otsego County Bus System each time a change is made to the list.
 - (v) The County shall provide property insurance, addressed in the PROPERTY INSURANCE section of this document.
- H. LONG-TERM DEBT

- (i) All long-term debt incurred by SPORTSPLEX must first be approved by the Commissioners, along with a financial plan to satisfy all debt requirements, submitted by SPORTSPLEX.
 - (ii) In the event of default of payments of long-term debt, refer to the EVENTS AND REMEDIES OF DEFAULT section of this document.
 - I. CAPITAL IMPROVEMENT PLAN
 - (i) SPORTSPLEX shall submit annually, along with its proposed budget, by October 1st, a five-year plan containing a list of planned building, equipment, and vehicle purchases and major repairs and maintenance on such items.
 - (ii) The plan and all such capital expenditures shall be approved by the Commissioners by December 31st, as part of the budget approval process.
 - J. OPERATING YEAR
 - (i) It is the expectation of the County to levy the full SPORTSPLEX millage permitted by law.
 - (ii) SPORTSPLEX shall have, as its operating year, one which shall coincide with the County's fiscal year which is the calendar year beginning in January. With the consent of the SPORTSPLEX, the County may levy less than the full millage.
- IV. MAINTENANCE AND REPAIRS
 - A. REPAIRS - PREMISES
 - (i) SPORTSPLEX shall, at its own expense, at all times during the term of this Agreement, keep the equipment and premises in good condition and repair, and shall make all necessary and desirable repairs, restorations and replacements, both structural and nonstructural, foreseen or unforeseen, and shall use all reasonable precautions to prevent waste, damage or injury.
 - B. REPAIRS - EXTERNAL
 - (i) SPORTSPLEX shall, at its own expense, also maintain in good repair and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, the sidewalks, parking areas, yards, plantings, gutters and curbs in front of and adjacent to the premises.
- V. OPERATION AND MAINTENANCE
 - A. OPERATION AND MAINTENANCE

SPORTSPLEX shall, at its own expense, at all times during the term of this Agreement, operate and maintain the equipment and the premises.
- VI. ALTERATIONS
 - A. ALTERATIONS TO THE PREMISES

SPORTSPLEX will make such alterations, changes, additions or improvements in or to the interior or exterior of the premises as it shall determine to be beneficial. SPORTSPLEX shall make any changes or alterations in, on or about the premises, which may be required by any applicable statute, charter, ordinance or governmental regulation or order.
 - B. COSTS AND EXPENSES OF ALTERATIONS

All alterations and improvements shall be at SPORTSPLEX's sole expense.
 - C. OWNERSHIP OF IMPROVEMENTS

All alterations and improvements shall be the property of the County.
- VII. PROPERTY INSURANCE
 - A. COST OF INSURANCE

The COUNTY shall provide property insurance, which shall cover all real and personal property on the premises on a 100% replacement cost basis. Premiums for insurance required to be carried upon or with respect to the premises or the use thereof shall be deemed operation and maintenance expenses of the SPORTSPLEX.

B. POLICY TYPE

Such policy shall be an all risks policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without limitation, flood, theft, vandalism, wind, lightning, act of war or terrorism, and malicious mischief. Coverage shall also include the cost of extra expense, for a period of 12 months, incurred by reason of the total or partial loss or damage to the premises caused by an insured peril.

VIII. LIABILITY/VEHICLE INSURANCE

A. COST OF INSURANCE

SPORTSPLEX, at its expense, shall provide comprehensive/commercial general liability insurance protecting SPORTSPLEX, the County and the Commissioners of the County, the members of the Sportsplex Board and their respective agents, officers and employees.

Insurance shall include motor vehicle liability coverage for any Sportsplex/County-Owned vehicles.

Insurance shall include coverage for Hired Car and Non-Owned Auto.

B. POLICY TYPE

- (i) Such insurance shall provide coverage for the defense of actions brought against SPORTSPLEX, its Board, Officers, and Employees for, including but not limited to, negligence, malfeasance, misfeasance, errors, omissions, neglect, damages, intentional acts, or other actions arising out of the operation, maintenance and activities of SPORTSPLEX.
- (ii) Further, SPORTSPLEX agrees to maintain coverage, for malpractice or medical negligence to cover SPORTSPLEX, its Board, Officers, and Employees.
- (iii) Such insurance shall be in limits of not less than \$1,000,000 per occurrence for injury or death to any one person, not less than \$3,000,000 per occurrence for injury or death to more than one person, and not less than \$500,000 per occurrence for property damage.

C. NAMED INSUREDS

- (i) SPORTSPLEX and the County shall all be named insureds on all insurance policies required hereunder and all insurance proceeds shall be payable to SPORTSPLEX and the County according to their respective interests.
- (ii) Upon request, the County shall provide SPORTSPLEX or the SPORTSPLEX Board with certified copies of the insurance policies or other evidence indicating that the insurance is in effect.
- (iii) In addition, SPORTSPLEX or the SPORTSPLEX Board shall be notified in writing at least thirty (30) days prior to cancellation, non-renewal or any material reduction of the any coverage.
- (iv) All insurance maintained pursuant to this Agreement shall contain a clause or endorsement under which the insurer waives all rights of subrogation against any and all of the parties to this Agreement and their respective officers, commissioners, agents, and employees, with respect to losses payable under the policy.

- (v) Claims for loss due to damage to the premises under any policies maintained pursuant to this Agreement shall be adjusted with the insurance companies by the County after advice from SPORTSPLEX or the Sportsplex Board.
- (vi) The proceeds of any insurance shall be paid to the County, which shall deposit the funds in the capital improvement fund for the purpose of paying the cost of repair and restoration of the SPORTSPLEX premises and equipment.
- (vi) All policy forms, limits and deductibles shall be subject to approval by the County and SPORTSPLEX.

IX. OPERATIONAL INTEGRITY

A. OPERATIONS

The County covenants and agrees with SPORTSPLEX, subject to the performance by SPORTSPLEX of all of the terms, covenants, and conditions of this Agreement to permit SPORTSPLEX to operate the service for the County. SPORTSPLEX may employ such persons in such capacities as it deems advisable and may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of SPORTSPLEX. Further, SPORTSPLEX, with the approval of the SPORTSPLEX Board, shall have the authority, power, and ability to obtain, lease, purchase, acquire or transfer, sell, or dispose of such equipment as is necessary to carry out its obligations to the citizens of Otsego County.

B. BOARD MEMBERSHIP

Recommendations for SPORTSPLEX Board Membership shall be forwarded to the County Board for approval.

C. PERSONNEL

- (i) All personnel staffing SPORTSPLEX equipment and premises, shall be deemed to be employees of SPORTSPLEX.
- (ii) The County Administrator (or designee(s) of the County Administrator) shall be on the hiring committee for the SPORTSPLEX Director position in the event of a vacancy. The Commissioners shall have the final approval on selecting the new Director.
- (iii) If applicable, the County Administrator (or designee(s) of the County Administrator) shall take part in the union negotiation process. The Commissioners shall have final approval of all union contracts.

C. CONTRACTING

SPORTSPLEX, with the approval of the SPORTSPLEX Board, shall have the exclusive authority to enter into such transport, standby and special event contracts or other agreements or contracts for services as deemed necessary to carry out its obligations to the citizens of Otsego County.

X. INSPECTION

Without notice and at reasonable times of the day, the County, through its officers, employees or agents, may enter upon the premises at any time during the term of this Agreement for the purpose of inspecting the premises and determining whether SPORTSPLEX is complying with the covenants, Agreements, terms, and conditions of this Agreement.

XI. EVENTS AND REMEDIES OF DEFAULT

A. EACH OF THE FOLLOWING SHALL CONSTITUTE AN EVENT OF DEFAULT:

- (i) SPORTSPLEX fails to submit and operate within the budget required by Section III.

- (ii) Any representation or warranty made by SPORTSPLEX in this Agreement, or which is contained in any certificate or other document delivered at any time pursuant to this Agreement proves to have been false, incorrect or incomplete in any material respect when made or deemed to be made.
- (iii) SPORTSPLEX fails to observe or perform any covenant or Agreement contained in this Agreement or in any certificate or other document delivered pursuant to this Agreement (other than those covered by clause (i) above) for thirty (30) days after written notice, as set forth herein, thereof shall have been given to SPORTSPLEX by the County.
- (iv) SPORTSPLEX files a petition in bankruptcy, insolvency, dissolution or for reorganization or arrangement under the laws of the United States or of any state, or voluntarily takes advantage of any such law, or act, or is dissolved, (voluntarily or involuntarily) or makes an assignment for the benefit of creditors.
- (v) If involuntary proceedings under any bankruptcy law or insolvency act or for the dissolution of a corporation are instituted against SPORTSPLEX, or if a receiver or trustee is appointed for all or substantially all of the property of SPORTSPLEX, and such proceedings are not dismissed or such receivership or trusteeship vacated within ninety days after such institution or appointment.
- (vi) SPORTSPLEX ceases to operate or indicates its intention to do so.
- (vii) SPORTSPLEX defaults on any long-term debt covenants or payments.

B. REMEDIES IN EVENT OF DEFAULT

If any event of default as defined in this Agreement shall occur and be continuing for a period of 90 days or more following written notice of default:

- (i) The County shall have the right, but not the obligation, to take any of the following action:
 - (a) The County may terminate this Agreement.
 - (b) The County, through its Commissioners, officers, agents or employees, shall, at all times, the have the right to enter the premises for inspection as set forth above, and to prevent waste, damage or destruction.
 - (c) In the event of financial insolvency, bankruptcy, or cessation of operations, all assets (including but not limited to: cash, investments, receivables, and capital assets), all liabilities (including long-term debt), and fund balances for all SPORTSPLEX funds shall revert to the County immediately.
- (ii) The rights provided for in this Section cumulative and are not exclusive of any other right, privilege, or remedy provided by law or in equity.

XII. WAIVERS

A. FAILURE TO DELAY OR EXERCISE

No failure or delay on the part of the County or SPORTSPLEX in exercising any right, power, or remedy contained in this Agreement shall operate as a waiver of any right, duty, requirement, or obligation provided by this Agreement.

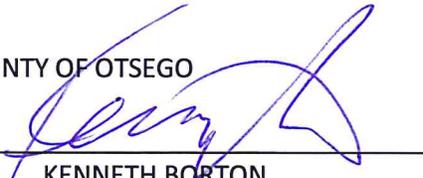
B. PARTIAL EXERCISE

No single or partial exercise by the County or SPORTSPLEX of any right or remedy shall preclude other or future exercise thereof or the exercise of any other right or remedy.

XIII. ASSIGNMENT

COUNTY OF OTSEGO

By:



KENNETH BORTON

Chairman, Otsego County Board of Commissioners