

**Board of Directors Special Meeting**

**Friday, March 13, 2020 7:00 a.m.**

**Location: Idaho Falls Auditorium District Office**

**467 Constitution Way, Idaho Falls, Idaho 83402**

**Attendees: Terri Gazdik, John LoBuono, Bob Nitschke, Steve Vucovich, Rob Spear, Mark Fuller, Salem Thomas, Mike Clements, David Cress and Chris Nations (by phone)**

**Minutes**

1. **Action Item** - Call to Order – at 7:05 a.m.
2. **Action Item** - Accept the Consent Agenda – Nitschke said that he would like to indicate that personal attacks are not acceptable during public comment. LoBuono said he didn’t think it would be possible to censor the public’s comments. Fuller asked if Nitschke was indicating he would like to add a phrase to what was posted with the agenda; Nitschke said yes. Nitschke added that if it were to happen again, he would like someone to remind the public that making personal attacks is neither proper nor helpful in anyway. Fuller said he would review the meeting bylaws to make certain they were following all correct protocols concerning this matter. Motion to accept the agenda. Seconded. Motion passes.
	1. Meeting Minutes – 3-10-20 - No Action. Further review time needed by the Board.
	2. Review of the Payables/Financials - No Action.
3. Public Comment (Any member of the public is welcome to take three minutes and share concerns or questions with the Board) - None.
4. **Action Item -** Review, discuss and approve, in principle, the Centennial Management Contract for operating the Event Center.

Spear presented the Board with an Executive Summary of the Centennial Management (CM) contract (**Attachment I**) that compared changes between the 2-17-20 draft and the 3-11-20 draft. A table summary of the changes is provided in **Attachment II**. Spear explained that having CM prepare the contracts with the concessionaire and hockey team is a change that carries throughout the entire agreement. This change will speed up the process of contract writing because CM already has draft contracts for a hockey team and concessionaire available. Nitschke asked about all the collections from the affiliates. Gazdik explained that the money that comes from the hockey team will go to the hockey team, and they will then pay IFAD $4,000 per game. A portion of the concessions will also go to IFAD. Nitschke asked about the practice time payments. Spear clarified that all practices leading up to each game will be included in the $4,000 per game. Fuller explained that the document now being considered does not control the relationship between anyone with the hockey team, this is between the management company and IFAD. Nitschke said he feels it is important to set up parameters that all parties understand and agree to before any contracts are signed. Fuller reminded Nitschke that Kevin Bruder is planning on coming to Idaho to present and there will be time to ask him all those questions. Spear shared the agreements used between the Maverik Center and West Valley City as examples. Gazdik said that when it comes time to establish a budget, the Board can negotiate percentages of revenues to be deposited into operating revenues. For example, the West Valley contract has set the percentage of gate receipts at 7.5%, but IFAD can request a different percentage or a flat amount. Fuller pointed out in the contract where it says that IFAD will be in control of the budget as required by the tax-exempt status of the Certificates of Participation that the auditorium District plans to sell.

Spear explained the changes in the definitions. The biggest changes were to add “ticketed commercial event” and increase the time period in the abandonment definitions from 30 to 60 days.

A Ticketed Commercial event is an event to benefit the community with the intent of making money. Nitschke reminded the Board that he has been interested in how many “facility” days as opposed to “event” days because there is the conference area as well as the arena.

With respect to the increase in the Abandonment period, Centennial presented examples of where 60 days was more appropriate. Rink maintenance could extend beyond 30 days for instance. Gazdik said that CM is wanting to run this facility to make money and, in their experience, 60 days is not a problem. It is not likely that the event center will stay empty that long. Nitschke asked why put a number on it at all if CM is going to do their best either way. Gazdik again said that 60 days was CM’s original suggested definition for abandonment.

Definition of Concessionaire was added and all references to IFAD entering into hockey and concession agreements were removed.

The definition of an operational year was changed to coincide with IFAD fiscal year. Also, specifically defined the First Operational Year. It shall commence on the first day of the first month in which the first Event Day is held in the Arena and shall end November 30 of the subsequent year.

LoBuono asked if there is a possibility to hire a different management group for the conference area if CM is hired for the arena. Fuller replied that under the current contract and negotiations, only one management company can be in the building. Spear said that having two management companies could create issues between the two companies. LoBuono asked about having Diamond Concessions catering all events in the conference portion of the building. He expressed concern about food quality. Fuller responded that as the owner, the Board would have the opportunity to evaluate the quality of the food.

Spear explained he was comfortable with giving CM sole management responsibility because Centennial does not want conflicting policies. Spear further explained that if a default arises, IFAD can terminate the contract. In addition, the agreement doesn’t become effective until the Certificates of Participation are sold. Nitschke pointed out that the length of the contract is longer than CSL recommended, but Spear feels IFAD has enough power to end the contract if needed. Nitschke asked how easy it would be to terminate the contract with CM. Fuller said it will be easier to terminate the manager than to find a successor. Fuller said that it would probably take several months to terminate the contract if there were any contested issues.

Nitschke said it needs to be more clear that the Board has oversight and final say on the “big picture” items. Vucovich asked about CM having “sole responsibility” to run the facility. Fuller explained that giving CM sole responsibility to operate the facility allows the Board to more easily determine if CM is operating in accordance with the agreement. Fuller’s initial concern with indicating that CM had sole responsibility was in the legality of it, while still having the Board be in charge. According to Gilmore Bell, it is not a legal concern. Spear said that CM would have sole responsibility to operate the event center, but not sole responsibility to make every decision because the Board is the owner.

Spear explained that Section 4.1 that addressed use, operation, maintenance and occupancy of the Event Center, was changed to not require the approval of IFAD**,** if it is for a term of not more than 50 days and made at arm’s length and market rates. This was changed from IFAD having to approve all agreements. The reason is waiting for IFAD to approve all rentals (e.g. a 2-hour rental of a banquet space) is inefficient especially since IFAD meets every two weeks. Gilmore Bell attorneys stated this change would not violate any legal matters.

Spear explained that section 4.5 that addressed Capital Improvements or Capital Purchase was changed to require IFAD approval.

Pertaining to Hazardous Waste Section 5.2, Spear explained that Centennial Management stills wants assurance that they have no responsibility for pre-existing conditions of land.

Nitschke asked how important it is to have a phase 1 and phase 2 land study completed. Clements explained that doing a study at this point is unnecessary because the construction company has already evaluated the land and completed the in-ground construction. Fuller said it is likely that the construction company has already completed a more in-depth study than a phase I evaluator would, and no hazards had been discovered. The contract is simply clarifying that if some sort of hazardous problem arises on the land, the Board cannot put the blame on CM if the hazardous waste was in place before CM started managing. Fuller invited a motion from the Board at this time if the Board desired a Phase I or Phase II study to be conducted on the Event Center site. No motion was made.

Spear explained how revenues from the sale of naming rights are to be handled in Section 6.2. Spear is comfortable with this arrangement because it ensures all naming rights have the opportunity to be sold by CM and the funds deposited into Gross Operating Revenues for that year. Re-selling naming rights in the future could allow the Board to budget for some renewal replacement items in that year. Spear explained that any revenues that go into operating revenues are IFAD’s revenues. Fuller said that CM originally wanted to take over the selling of the naming rights much sooner, but IFAD pushed back because the naming rights are needed to cover construction costs and cannot be deposited into gross operating revenues until construction is fully funded.

Nitschke asked if the language surrounding the incentive fee had been corrected to be clear that an incentive fee was not guaranteed. Spear said it has been corrected to reflect the three main areas: promoter satisfaction, user satisfaction and owner satisfaction and are subject to board approval, no guarantee. Fuller pointed out under paragraph Article 21, Remedies, (e) (vi) that the language indicates that the Board is required to pay the fixed fee. CM cannot terminate the contract based on the lack of incentive fee payment. Gazdik pointed out another location that the “incentive fee, ‘if any,’ will be paid...” This indicates that there may not be an incentive fee paid.

Although not changed, Spear reminded the Board Article 9.4 gives the Board authority over budgets.

Spear explained that Article 15 was modified to clarify how many parking spaces CM will have. Spear said that CM will control 1,461 parking spaces. Nitschke said he feels it is inappropriate for CM to demand that amount of parking spaces. What if there is a minor issue that causes there to be 50 less spaces available for any amount of time. Fuller clarified that CM’s concern is more about IFAD deciding to build another structure in the parking lot that should have been available for customers’ use. Gazdik pointed out that IFAD will not be able to lease out the parking lot to another entity without the consent of CM. Spear showed that there will be another 1,200 spaces available for shared use, but CM will not be able to charge for those spaces unless they negotiate with the owners themselves.

Vucovich asked about insurance for things like Coronavirus which cause interruption in shows and productions. Spear said that there is not insurance for things like that available right now. Gazdik stated, this is an insurance area the Board should consider once the facility is open.

Spear explained in the termination section, the wording “failure to operate within IFAD’s approved budget**”,** was removed. Spear explained that in his opinion, this language is broad enough to give IFAD the ability to terminate this agreement for recurrent events of default related to CM’s failure to operate within budget.

Spear said that CM was adamant that they will not operate the facility without the ability to sell alcohol. Nitschke said he doesn’t like the idea that CM can terminate if alcohol is not permitted. The Board is responsible for the overall profitability of the Event Center not CM. Since no one would welcome the loss of alcohol sales, Nitschke would like to see the manager be more a team-player who is willing to manage no matter what the circumstance. Vucovich said he understands CM’s point of view. If it would render their business model unsuccessful as CM is saying it would, then they should have a way to get out of the contract without having to be sued for it. Fuller clarified that they could only be removed from consequences of the contract if there aren’t any other opportunities available to CM to create that revenue. Fuller also clarified that CM would not be forced out if alcohol sales were lost, but it would give CM the opportunity to terminate the contract.

Fuller said that every time the Board sends CM modifications to the contract, Richard Catton responds with an indication that David Elmore has not reviewed the contract at all and that all agreements are subject to his approval. Fuller retains the same review rights for the Board.

Nitschke requested a specific date on which CM will send the Board the pro forma. Spear indicated that he was anticipating receiving the pro forma directly after the conclusion of this meeting. Spear said he would contact Kevin Bruder and identify a date for discussion of the pro forma.

LoBuono moved to accept the current draft of the contract in principle. Vucovich seconded the motion. Gazdik asked for further discussion. Nitschke suggested that there are three issues still needing resolution before he would agree to the contract in principle. The first is that “agreeing in principle” with a company that hasn’t always been receptive to some simple changes not to mention some big items does not seem like a great idea. The second is that he would like to see any income above a reasonable return from the operations of the hockey club and concessionaire contracts be returned to the board and utilized to benefit the community. Additional monies could be used for a number of things that benefit people in the community such as discounts to non-profits rather than excessive monies going to the management company. The third is wanting to know how well CM is operating the Maverik Center. He is concerned that if the Board agrees to the contract in principle then CM will not be willing to negotiate any further even though it hasn’t officially been signed. Spear clarified that all the revenue that comes in, IFAD will control. Gazdik said that agreeing to the contract in principle is saying that the last year of negotiations have been worthwhile and that the Board is ready to move on with the next steps of an eventual agreement. Gazdik called for a vote. Three members were in favor. One member abstained from the vote.

1. **Action Item –** Discuss and approve critical need items for submittal preparation and material orders for the Event Center Phase II project in order to meet the August 2021 Event Center opening. Gazdik reminded the Board that Bateman Hall has requested $466,792 to move forward with phase II. She said that they were able to talk with Stephanie Bonney on the question of whether the District can secure a line of credit and she said the short answer is yes, but the Board cannot secure a line of credit for longer than a 1-year time period.

Spear asked Christ Nations to share his opinion on the dollar amount suggested by Bateman Hall/Hogan. Nations said that the costs Bateman Hall is trying to cover are necessary costs to meet the construction schedule. All items identified are critical to getting construction started.

Nitschke asked about how much of the money could be recoverable if construction was delayed one year. Clements said that of the $466,792 about $200,000 could potentially be recoverable subject to a restocking fee. He said that the Construction Schedule is now behind about a month. If the Board were to approve this Materials Acquisition Request today the completion date of August 2021 is doable. If they do not, the completion date will not be until September 2021. Gazdik clarified that this dollar amount would only be considered sunk costs if the Board decides to redesign. If a decision is made to start construction a year later, these costs would not be in vain. Nations said he sees the benefits of approving this proposal now and recommended moving forward. It will help donors feel more certain about donating to the project.

Motion to accept the proposal. Seconded. Nitschke asked about the previously mentioned $650,000. Spear said that his recommendation is to approve the necessary amount and not approve a “not to exceed” amount. Nitschke also said he was worried because originally it seemed like it would not be difficult to fund raise the amount necessary to pay for the building. Now it doesn’t seem likely. Nitschke said he wasn’t sure the Board should continue pushing past all the issues facing them. Gazdik said Spear would be addressing that later in the meeting. Motion passes.

1. **Action Item –** Review and approve bond underwriter for the sale of lease revenue (certificates of participation) for financing the Event Center. Spear said the two finalists are Raymond James (RJ) and Key Bank (KB). Laura Lewis has created a comparison sheet for the Board’s review. Key Bank is the lower cost, but Lewis indicated to Spear that lower cost doesn’t always mean it is the best option.

Both companies have lots of experience with Triple B rated offerings and will be diligent in marketing to investors. KB had the lowest “True Cost of Interest” and RJ was the next lowest. RJ presented a proposal to close the gap through a subordinate bond offering. KB offered IFAD a line of credit, but it is based upon IFAD moving all their funds to Key Bank. Based on the donation agreement with Mountain America Credit Union that is not possible. Mountain America declined to offer the Board a line of credit because as a Credit Union they do not participate in that type of lending.

Gazdik said that in the proposals, Key Bank identified the gap at $5 million and suggested that they cover it with a 12- or 24-month line of credit. RJ said the gap is $2.5 million and suggested subordinate bonds to cover the remaining costs. RJ does have the option to loan money and keep it on their balance sheet. Gazdik feels that KB would be likely to respond to things more quickly because it is a local company, but RJ has the stability of a larger entity and is much better capitalized.

Vucovich asked for clarification concerning RJ’s potential line of credit. Spear read a text from Lewis that indicated she was unsure if RJ would require the Board to switch all their banking over to them, just like KB. Vucovich said it would cost more to hire RJ, but if they can get the gap down to $2.5 million, then it would be worth the dollar amount.

Spear said that both he and Gazdik felt that RJ had a strong interview but explained Lewis has had experiences with KB where they were able to sell “Triple B Minus” bonds through an aggressive face-to-face marketing plan. Gazdik also shared that Lewis said the Board could hire both KB and RJ. It is not uncommon with projects of this size. However, having a Senior and a Junior bond underwriter makes both companies less motivated to make their sales.

Fuller asked Gazdik if having Mark Young participate in the Business Advisory Committee influences Gazdik’s decision. Gazdik said that his support has been important, but that he will not benefit individually if the Board decides to use RJ as their bond underwriter. Fuller summed up the conversation by saying that both foresee a shortfall, and neither can offer a line of credit for the missing amount. However, one will likely leave a $5 million deficit while the other will leave a $2.5 million deficit.

Gazdik pointed out that both companies have the ability to buy the bonds themselves and include them on their balance sheet. However, one company has the ability to do that up to $1 billion and the other only has the ability up to $350 million. She is leaning toward the stronger balance sheet.

LoBuono asked if there was a recommendation. Gazdik said she and Spear recommend RJ because of their stronger balance sheet.

Motion to accept Raymond James proposal to serve as underwriter. Seconded. Motion passes unanimously.

1. **Action Item –** Approve Alternate Rendering for Exterior of Mountain America Center. Spear said that this alternate exterior option costs about $300,000. Gazdik asked why it is important to decide on the façade of the building at this time. Nations said that it is required to finalize the Guaranteed Maximum Price (GMP). It also affects the way the community and the Board see the building.

Gazdik said that the exterior is important to the public and they should be proud of it. The current rendering looks too institutional. She said she likes the front of the building and suggested adding steel ribbing of some sort to the sides. Nations said going back to a curvier design will likely elevate the costs.

Spear said he would speak with CRSA about the exterior design. They were the ones pushing for this the most so they can get building permits. Vucovich said he still thinks it should be possible to make the exterior look nice without it going too high over the budget. He asked about asking a different architect to create another design. Nations said it would be possible but isn’t advisable. A different architect would likely create something that is much more expensive. Working with CRSA closely would be better.

Gazdik suggested tabling this item until a later meeting. No action was taken.

**Report and Updates**

1. **Discussion Item** - Executive Director Updates
	1. State Tax Commission Receipts - Spear shared a document that shows the recent report from the State Tax Commission. The report needed to be reconciled to determine the relationship between the Designated Business Names (DBA) and the common names we are using. There was incomplete information on marketplace facilitators (e.g. Expedia). Any entity that does not remit a payment and is registered will be turned over to the State Auditor’s Office. Spear clarified that collections were up 2% instead of 11% over January 2020 because the State Controller’s Office mistakenly included IFAD’s $10k setup fee in the initial report. Spear said he will provide the information to Dorothy Banner at WIPFLI to create financials.
2. **Discussion Item** - Legal Updates - No further report from Fuller.

 Calendar and Announcements

1. Upcoming IFAD Meeting – **Next Meeting on March 24, 2020 Discussion Item** - Announcements and Minor Questions
2. **Discussion Item** - Agenda Items for March 24, 2020 meeting - Hazardous material study for the land.
3. **Action Item** - Adjournment from Public Session - at 9:39 a.m.

**Executive Summary of Centennial Management Contract**

Comparing Version 2-17-20 with 3-11-20

Recitals

Eliminated any reference to IFAD entering into agreements with affiliates (hockey and concessions). Reason is because IFAD was ensured that revenues, $4k per game for hockey and 30% of gross food and beverage sales, would flow into operations, it was decided to have Centennial enter into those agreements.

Article I

1.3 Definitions

Biggest change was to add “ticketed commercial event” and increase from 30 to 60 days. Commercial event defined an event to benefit the community with the intent of making money. Centennial presented examples of where 60 days was more appropriate. Rink maintenance could extend beyond 30 days.

Definition of Concessionaire added

Changed all references from IFAD entering into hockey and concession agreements to Manager.

Defined operational year to coincide with IFAD fiscal year. Specifically defined the First Operational Year. It shall commence on the first day of the first month in which the first Event Day is held in the Arena and shall end November 30 of the subsequent year.

Article 2 Term

This was not changed. It remained at 15 years with 2 five-year extensions. The reason this was not reduced was that the termination provisions give IFAD flexibility to terminate if issue arise.

2.5 Effective Date. This agreement does not become effective until bonds are sold. Bonds need to be sold by 8-15-20.

Article 3

3.1 Changed to give Centennial “sole” responsibility for the management. The reason is that Centennial does not want to co-manage the facility.

(e) If the Manager follows an IFAD policy or guideline, and as a result does not perform an obligation or duty of the Manager set forth in this Management Agreement, then the Manager’s failure to perform that obligation or duty shall not be considered a violation or a breach of this Management Agreement. Reason is Centennial does not want conflicting policies.

3.3 The Manager shall not enter into an agreement with a professional or semi-professional sports team or similar organization, other than the Hockey Club, for regular use of the Arena without consulting with IFAD. Added back because IFAD would not be entering into an agreement.

Article 4 Duties of Manager

4.1 General. Notwithstanding the foregoing, any lease, license, use agreement, bookings, or other such agreement pertaining to the use, operation, maintenance and occupancy of the Arena, may be executed by the Manager and shall not require the approval of IFAD, if it is for a term of not more than 50 days and made at arm’s length and market rates. Changed from IFAD having to approve all agreements. Reason, waiting for IFAD to approve all rentals (e.g. a 2-hour rental of a banquet space) is inefficient especially since IFAD meets every two weeks.

(d) The Manager shall provide the Hockey Club, which shall play its home games in the Arena, and the Concessionaire, which shall be the sole provider of food and beverage concessions within the Arena. Both the Hockey Club and the Concessionaire are affiliates of the Manager.

4.5 Maintenance Schedule

Capital Improvements or Capital Equipment purchases shall be considered operational repairs and maintenance for purposes of this Section if approved as such by IFAD and included in the Manager’s Annual Plan. This was IFAD’s change.

4.6 Right of Entry

Added. Nothing contained in this Section is intended or shall be construed to allow IFAD representatives from entering into the backstage area of the Arena during the set-up, rehearsals, performance or load out of an event, or into the locker rooms of any teams playing in the Arena, or any other areas restricted by the terms of an event contract. Reason, according to Centennial some artists are very protective of their space and having IFAD Board members back of house could create issues.

4.14 Compliance with Contemporary Community Values

Added. IFAD may provide the Manager with a policy regarding the contemporary community values of the Idaho Falls region. If the Applicable Standard and the contemporary community values conflict with each other, the contemporary community values shall prevail. Reason Centennial wanted this clarification. Final document changed to may from shall.

Article 5

5.1 (e) Added. Provided however, that the Parties understand that any lease, license, use agreement, bookings, or other such agreement, made at arm’s length and market rates, pertaining to the use, operation, maintenance and occupancy of the Arena for a term of not more than 50 days, does not require the prior opinion of bond counsel.

5.1 (i) Centennial added back. Knowingly allow or authorize, by action or inaction, without the prior written consent of IFAD, which consent will not be unreasonably withheld: (1) any extension of time for, or excuse of performance under, the Arena License Agreement, (2) any modification, waiver, or excuse of use or operating covenants under the Arena License Agreement, (3) any modification, deferral, or waiver of payments, revenue sharing, or other business terms of the Arena License Agreement, (4) any assignment or transfer of interest requiring IFAD’s consent under the Arena License Agreement, (5) any action that would invalidate or cause a default by the Manager under the Arena License Agreement, or excuse performance by the other party thereunder, (6) any termination of the Arena License Agreement prior to the expiration of its term or the Management Term, or (7) any action to be taken as an agent or representative of IFAD, unless specifically authorized to do so by this Management Agreement.

5.2 Hazardous Substances

(a) Centennial wanted this added back. Even though this was farm ground, Centennial stills wants protection. IFAD represents and warrants that the property on which the Arena is located does not contain any Hazardous Substances found in violation of any applicable Law or Regulation. IFAD further represents and warrants that every mandatory requirement of any applicable Law or Regulation with respect to environmental hazards or Hazardous Substances affecting the Arena or the real property on which the Arena is located has been complied with. IFAD shall not cause to occur upon, in, or about the Arena, or permit person with whom it has contractual relations to use the Arena to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process, Hazardous Substances, except in compliance with all applicable Laws and Regulations, and IFAD shall comply with applicable Law and Regulation regulating, Hazardous Substances found in, on, or about the Arena or the real property on which the Arena is located, and shall promptly remedy any violation of each such Law or Regulation, except with respect to Hazardous Substances generated or disposed of by the Manager or any of its employees, agents, concessionaires, lessees, licensees, or contractors, or any of its contractors’ subcontractors or materialmen, or other persons or entities.

Article 6 Arena Revenues

6.2 New language that IFAD requested, and Centennial agreed to. Revenues from the sale of naming rights enumerated in the attached Exhibit K shall be retained by IFAD. Not later than opening date of the Arena, the sale of any unsold naming rights listed in Exhibit K shall revert to and, thereafter, be the responsibility of the Manager. The sale of any of the remaining naming rights listed in Exhibit K, by the Manager, shall be Gross Operating Revenues.

Article 7 Management Compensation

7.1 Clarified first operational year. IFAD request and Centennial agreed. The First Year Fixed Fee shall begin with the first month in which the first Event Day is held in the Arena and shall continue throughout the initial 15-month First Operational Year.

The adjusted fixed fee will be paid first out of Gross Operating Revenues, and then by such other funds as IFAD may designate. Centennial added but this gives IFAD flexibility.

Article 8 Facility Improvements

8.2 (e) Centennial Added. “Parking Capital Repairs and Replacement” are those repairs and replacements of capital items, as distinguished from normal maintenance, which are necessary to repair or replace, over time, capital items of the Arena Parking Facilities that are subject to wearing out after a useful life. Examples are asphalt or other hard surfacing, lighting fixtures, barricades, equipment and structures. Parking Capital Repairs and Replacements can be forecast and budgeted. As an example, the cost of resurfacing the asphalt or other hard surface due to normal wear and tear is a Parking Capital Repair and Replacement.

Article 9 Funding

9.4 No change but very important clause that gives IFAD authority over budget. Reduced Budgets. If there appears, in any year, to be a substantial adverse departure from budget or IFAD reasonably believes it will not receive sufficient funding to cover any increase in the operating deficit beyond the operating deficit contained in the approved budget, then, IFAD shall request from the Manager a plan for reduction of expenditures to a level consistent with the funding available to IFAD. The parties recognize that the ultimate responsibility for preservation and protection of the Arena and its funding lies with IFAD and the final decision with regard to expense reduction is solely that of IFAD. The Manager shall comply with any expense reduction ordered by IFAD and the approved budget for such Fiscal Year shall be modified accordingly. If the approved annual budget departs from the annual budget submitted by the Manager, the Manager shall not be construed to have breached or defaulted under this Management Agreement to the extent its services or responsibilities hereunder are compromised as a result of the limitations in the Fiscal Year’s budget. If IFAD acts hereunder to reduce expenditures, and such reduction of expenditures impairs, ·restricts or otherwise affects the ability of the Manager to perform its duties hereunder, then any consequent failure of the Manager to perform its duties as described in this Management Agreement shall not be considered a default, or breach by the Manager of its obligations under this Management Agreement. The provisions of this subsection 9.4 shall not be construed so as to cause a reduction in the Manager’s compensation as set forth in Article 7.1 of this Management Agreement.

9.8 Bold section removed. Centennial says this is inherent throughout the document. This is covered Notwithstanding any provision herein to the contrary, the Manager shall have no obligation to fund any cost, expense or liability with respect to the operation of the Arena, so long as Manager and its employees are complying with all contract duties set forth herein. This provision shall have no effect upon Manager’s obligation to provide a fidelity bond as required in Article 12.4, to cover acts set forth therein.

Article 15 Parking

(a) Parking spaces. Centennial added because they want to know how much parking they have. Added. “at no time shall IFAD provide any less than 1450 parking spaces.

Article 17 IFAD Name/Office Space

17.1 IFAD Added. The office space to be used by IFAD shall consist of two offices (location to be agreed upon by the parties) and shared use of the conference room.

Article 18 Suites, Passes, Tickets

18.3 IFAD and Centennial agreed to add. Centennial has the experience. Added. Subject to the following restrictions, IFAD Board members and staff shall have the option to purchase advanced tickets for all events at Manager’s cost.

(a) such ticket sale is allowed by the terms of the contract for the event; and

(b) each IFAD Board member and staff shall be limited to 4 tickets per event (unless further restricted by the specific event contract)

ARTICLE 20 FORCE MAJEURE

Changed per Fuller recommendation. Should any matter or condition (“Force Majeure”) beyond the reasonable control of a party, affecting the operation of the Arena or disrupting timely delivery of materials or supplies, including causes affecting materialmen and suppliers, civil disturbances or riots, or any governmental restriction, prevent or delay performance of this Management Agreement in accordance with provisions hereof, in whole or in part, after the employment of all reasonably available means to overcome such condition, avoid delay, and mitigate the effects thereof, performance of this Management Agreement by the party affected thereby shall be suspended or excused to the extent commensurate with such interfering occurrence. The party availing itself of this section shall notify the other party, within ten (10) days, of its knowledge of commencement of such occurrence or the event of Force Majeure. Force Majeure shall include, but not be limited to, war, public emergency or calamity, fire, earthquake, flood, unusually severe and abnormal weather condition not anticipatable, Act of God, strike, or labor disturbance. As applied to performance by IFAD, enactment or promulgation of an ordinance, resolution, policy or guideline by IFAD shall not be an event of Force Majeure. Provided further that, the time of suspension or excuse shall not extend beyond that reasonably necessitated by the occurrence of the event of Force Majeure. If the Arena is rendered inoperable by a Force Majeure condition for more than five (5) consecutive days, the Manager’s Compensation shall be abated (and credited or refunded to IFAD) to the extent that, and for the period that, the Arena is rendered inoperable.

ARTICLE 21 DEFAULT AND TERMINATION

21.3 d (iii) Centennial removed bold highlight. The section is currently broadly written to cover areas like budget. 9.4 and the remainder of this language cover IFAD. Recurrent material Events of Default by the Manager of its duties and obligations hereunder, including failure to operate within IFAD’s approved budget, clearly demonstrating a pattern and practice of uncooperativeness with IFAD.

(v) Reference to IFAD removed. Centennial would not want to operate the arena without alcohol sales. The adoption by the State of Idaho or the City and/or County in which the Arena is located, of any statute, rule or ordinance that would prohibit the sale of alcohol at the Arena (except a temporary license suspension incurred by the Manager or Concessionaire). This reason for termination by the Manager is an independent reason and is not dependent upon an Event of Default as described in Section 21.1.

(vi) Changed in IFAD’s favor to eliminate refence to 7.2 incentive fee. IFAD’s failure to pay the Manager the Fixed Fee due under the terms of Article 7.1 of this Management Agreement. This reason for termination by the Manager is an independent reason and is not dependent upon an Event of Default as described in Section 21.1.

PRE-OPENING SERVICES

1.1 Pre-Opening Phase

a. The Parties agree that IFAD has paid to the Manager the sum of Thirty Thousand Dollars ($30,000) for services rendered prior to the execution of this Management Agreement, including the preparation of an updated financial pro forma for the operation of the Arena. After the execution of this Agreement, the Manager shall provide Owner with an updated financial pro forma for the operation of the Arena. The updated pro forma shall be delivered to the Owner by either February 28, 2020 or thirty (30) days after the execution of this Agreement, whichever shall occur later. Upon delivery of the updated pro forma, Owner shall pay to Manager the sum of $ 30,000. The sum paid to Manager for the previously rendered services and updated pro forma shall be credited against future payments for the Pre-Opening Phase as set forth in Section 1.5(a) below.

1.2 a. a. Review the construction drawings and specifications relating to the construction of the Arena and give advice to the Owner and the architect for the Arena (the "Architect") on the detailed plans, designs, lay-outs and specifications for the Arena and all goods, equipment, services and other facilities required in connection with the construction, furnishings, equipping and future use and operation of the Arena, including interior spaces, and for any parts of the area surrounding the Arena, and make recommendations to help ensure an operationally efficient, economical, well­ functioning and saleable facility capable of attracting and presenting sports, entertainment, meetings, trade shows and other special events.

1. **Table of Centennial Management Contract Changes**

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| --- | --- | --- | --- |
| Section | 3-11-20 | 2-17-20 & 1-28-20 | Rationale |
| 1.3 | * Added “ticketed commercial event”
* increase from 30 to 60 days
* Definition of Concessionaire added
* Changed all references from IFAD entering into hockey and concession agreements to Manager
* Defined operational year to coincide with IFAD fiscal year
 | * hold an event in the Arena for a period of thirty (30) or more days
 | * Rink maintenance could extend beyond 30 days.
* Hockey and Concessions operated by manager makes manage responsible for operating profits and losses
 |
| Article 2  | * remained at 15 years with 2 five-year extensions
* Bonds need to be sold by 8-15-20 for agreement to be effective
 | * Continue for a period of 15-25 years
 | * Wanted a defined period
 |
| 3.1 | * give Centennial “sole” responsibility for the management
 | * party with the responsibility and right to operate, manage, and maintain the Arena
 | * Centennial does not want to co-manage the facility.
 |
| 3.1e | * Manager’s failure to perform that obligation or duty shall **not** be considered a violation or a breach of this Management Agreement
 | * Manager’s failure to perform that obligation or duty shall be considered a violation or a breach of this Management Agreement
 | * Centennial does not want conflicting policies
 |
| 3.3 | * The Manager shall not enter into an agreement with a professional or semi-professional sports team or similar organization, other than the Hockey Club, for regular use of the Arena without **consulting** with IFAD
 | * The Manager shall not enter into an agreement with a professional or semi-professional sports team or similar organization, other than the Hockey Club, for regular use of the Arena without **approval** with IFAD
 | * IFAD would not be entering into an agreement with Hockey
 |
| 4.1 | * any lease, license, use agreement, bookings, or other such agreement pertaining to the use, operation, maintenance and occupancy of the Arena, may be executed by the Manager and **shall not require the approval of IFAD,** if it is for a term of not more than 50 days
 | * shall require the approval of IFAD,
 | * Unwieldy section that essentially micromanages Centennial’s management of the Arena.
 |
| 4.1d | * The Manager shall provide the Hockey Club
 | * Did not exist
 | * Changed to define who provides Hockey Club
 |
| 4.5 | * Capital Improvements or Capital Equipment purchases shall be considered operational repairs and maintenance for purposes of this Section **if approved as such by IFAD**
 | * Did not have IFAD approve
 | * IFAD wanted to approve all capital improvements/purchases
 |
| 4.6 | * Nothing contained in this Section is intended or shall be construed to allow IFAD representatives from entering into the backstage area of the Arena
 | * Did not exist
 | * some artists are very protective of their space and having IFAD Board members back of house could create issues
 |
| 4.14 | * IFAD may provide the Manager with a policy regarding the contemporary community values of the Idaho Falls region. If the Applicable Standard and the contemporary community values conflict with each other, the contemporary community values shall prevail.
 | * The Manager shall comply with the Applicable Standard in advertising and promoting events at the Arena,
 | * Centennial wanted this clarification
 |
| 5.1e | * Provided however, that the Parties understand that any lease, license, use agreement, bookings, or other such agreement, made at arm’s length and market rates, pertaining to the use, operation, maintenance and occupancy of the Arena for a term of not more than 50 days, does not require the prior opinion of bond counsel.
 | * Did not exist
 | * Added per bond counsel recommendation
 |
| 5.1 (i) | * Knowingly allow or authorize, by action or inaction, without the prior written consent of IFAD, which consent will not be unreasonably withheld: (1) any extension of time for, or excuse of performance under, the Arena License Agreement, (2) any modification, waiver, or excuse of use or operating covenants under the Arena License Agreement, (3) any modification, deferral, or waiver of payments, revenue sharing, or other business terms of the Arena License Agreement, (4) any assignment or transfer of interest requiring IFAD’s consent under the Arena License Agreement, (5) any action that would invalidate or cause a default by the Manager under the Arena License Agreement, or excuse performance by the other party thereunder, (6) any termination of the Arena License Agreement prior to the expiration of its term or the Management Term, or (7) any action to be taken as an agent or representative of IFAD, unless specifically authorized to do so by this Management Agreement.
 | * Was deleted
 | * Centennial wanted it added back
 |
| 5.2 | * IFAD represents and warrants that the property on which the Arena is located does not contain any Hazardous Substances
 | * Was removed
 | * Even though this was farm ground, Centennial stills wants protection
 |
| 6.2 | * Revenues from the sale of naming rights enumerated in the attached Exhibit K shall be retained by IFAD
 | * Did not exist
 | * IFAD wanted this added
 |
| 7.1 | * The First Year Fixed Fee shall begin with the first month in which the first Event Day is held in the Arena and shall continue throughout the initial 15-month First Operational Year.
* The adjusted fixed fee will be paid first out of Gross Operating Revenues, **and then by such other funds as IFAD may designate.**
 | * Did not exist
* Centennial added. Bold section did not exist
 | * Clarified first operational year.
* Centennial added but this gives IFAD flexibility
 |
| 8.2 (e) | * “Parking Capital Repairs and Replacement”
 | * Did not exist
 | * Centennial wanted clarification on parking
 |
| 9.8 | * Section removed
 | * so long as Manager and its employees are complying with all contract duties set forth herein. This provision shall have no effect upon Manager’s obligation to provide a fidelity bond as required in Article 12.4, to cover acts set forth therein.
 | * This is inherent throughout the document and deemed unnecessary
 |
| 15.1a | * (a) Parking spaces. in no event and at no time shall IFAD provide any less than 1450 parking spaces.
 | * at no time it is IFAD’s intent to provide any less than [\_\_\_\_\_\_\_\_\_\_]1450 parking spaces.
 | * Lack of parking can severely affect arena revenues – including those of the hockey team and the concessionaire – that is why it is critical to Centennial.
 |
| 17.1 | * The office space to be used by IFAD shall consist of two offices (location to be agreed upon by the parties) and shared use of the conference room.
 | * Did not exist
 | * IFAD wanted clarity that it would have office space
 |
| 18.3 | * Subject to the following restrictions, IFAD Board members and staff shall have the option to purchase advanced tickets for all events at Manager’s cost.

(a) such ticket sale is allowed by the terms of the contract for the event; and(b) each IFAD Board member and staff shall be limited to 4 tickets per event (unless further restricted by the specific event contract) | * Did not exist
 | * Needed clarity on IFAD Board members and staff to purchase tickets
 |
| 20 | * Force Majeure updated. Force Majeure shall include, but no be limited to, war, public emergency or calamity, fire, earthquake, flood, unusually severe and abnormal weather condition not anticipatable, Act of God, strike, or labor disturbance. As applied to performance by IFAD, enactment or promulgation of an ordinance, resolution, policy or guideline by IFAD shall not be an event of Force Majeure.
 | * Force Majeure. (such as, but not limited to, war, public emergency or calamity, fire, earthquake, flood, unusually severe and abnormal weather condition not anticipatable, Act of God, strike, labor disturbance, or action),
 | * Changed per Fuller recommendation
 |
| 21.3 d (iii) | * Recurrent material Events of Default by the Manager of its duties and obligations hereunder clearly demonstrating a pattern and practice of uncooperativeness with IFAD.
 | * Recurrent material Events of Default by the Manager of its duties and obligations hereunder, including failure to operate within IFAD’s approved budget, clearly demonstrating a pattern and practice of uncooperativeness with IFAD.
 | * Centennial removed but 9.4 and the remainder of this language cover IFAD
 |
| 21.3 v | * The adoption by the State of Idaho or the City and/or County in which the Arena is located, of any statute, rule or ordinance that would prohibit the sale of alcohol at the Arena (except a temporary license suspension incurred by the Manager or Concessionaire). This reason for termination by the Manager is an independent reason and is not dependent upon an Event of Default as described in Section 21.1.
 | * (v) The adoption by IFAD of any statute, rule or an ordinance that would prohibit the sale of alcohol at the Arena (except a temporary license suspension incurred by the Manager or Concessionaire
 | * Reference to IFAD removed. Centennial would not want to operate the arena without alcohol sales.
 |
| 21.3 (vi) | * IFAD’s failure to pay the Manager the Fixed Fee compensation due under the terms of Article 77.1 of this Management Agreement. This reason for termination by the Manager is an independent reason and is not dependent upon an Event of Default as described in Section 21.1.
 | * IFAD’s failure to pay the Manager the compensation due under the terms of Article 77.1 of this Management Agreement. This reason for termination by the Manager is an independent reason and is not dependent upon an Event of Default as described in Section 21.1.
 | * Changed to be specific to the management fee
 |
| Pre-Opening Services 1.1 | * The Parties agree that IFAD has paid to the Manager the sum of Thirty Thousand Dollars ($30,000) for services rendered prior to the execution of this Management Agreement, including the preparation of an updated financial pro forma for the operation of the Arena. The sum paid to Manager for the previously rendered services and updated pro forma shall be credited against future payments for the Pre-Opening Phase as set forth in Section 1.5(a) below.
 | * The Parties agree that IFAD has paid to the Manager the sum of Thirty Thousand Dollars ($30,000) for services rendered prior to the execution of this Management Agreement, including the preparation of an updated financial pro forma for the operation of the Arena. After the execution of this Agreement, the Manager shall provide Owner with an updated financial pro forma for the operation of the Arena. The updated pro forma shall be delivered to the Owner by either February 28, 2020 or thirty (30) days after the execution of this Agreement, whichever shall occur later. Upon delivery of the updated pro forma, Owner shall pay to Manager the sum of $ 30,000. The sum paid to Manager for the previously rendered services and updated pro forma shall be credited against future payments for the Pre-Opening Phase as set forth in Section 1.5(a) below.
 | * Clarified to add previous services and pro forma preparation
 |
| Pre-Opening Services 1.2 | * Eliminated
 | * Review the construction drawings and specifications relating to the construction of the Arena and give advice to the Owner and the architect for the Arena (the "Architect") on the detailed plans, designs, lay-outs and specifications for the Arena and all goods, equipment, services and other facilities required in connection with the construction, furnishings, equipping and future use and operation of the Arena, including interior spaces, and for any parts of the area surrounding the Arena, and make recommendations to help ensure an operationally efficient, economical, well­ functioning and saleable facility capable of attracting and presenting sports, entertainment, meetings, trade shows and other special events.
 | * This stage of the project has passed
 |
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