

**BLOOMER PARK VELODROME**  
**MANAGEMENT AGREEMENT**

This Agreement is entered into on \_\_\_\_\_, 2010, between the City of Rochester Hills, Michigan municipal corporation, with offices at 1000 Rochester Hills Dr., Rochester Hills, Oakland County, Michigan 48309-3033, hereinafter referred to as the CITY, and The Velodrome Non-Profit Corporation, with offices at 407½ Main Street, Rochester, Michigan 48307, hereinafter referred to as the CORPORATION.

WHEREAS, on October 23, 1999, the parties entered into a certain Bloomer Park Velodrome Development and Management Agreement (supplemented later by an Addendum entered into on June 17, 2002) to have a superior community recreational facility in the form of a velodrome bicycle riding and racing track constructed and operated at Bloomer Park on a not-for-profit basis so that the residents of Rochester Hills and the general public would benefit from and be proud of it, and the construction and operation of which would not require expenditure of CITY funds; and

WHEREAS, the initial 10-year term of the October 23, 1999, Agreement has expired; and

WHEREAS, Section 1.3 of the October 23, 1999 Agreement provided that upon mutual agreement, the parties could extend the initial term of the Agreement; and

WHEREAS, the parties mutually desire and agree to extend the Agreement in accordance with this Bloomer Park Velodrome Management Agreement;

THEREFORE, in consideration of the construction, operation and maintenance by CORPORATION of the velodrome and other related improvements, anticipated increased park entrance fee revenue and other considerations given by the parties, the parties covenant and agree that the CORPORATION shall have the right to maintain and operate the velodrome, on a not-for-profit basis, at Bloomer Park, as depicted in attached "EXHIBIT A," and hereinafter referred to as the "Premises," subject to the terms, conditions, covenants and easements herein contained, for the term of years hereinafter specified.

## ARTICLE I

### Term

#### Section 1.1 Term.

The term of this Agreement shall be ten (10) years, commencing the \_\_\_\_ day of \_\_\_\_\_, 2010, and terminating at 11:59 p.m. on the \_\_\_\_ day of \_\_\_\_\_, 2020.

Section 1.2 Title to Improvements.

Upon installation on the Premises, any and all improvements and additions constructed and installed, and all the furnishings, fixtures and equipment related thereto shall become and remain the property of, and owned by, the CITY.

Section 1.3 Option to Extend Term.

Upon mutual agreement, the parties may extend the term of this Agreement. Any extension of the term of this Agreement shall be subject to the same general terms and conditions contained herein, unless agreed otherwise in writing.

Section 1.4 Disposition of Velodrome upon Expiration of Term.

It is the intention of the parties that upon the expiration of the term of this Agreement, the CITY shall continue to operate and maintain the velodrome if the CITY, in its sole discretion, deems it reasonable and feasible to do so. However, if at any time after expiration of the term of this Agreement the CITY decides to discontinue, abandon, transfer or otherwise remove (but not including removal or relocation to other City-owned property in the City of Rochester Hills) the velodrome facility from the Premises, the CITY shall first offer, free of charge, to transfer ownership to the CORPORATION of the buildings, structures, improvements, furnishings, fixtures and equipment comprising the velodrome facility to the extent same were originally provided or donated to the CITY by CORPORATION. In the event CORPORATION accepts such offer, CORPORATION shall, at its own cost, remove the velodrome facility from the Premises and properly regrade and reasonably restore the Premises to their original condition.

ARTICLE II

## Plans

### Section 2.1 Preliminary Plans for New Improvements.

Preliminary plans provided by CORPORATION to illustrate and develop the general features of any new improvements to be constructed by CORPORATION shall be provided to and mutually agreed upon by the CITY and CORPORATION. The preliminary plans shall indicate the location of each of the features proposed, and the general extent of each and the improvements to be placed on the Premises shall conform to the preliminary plans unless change is mutually agreed upon by the CITY and CORPORATION. Any approval received from the CITY under this section shall not constitute a waiver of the need to comply with all CITY ordinances, regulations, or review procedures.

### Section 2.2 Final Plans and Specifications.

Final plans and specifications for constructing any new improvements to the facility shall be prepared by an Architect or Engineer registered in the State of Michigan. The final plans shall be in sufficient detail to permit construction in accordance with the approved general features, and the specifications shall be in sufficient detail to provide for adequate control of materials and processes to conform with good practices and meet code requirements where applicable. If final plans for the facility are substantially the same as preliminary plans previously approved, the final plans will be approved. Approval of final plans shall not be unreasonably withheld by the CITY.

### Section 2.3 Approval.

Wherever in this Agreement provision is made for “Approval” or “Review and Approval,” such “Approval” or “Review and Approval” shall be made after following normal CITY policies, practices and procedures. All requests by CORPORATION for approvals shall be acted on by the CITY in a timely fashion and such approvals shall not be unreasonably withheld. Plans and specifications shall be stamped or noted as “Approved” and shall become a part of this Agreement as a record of the constructed facility. Duplicate copies shall be submitted for approval signature in order that the CITY and CORPORATION may each have the record.

### ARTICLE III

#### Construction

##### Section 3.1 Conformance to Plan and Specifications.

All construction performed by CORPORATION under this Agreement shall conform to the provisions of the approved plans and specifications. The CORPORATION shall, at its own expense, give all notices, and comply with all lawful laws, orders, regulations, rules or ordinances of all local, county and state authorities affecting the Premises and the development of the facilities. It shall be the responsibility of the CORPORATION to secure and pay for all required permits, fees and licenses.

##### Section 3.2 Approval by City.

No construction shall be undertaken until agreement and approval, as previously outlined, occurs. Inspection of the construction will be made by those public authorities bearing on the development and by the representatives of the Mayor.

##### Section 3.3 Dispute Resolution.

Any disputes arising under this Agreement shall be settled either by commencement of a lawsuit in Oakland County Circuit Court or by binding arbitration, at the election of the CITY. The CORPORATION shall advise the CITY of any dispute it has arising out of this Agreement and shall demand that the CITY elect whether the dispute shall be resolved by submitting it to binding arbitration or by commencement of a lawsuit in Oakland County Circuit Court. The CITY shall make its election in writing within thirty (30) days after receipt of such notice. If the CITY elects to have the dispute resolved by binding arbitration, it shall be conducted pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan, as amended, with each of the parties appointing one arbitrator and those two arbitrators appointing a third. In the event the CITY fails to make such an election, any dispute between the parties may be resolved by filing a lawsuit in the Oakland County Circuit Court.

#### Section 3.4 As-Built Plans.

CORPORATION shall furnish to the CITY a complete set of “As Constructed” or “As Built” Plans upon the completion of any new construction, but ownership of plans and specifications shall remain in CORPORATION.

### ARTICLE IV

#### Charges

#### Section 4.1 Charges and Fees.

Since it is the sole responsibility of the CORPORATION to operate and maintain the velodrome facility on the Premises on a not-for-profit basis, during the term of this Agreement, the CITY and the CORPORATION agree and understand that the CORPORATION shall have full

and complete right to set, on a nondiscriminatory and not-for-profit basis, all prices, fees and charges of any kind to be made to users. Except in the case of events where an admission fee may be charged to spectators, CORPORATION shall generally allow spectators to enter the velodrome facility during open public riding hours free of charge. If at any time during the term of this Agreement or any extension thereof, the CITY becomes dissatisfied with prices and fees charged by the CORPORATION, the CITY and CORPORATION shall make all reasonable efforts to resolve the matter cooperatively. The CITY agrees to provide CORPORATION with written notice of its objection to prices and fees charged, and if the parties are unable to reach an accord within thirty (30) days of that notice, the matter shall be automatically referred to arbitration, and the provisions of Section 3.3 regarding dispute resolution shall govern.

The parties fully intend and believe that the completed velodrome facility is a superior, world-class facility. Therefore, the CITY understands that in setting rates, charges and fees, the CORPORATION will be guided by fees charged at similar facilities.

#### Section 4.2 Accounting.

The CORPORATION shall keep books of accounts and records of all operations and establish a system of bookkeeping and accounts in a manner satisfactory to the CITY and shall permit inspection of said books and records by the CITY as often as is deemed necessary in the opinion of the CITY. The CORPORATION shall submit, if required by the CITY, audited financial statements of operations under this Agreement, in a form prepared by a certified Public Accountant acceptable to the CITY, itemizing receipts, payroll costs, operation, and other expenses.

#### Section 4.3 Taxes.

The Premises are owned by the CITY, and any building, structure or improvement constructed or installed on the Premises by the CORPORATION pursuant to this Agreement shall become the CITY's property. It is the parties' intention that the Premises and any building, structure or improvement constructed or installed on the Premises shall be property tax exempt.

#### Section 4.4 Utilities.

CORPORATION shall pay all public utility bills for electricity, gas, water, sewer, telephone, refuse removal and any and all other fees for utilities provided and consumed on the Premises and to procure at its expense all meters and permits necessary for making connections and continuing the service in proper manner for a facility which services the general public.

### ARTICLE V

#### Maintenance

#### Section 5.1 Corporation's Obligation to Maintain.

CORPORATION shall operate the velodrome facility and be responsible for proper security and maintenance of the Premises, including all improvements constructed thereon in a safe and good condition similar at other world-class velodrome facilities. The CITY shall have the right to inspect the Premises at all reasonable times.

#### Section 5.2 Parking Area Maintenance.



The CITY shall be responsible for ordinary maintenance and repair of vehicle parking areas and entrance drives. CORPORATION shall be responsible for the cost of any extraordinary maintenance, repair, trash removal or clean-up caused by or made necessary due to CORPORATION's events or the actions of patrons or attendees of the facility.

Section 5.3 Maintenance Disagreement.

In case of disagreement with regard to the general standards of maintenance, the CITY shall advise the CORPORATION in writing of the claimed deficiency. The CITY and CORPORATION shall make a good faith effort to resolve the CITY's objection to the maintenance standards of CORPORATION as soon as possible. If the parties are not able to agree on a resolution of the dispute within thirty (30) days, the CITY shall have the right to contract for independent maintenance service and shall charge the CORPORATION the full cost of such maintenance contract plus a fifteen percent (15%) administration fee.

Section 5.4 Maintenance Requirement During Term.

During the entire term of the Agreement, or any agree-upon extension, the CORPORATION shall keep up the same level of maintenance and shall expend routine repair and maintenance dollars, other than capital asset expenditures, at substantially the same ratio to other operating expenses as in preceding years.

## ARTICLE VI

### Operation

#### Section 6.1 Compliance with all Laws.

In its operation of the velodrome on the Premises, CORPORATION shall observe all federal, state and local laws, ordinances, rules and regulations applicable to the protection of health, safety and welfare of the public. CORPORATION shall at its expense meet the requirements of local and state health department regulations covering the handling and dispensing of food and beverages, and the handling and disposal of refuse and waste.

#### Section 6.2 Cooperation with City.

For purposes of promoting goodwill and positive publicity for the velodrome facility, the CITY and CORPORATION may agree from time to time to hold and promote events and programs of community significance. CORPORATION shall also work in cooperation with the Rochester Avon Recreation Authority (RARA).

#### Section 6.3 Advertising.

The CITY shall maintain a non-commercial directional sign for the velodrome at the Bloomer Park entrance and such other off-site, non-commercial directional signs as the CITY deems appropriate. CORPORATION may erect, attach or install commercial advertising or other signs inside the velodrome area, provided that such signs comply with CITY's sign regulations and are approved by the CITY. CORPORATION shall be allowed to place on the exterior of the velodrome area one (1) additional sign naming or identifying the facility. No other signs relating to the velodrome facility shall be permitted on the Premises without CITY approval.

#### Section 6.4 Special Events.

CORPORATION shall obtain the CITY's approval, which shall not be unreasonably withheld, before staging, holding or allowing any non-bicycling events or activities on the Premises.

#### Section 6.5 Concessions.

During events or activities at the velodrome, CORPORATION shall be allowed to operate temporary concessions for the sale of food, non-alcoholic drinks and merchandise with the prior approval of the CITY.

#### Section 6.6 Personnel.

CORPORATION shall be responsible for hiring, training and supervising all operating personnel including maintenance, secretarial, clerical, accounting, instructional, security or such other personnel as are necessary and appropriate for the operation of the velodrome.

#### Section 6.7 Hours.

The operating hours of the velodrome shall conform to the hours that Bloomer Park is open, unless additional hours are approved in advance by the CITY.

#### Section 6.8 Equal Rights of Access.

The CORPORATION agrees that the velodrome facility shall be equally available to all members of the public without discrimination. Any discrimination by the CORPORATION in the access to or use of the velodrome to members of the public on grounds of age, race, sex, color, religion, national origin, place of residence, physical or mental disability, ancestry or other protected class shall be deemed to be a material breach of this Agreement.

Section 6.9 Equal Employment Opportunity.

The CORPORATION agrees that it will not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement with respect to his or her hire, tenure, terms, conditions or privilege of employment or any matter directly or indirectly related to employment because of age, except when based on a bona fide occupational qualification or because of sex, race, color, religion, national origin, physical or mental disability, or ancestry. Any such discrimination shall be deemed to be a material breach of this Agreement.

## ARTICLE VII

### Insurance

#### Section 7.1 Insurance Required.

During the terms of this Agreement, CORPORATION shall procure and keep in force, or shall where appropriate, require CORPORATION's Contractors and Subcontractors to procure and keep in force the following insurance:

- A. Workers' Compensation Insurance: The CORPORATION represents that it has no employees, but if and when the CORPORATION does have an employee, the CORPORATION shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including employers liability in accordance with all applicable statutes of the State of Michigan. The CORPORATION shall require its contractors and subcontractors who perform work on the Premises to have Workers' Compensation Insurance.
- B. Commercial General Liability Insurance: The CORPORATION shall procure and maintain during the term of this Agreement, broad form Commercial General Liability Insurance on an "occurrence basis" with limits of liability of not less than \$3,000,000 per occurrence and/or aggregate combined single limit, personal injury, bodily injury and property damage.
- C. Motor Vehicle Liability: The CORPORATION shall procure and maintain, during the life of this Agreement, Motor Vehicle Liability Insurance, including Michigan

No-Fault Coverages, with limits of liability of not less than \$3,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned, non-owned and hired vehicles.

Section 7.2 Additional Insured.

With the exception of Workers' Compensation Insurance, all insurances provided by the CORPORATION shall include an endorsement stating the following as "Additional Insureds": The City of Rochester Hills, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof.

Section 7.3 Cancellation Notice.

All insurances provided by the CORPORATION shall include an endorsement stating the following: "It is understood and agreed that thirty (30) days advance written notice of cancellation, non-renewal, reduction and/or material change shall be sent to: City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309-3033, Attention: City Clerk."

Section 7.4 Proof of Insurance.

CORPORATION, prior to the commencement of annual activities under this Agreement, shall deliver to the City of Rochester Hills, certificates of insurance evidencing the coverages outlined above. Upon request, the CORPORATION shall deliver to the CITY certified copies of all policies outlined above.

Section 7.5 Expiration of Insurance.

Prior to expiration of any of the above coverages during the term of this Agreement, the CORPORATION shall deliver renewal Certificates of Insurance to the CITY at least thirty (30) days prior to the expiration thereof.

Section 7.6 Obligation to Rebuild.

CORPORATION shall repair or rebuild any damaged structures located upon the Premises to their previous condition. The entire amount collected for losses under any fire and extended coverage policies shall be used to repair, restore, or rebuild the damaged improvements to a substantially similar condition as the prior structure using similar quality materials. CORPORATION shall commence such repairs, restoration or rebuilding promptly and shall proceed with due diligence to reopen the facility within the shortest reasonable timeframe. Any excess portion of the insurance fund remaining after the cost of repairs, rebuilding or restoration is paid, shall belong to the CORPORATION.

Section 7.7 Review of Insurance.

The parties agree to reassess insurance needs at least every three (3) years to determine whether or not the coverages need to be changed. If the review indicates a change is needed, CORPORATION shall provide and pay for the required insurance.

ARTICLE VIII

Non-Assignability of Agreement

This Agreement shall not be assigned, nor shall the obligations and responsibilities hereunder be delegated, in whole or in part, by CORPORATION unless the CITY authorizes such assignment by City Council resolution. CORPORATION shall have the right to contract for food, beverage and other incidental activities relating to temporary concessions only upon written approval by the CITY, but the CORPORATION shall remain responsible for observing all performance standards and obligations under this Agreement.

ARTICLE IX

Cancellation and Forfeiture

Section 9.1 Termination.

In the event the CORPORATION is declared bankrupt, or if any assignment of this Agreement or delegation of obligations or responsibility shall be attempted for the benefit of creditors, or if CORPORATION shall abandon the Premises or in the event of any other material breach or default under this Agreement by CORPORATION, the CITY may declare this Agreement to be terminated and may expel the CORPORATION from operating the velodrome without prejudice to any other available remedies.



Section 9.2 Termination-City Council Decision.

The termination of this Agreement by the CITY shall be accomplished by resolution of the Rochester Hills City Council for failure of CORPORATION to cure a material breach or default under this Agreement, after thirty (30) days advance written notice to CORPORATION of the CITY's intention to terminate.

ARTICLE X

Indemnification

Section 10.1 Indemnity/Hold Harmless.

CORPORATION shall to the fullest extent permitted by law defend, indemnify and hold the CITY, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof harmless from and against any and all claims, demands and causes of action of any kind whatsoever for injury to or death of persons, or loss or damage to property, occurring on the Premises, and in manner growing out of, and connected with the CORPORATION's construction, use, operation, maintenance and/or condition of the Premises during the term of this Agreement.

Section 10.2 Participant Waivers.

CORPORATION shall require all event participants or users of the velodrome facility to sign a waiver or release of liability, in a form satisfactory to the CITY, releasing the CITY from all liability for any injury or damage arising from participation in any event at the facility.

ARTICLE XI

Waiver of Default

Any waiver by the CITY of any default or breach of this Agreement shall not be construed to be a continuing waiver of such default or breach nor as a waiver or permission, express or implied, of any other or subsequent default or breach.

ARTICLE XII

Force Majeure

If by reason of labor strike, lockout, war, rebellion, material or labor shortage due to a national emergency, fire, flood, storm or other casualty, or by any other matter not within its control, the CITY or CORPORATION is in good faith and without fault or neglect on its part prevented or delayed in the construction of any improvements or in the performance of any covenant and condition which under the terms of this Agreement it is required to do within a specified period of time, the period of time within which such performance was to have been completed shall be extended by a period of time equal to that of such delay or prevention, and the CITY or CORPORATION, as the case may be, shall not be deemed to be in default if it performs and completes such work or covenant or condition in the manner required by the terms of this Agreement within the specified period of time as so extended.

## ARTICLE XIII

### Easements

This Agreement is made subject to all easements across the Premises that are on record in the Office of the Registrar of Deeds, Oakland County, Michigan and all natural drainage courses, and the CITY reserves the right to grant or reserve additional easements on, over, under or through the Premises.

## ARTICLE XIV

### Organization of Corporation

#### Section 14.1 Non-profit Corporation.

CORPORATION represents and warrants that it is and, at all times during the term of this Agreement, shall remain a Michigan non-profit corporation in good standing formed specifically to operate a velodrome, on a not-for-profit basis.

#### Section 14.2 Involvement of Director.

It is a material condition of this Agreement, that Dale Hughes shall for the duration of this Agreement be on CORPORATION's Board of Directors and shall remain actively and significantly involved in the operation of the velodrome.

#### Section 14.3 City's Role in Governance.

The CITY shall be entitled to appoint one (1) representative to serve as a voting member on CORPORATION's Board of Directors and/or whatever board or committee CORPORATION may establish to govern the velodrome on the Premises.

## ARTICLE XV

## General Clauses

### Section 15.1 Word References and Gender, etc.

All references to the parties to this Agreement and all covenants, conditions and agreements of this Agreement shall apply to and be binding upon the CITY and CORPORATION and their respective heirs, executors, administrators, legal representatives, successors and assigns as if they were in each case fully named and stated.

### Section 15.2 Modifications Must be in Writing.

This Agreement, together with the proposal submitted by the CORPORATION, contains the entire agreement of the parties and replaces and supersedes all previous agreements, if any, both oral and written. Any amendment or modification must be in writing, signed, dated and agreed to by both parties, before said amendment or modification becomes effective and binding under the terms hereof.

Section 15.3 Notices.

All notices to the CITY shall be sent by certified or registered mail addressed to the MAYOR, CITY OF ROCHESTER HILLS, 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309-3033, or at such other address as the CITY may in writing from time to time designate.

All notices to CORPORATION shall be sent by certified or registered mail addressed to CORPORATION at 407½ Main Street, Rochester, Michigan 48307 or at such other address as the CORPORATION may in writing from time to time designate.

Section 15.4 Draftsmanship.

The parties shall rely solely on the advise of their own legal counsel concerning the legal and tax consequences of this Agreement. The CITY and CORPORATION acknowledge that they and/or their representatives have each contributed to the choice of language and/or draftsmanship of this Agreement, and this Agreement shall be interpreted and construed without application of, reliance upon, or respect to any doctrine or principle the import of which is or shall be that this Agreement shall be interpreted in favor of a non-drafting party and/or against the interest of the drafting party.

Section 15.5 Approval by City.

Unless otherwise specified herein, whenever this Agreement provides for the approval or agreement by the CITY, this shall mean that such approval shall be by City Council.

CITY OF ROCHESTER HILLS

By: \_\_\_\_\_  
Bryan K. Barnett, Mayor

By: \_\_\_\_\_  
Jane Leslie, Clerk

THE VELODROME NON-PROFIT CORPORATION

By: \_\_\_\_\_  
Dale Hughes

Its: \_\_\_\_\_