

CITY OF MUSKEGON
SPECIAL CITY COMMISSION MEETING

Wednesday, February 19, 2020
5:00 p.m. @
Muskegon City Hall
933 Terrace Street
Muskegon, MI 49440
In the Commission Chambers, Room 107

AGENDA

1. Third Amendment to Shared Use Agreement
2. First Amendment to Naming Rights and Sponsorship Agreement
3. Adjournment

Third Amendment to Shared Use Agreement

This Third Amendment to Shared Use Agreement ("Amendment") dated effective July 1, 2019, is entered into between the **City of Muskegon**, a municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440 ("City") and **WC Hockey, LLC**, a Michigan limited liability company, of 13854 Simone Drive, Shelby Township, MI 48315 ("Lumberjacks") (collectively, the "Parties") with reference to the following facts:

Background

A. The Parties entered into a certain Shared Used Agreement, as amended by that certain First Amendment to Shared Use Agreement, as amended by that certain Second Amendment to Shared Use Agreement, both dated effective July 1, 2019 (collectively, the "Agreement").

B. Pursuant to Paragraph 2 of the Second Amendment, Exhibit C to the original Shared Use Agreement was replaced with "Exhibit C Replacement", which provides for annual max sponsorship projections and net revenue splits between the City and the Jacks for various sponsorship opportunities.

C. Pursuant to Paragraph 14 (a) of the Agreement, the Lumberjacks agreed to advance funds to the City to be used to pay for certain capital improvements requested and approved by the City, and the manner and schedule according to which such sums would be reimbursed to the Lumberjacks.

D. The parties desire to enter into this Amendment to set forth the new agreed upon net revenue splits between the City and the Jacks for various sponsorships, and to confirm the amount and repayment terms of the capital expenditure costs advanced to the City by the Lumberjacks, and to confirm the City's granting of space within the Arena for use by WZZM.

Therefore, the Agreement is amended as follows:

1. **Paragraph 12. Sponsorship and Advertising.** Attached Exhibit A labeled Dominant Partner Breakdown sets forth the shared net revenue splits for various sponsorship opportunities. This Exhibit A supersedes the net revenue splits set forth on Exhibit C Replacement in the Second Amendment.

As to Item 1 in Exhibit A, the naming rights agreement between Mercy Health Muskegon, the City and the Lumberjacks, the City shall pay the Lumberjacks an annual 20% split of gross revenues no later than December 30th of each year of the term beginning in 2019. Any such amounts due from the City which are not timely paid by the City shall begin to accrue interest on the amount due and owing at the rate of ten (10%) per annum from the date such amount first became due. In addition to pursuing any other legal or equitable remedies available, the Lumberjacks shall be permitted to offset the amount owed against rents next coming due under this Agreement. The City shall be responsible to pay for all signage related to the naming rights agreement.

As to Items 2-15 in Exhibit A, the Lumberjacks shall pay the City an annual 20% split of gross revenues no later than December 30th of each year of the term beginning in 2019. Any such amounts due from the Lumberjack which are not timely paid by the Lumberjacks shall begin to accrue interest on the amount due and owing at the rate of ten (10%) per annum from the date such amount first became due. In addition to pursuing any other legal or equitable remedies available, the City shall be permitted to offset the amount owed against rents next coming due under this Agreement. The Lumberjacks shall be responsible to pay for all signage related to Dominant Sponsorships Items 2-15.

2. **Paragraph 14 (a). Capital Construction.** The parties agree the amount of advanced funds to be reimbursed by the City to the Lumberjacks is \$260,215.35, which shall be paid through five annual offsets of \$52,343.07 against Base Rent owed by the Lumberjacks to the City during the First Option Period (i.e. years 3 through 7). under this Agreement. The annual rent offsets shall be applied to first rents coming due to the City during each year of the First Option Period.

3. **Paragraph 18. City Participation.** Paragraph 18 is amended to state that the City agrees to purchase an annual \$25,000 advertising package which includes 20 season tickets in the Jacks Club, three games on the Party Deck, and 150 tickets for the Boys and Girls Club. The City understands and agrees that each year they will give to Mercy Health from their advertising package 8 season tickets and two games on the Party Deck.

4. **WZZM Studio Space.** The City grants the Lumberjacks the right to provide WZZM Temporary and Permanent Studio Space within the Arena (as those terms are defined in that certain Sponsorship Agreement and Studio Lease dated effective July 12, 2019), from which WZZM will have the right to broadcast live and/or pre-recorded news content for distribution via the WZZM's platforms.

5. **Full Force and Effect.** Except as set forth in this Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

6. **Counterparts/Electronic Signature.** This Amendment may be executed in any number of counterparts and by different parties to this Amendment on separate counterparts, each of which, when so executed, will be deemed an original, but all such counterparts will constitute one and the same Amendment. Any signature delivered by a party by fax or email will be deemed to be an original signature.

7. **Full Execution.** This Amendment requires the signature of both parties. Until fully executed, on a single copy or in counterparts, this Amendment is of no binding or effect and if not fully executed, this Amendment is void.

[SIGNATURES ON FOLLOWING PAGE]

The Parties hereto have executed this Third Amendment on the dates set forth below.

Lumberjacks – WC Hockey, LLC

By: _____

Name: Mike McCall

Title: President

Date: February __, 2020

City – City of Muskegon

By: _____

Name: Franklin Peterson

Title: City Manager

Date: February __, 2020

By: _____

Name: Ann Meisch

Title: City Clerk

Date: February __, 2020

[illegible]

	2006	2007	2008
TOTAL	\$6,393,016.92	\$9,450,000.00	\$7,655%
JACKS	\$4,166,814.54	\$5,188%	
ARENA	\$2,726,222.17	\$4,822%	
NANNING	\$1,600,000.00	\$2,250,000.00	71.11%
JACKS	\$520,000.00	20.00%	
ARENA	\$1,280,000.00	80.00%	
OTHER	\$4,793,056.92	\$7,500,000.00	66.57%
JACKS	\$3,616,814.54	80.76%	
ARENA	\$926,222.17	19.74%	
GROWTH	\$2,406,913.08	\$1,935,554.16	
JACKS	\$1,935,554.16		
ARENA	\$481,368.62		

FIRST AMENDMENT TO NAMING RIGHTS AND SPONSORSHIP AGREEMENT

THIS FIRST AMENDMENT TO NAMING RIGHTS AGREEMENT (the “Amendment”) is made and entered into effective on December 30, 2019 (the “Effective Date”), by and between Mercy Health Partners d/b/a Mercy Health Muskegon, a Trinity Health Ministry and Michigan non-profit corporation (“Mercy”), the City of Muskegon (“City”), and WC Hockey, LLC (“WC”).

Recitals

- A. Mercy, City and WC entered into a certain Naming Rights and Sponsorship Agreement dated December 30, 2019.
- B. The parties desire to amend the Agreement as set forth in this First Amendment to Naming Rights and Sponsorship Agreement.

AGREEMENT

1. **Paragraph 2a – Arena Naming and Signage Rights - Exclusivity.** Paragraph 2a is deleted in its entirety and is replaced with the following:

2. **Arena Naming and Signage Rights.**

(a) **Exclusivity.** As of the Commencement Date, the City hereby grants to Mercy the exclusive right to name the Arena the Mercy Health Arena (the “Approved Name”). The Approved Name shall be used with all physical, electronic and other references to the Arena by City and WC and affiliates. This exclusivity shall extend to any hospital, health system, or entity which is owned, operated, or managed by a hospital or health system, as well as the following healthcare service lines even if the entity is not owned, operated, or managed by a hospital or health system:

- a. cardiology
- b. cancer
- c. rehabilitation
- d. urgent care
- e. sports medicine
- f. athletic training (excludes health/fitness clubs (e.g. Planet Fitness, SNAP, Family Fitness, etc.)
- g. durable medical equipment sales

With respect to these exclusivities, City agrees not to enter into any advertising/marketing arrangements at the Arena, during the Term of this Agreement, with any hospital, health system or entity without Mercy’s advance written consent. For purposes of this Agreement, “health system” shall be defined as an organization that includes at least one hospital and at least one group of physicians that provides comprehensive care (including primary and specialty care) who are connected with each

other and with the hospital through common ownership or joint management. Under this definition, foundation models are considered a form of joint management, while joint participation among providers in an accountable care organization is not, by itself, indicative of joint management. "Group" is not synonymous with a separately organized medical group; hospitals that employ community-based physicians who provide comprehensive care (but are not organized as a medical group) are considered health systems under this definition. For purposes of this Agreement, Sport's Medicine shall be defined as the investigation, diagnosis, preservation, and restoration by medical, surgical, and rehabilitative means to all structures of the musculoskeletal system affected by athletic activity.

2. **Entire Agreement.** This First Amendment constitutes the entire agreement of the parties as to its subject matter and may not be amended, except by an instrument in writing executed by the parties.

In witness whereof, the parties have executed this First Amendment as of the date Effective Date.

City – City of Muskegon

By: _____
Name: Stephen Gawron
Its: Mayor

By: _____
Name: Ann Meisch
Its: City Clerk

WC - WC Hockey, LLC

By: _____
Name: Mike McCall
Its: President

**Mercy – Mercy Health Partners
d/b/a Mercy Health Muskegon**

By: _____
Its: President