CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Motion – Approval of Park Use Agreement – West Des Moines Soccer Club

DATE: November 28, 2016

FINANCIAL IMPACT: None

BACKGROUND: The term of the five year Park Use Agreement between the City and West Des Moines Soccer Club expires December 31, 2016. The Club provides opportunities for over 2,000 youth and adult athletes to learn, play, and officiate soccer on year-round basis. More than 80% of the members attend West Des Moines Schools. The Club is committed to our community and will continue to provide the necessary services to enhance quality of life.

Changes have been made to the agreement that reflect the switch in maintenance staff from Parks and Recreation to Public Services. In addition, the Club will be taking over all of the mowing in exchange for the soccer fields becoming part of the City's system wide turf program which includes fertilization and broadleaf applications. If the Club desires additional fertilizer or spraying, the City will do the application with the materials being purchased by the Club.

The attached draft agreement has been reviewed by City staff and representatives of the West Des Moines Soccer Club. It has also been reviewed and approved by the Parks and Recreation Advisory Board which is recommending approval by the City Council.

OUTSTANDING ISSUES: None

RECOMMENDATION: Staff and the Parks and Recreation Advisory Board recommend that the City Council approve the Park Use Agreement.

Lead Staff Member: Greg Hansen, Superintendent of Recreation

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Parks & Recreation Advisory Board		
Date Reviewed	11/17/16		
Recommendation	Yes	No	Split

AGREEMENT

BETWEEN THE CITY OF WEST DES MOINES

AND THE

WEST DES MOINES SOCCER CLUB

FOR USE OF PARKS & RECREATION PREMISES

THIS AGREEMENT (hereinafter called "Agreement") is made this _____ day of _____, ~~2011~~2016, by and between the CITY OF WEST DES MOINES (hereinafter called "City") and the WEST DES MOINES SOCCER CLUB (hereinafter called "Association").

FOR AND IN CONSIDERATION OF MUTUAL PROMISES AND COVENANTS HEREIN CONTAINED THE PARTIES AGREE AS FOLLOWS:

I. Definitions

A. The term "City" shall mean the City of West Des Moines, Iowa and where necessary shall include the Mayor and City Councilmembers, employees, volunteers and agents of the City.

B. The term "Department" shall mean the City of West Des Moines Parks and Recreation Department. The term "Public Services Department" shall mean the City of West Des Moines Public Services Department.

C. The term "Association" shall mean the West Des Moines Soccer Club, its officers, directors, employees, volunteers and agents.

D. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to context.

E. The term "Premises" shall include the area in the attached diagram entitled Exhibit A, generally described as the area in Raccoon River Park for soccer.

II. Term

This Agreement shall commence on the above date of execution and shall continue until December 31, ~~2016~~ 2021 unless otherwise terminated at an earlier date as provided herein.

III. Extension of Agreement

The Agreement will automatically extend for an additional five (5) years unless the City has previously provided a Notice to Cure Default to the Association, pursuant to Section XI – Termination of this Agreement. If the City has previously provided such Notice to the Association, the parties must execute any extension of this Agreement in the form of a new

written Agreement. Any extension or renewal of this Agreement may include modifications to the original terms of this Agreement if mutually agreed to by the City and the Association.

IV. Field Usage

A. The soccer fields at Raccoon River Park so designated in the playing schedule shall be reserved for scheduled games, tournaments, and practices according to the Association's annual schedule. Any use of these fields by Association members or members of the general public shall be in accordance with the Association's field use and practice policy.

B. The Association may close the fields to the general public for repairs, renovation, or preparation for games or tournaments as long as the length of time is reasonable.

C. Any use of fields at Raccoon River Park by the Department shall be coordinated with the schedule of the Association's games and practices and shall be presented to the President of the Association by the Department.

D. Any use of the Premises by entities or organizations other than the Association shall require the written consent of the Department Director if that use is not sponsored by the Association. Request for approval of use must be submitted a minimum of ten (10) days prior to the use. Unless covered under the Association's insurance policy, proof of insurance coverage with the City of West Des Moines named as additional insured shall be provided by the entity or organization for all non-Association sponsored events prior to use.

V. Facilities and Improvements

A. Field lighting and scoreboards may be installed on the Premises by the Association with prior approval of the Department Director. Field lighting and scoreboards will not be installed by the City.

B. Overhead light bulbs on field lights will be maintained and insured by the Association for the full term of this Agreement. Any replacement(s) or repair(s) of the field light fixtures, poles or underground wiring is the responsibility of the Association.

C. Electric meters for field lights shall be listed in the Association's name with the electricity supplier and insured by the Association for the full term of this Agreement. Electrical use of lights for Association events shall be paid for by the Association. Any electrical use of the lights in tournament play or other activities scheduled by the Department shall be paid for by the Department.

D. All scoreboards used in conjunction with Association activities shall be repaired, maintained, replaced and insured by the Association for the full term of this Agreement.

E. Security lighting along the access road and in the parking lot at Raccoon River Park shall be repaired, maintained, and replaced by the City. Electrical use of security lighting shall be paid for by the City.

F. Irrigation systems may be installed on the Premises by the Association with prior approval of the Department and West Des Moines Water Works. If a well is involved, Iowa Department of Natural Resources approval shall also be required. Irrigation systems and wells will not be installed by the City. All installation, maintenance, replacement and repair of irrigation systems and wells are the responsibility of the Association.

G. Electric meters and water meters for irrigation systems shall be listed in the Association's name with the utility supplier and insured for the full term of this Agreement. Electrical and water use for irrigation shall be paid for by the Association.

VI. Concessions Operations

A. With prior written approval of the Department Director, the Association may contract with a third party to provide concession operations. Request for approval must be submitted a minimum of ten (10) days prior to start of concession operations and shall include all contact information for concessionaire. The concessionaire must meet all requirements of the City, including insurance coverage. The City reserves the ability to temporarily close down any concession operations until satisfactory proof is submitted to the Department Director that the concessionaire complies with all City requirements. If a third party contractor is used, then a certificate of insurance listing the Association and the City as additional insured will be provided to the City before the third party concession operations begin.

B. The Association may construct a concession/storage building to be utilized for concession operations either as a separate building or as a combined building with the restroom facilities provided by the City. In either case, the expense of the concession/storage building design and construction shall be the responsibility of the Association. Design of the concession/storage building shall be reviewed and approved by the City. Utilities for a permanent concession building, if any, shall be provided to the site by the City in the form of water (4" main with fire hydrant), sewer, and electrical service. All service connections from these utilities shall be the responsibility of the Association.

C. If a temporary concession facility is used by the Association, the Association shall pay for the installation of a paved pad. All temporary concession facilities shall be approved by the City.

D. The Association assumes all risks of concession operations and agrees to comply with all federal, state, and local laws and regulations and orders affecting the concession operation in regard to all matters including but not limited to the sale of, use of, and storage of foodstuffs and beverages.

E. The Association agrees to supply, repair, maintain, and replace at the sole cost and expense of the Association all equipment such as food preparation equipment, refrigeration, storage, and display equipment, other equipment, and property required for the necessary operation of the concession. The Association shall insure such property and equipment for the full term of this Agreement.

F. The Association agrees that all revenues derived from concession operations at Raccoon River Park shall be used to fund personnel, programs, equipment, facilities, or capital improvements in Raccoon River Park related to Association activities.

G. The Association agrees at all times to permit and allow free access to the concession operation by representatives of the ~~Parks and Recreation~~ Department, the Public Services Department, the Department of Health, and other city, county, state, or federal officials having jurisdiction for inspection purposes. The Association further agrees after any inspection and upon notification by a representative of any agency, that any part of the

premises or the facilities thereof are unsatisfactory, the Association will remedy the same at once.

VII. Maintenance Responsibilities

A. All requests for maintenance assistance from Public Services Department staff shall be submitted to the Parks Maintenance Supervisor at least seven (7) days in advance, except in emergency situations. If less than seven (7) days notice is given in non-emergency situations, the Association shall pay the full cost of any overtime hours worked by ~~the~~ Public Services Department staff if applicable.

B. The Public Services Department will provide an adequate number of barrels for litter and empty all containers on a regular basis. The Association is responsible for picking up litter and debris on the ground within the Premises and shall do so within twenty-four (24) hours upon receiving notice from the Department.

C. The Public Services Department shall provide permanent restrooms at Raccoon River Park during the period of time the restrooms are open to the public (typically April 15 to October 15). Dates are subject to change according to weather conditions. Permanent restrooms will be maintained by the Public Services Department. The Association may be responsible for stocking restroom supplies as necessary.

D. Up to three (3) portable toilets will be provided by the City within the Premises when permanent restrooms are not available during the Association's regular season. The Public Services Department shall be responsible for the maintenance of the portable toilets provided by the City. Additional portable toilets may be utilized at any time during the Association's regular season at the Association's expense. Maintenance of portable toilets provided by the Association will be the responsibility of the Association.

E. A ~~Department~~ City employee or City-contracted security officer will check and lock all permanent restrooms in the Association's area every evening between 10:30 p.m. to 12:00 a.m. during the period of time the restrooms are open to the public.

F. Duplicate keys must be supplied to the Superintendent of ~~Parks~~ Recreation and Parks Maintenance Supervisor for any lock used by the Association. If a lock is changed, keys must be made available immediately to the Superintendent of ~~Parks~~ Recreation and Parks Maintenance Supervisor. All alarm system codes and instructions for their use must be supplied to the ~~Department~~Superintendent of Recreation and Parks Maintenance Supervisor. Any costs incurred by the ~~Department~~ City resulting from failure of the Association to comply with this provision shall be the sole responsibility of the Association.

G. All roads and parking lots will be maintained by the Public Services Department.

H. All grass will be mowed by the ~~Department~~ Association on a regular basis ~~(typically one mowing per week). If additional mowing is needed, the Association will be responsible for keeping grass at the height required by the Association.~~ The Association will maintain all goal areas and mark the fields. All sod used for repair of goal areas shall be purchased and laid by the Association.

I. ~~At the request of the Association, the~~The Public Services Department will fertilize all soccer field areas consistent with sports turf management standards ~~once a year as part of its system-wide turf program~~. The Public Services Department will also apply a pre-

emergent product for crabgrass prevention and a grub preventative in a manner and timing as determined by the Public Services Department according to product labeling. The cost of any additional materials needed as determined by soil testing or as requested by the Association (i.e. micronutrients, lime, etc.) will be the responsibility of the Association. The Public Services Department will provide the labor and equipment to apply the material for additional applications at no cost to the Association.~~The purchase of additional fertilizer or seed shall be the responsibility of the Association, and application thereof shall require the prior approval of the Superintendent of Parks. Any cost of additional fertilization or seeding done by the Department shall be borne by the Association.~~

J. ~~At the request of the Association, the~~The Public Services Department shall spray the area for broadleaf weeds as part of their overall system-wide weed control program with one spot spray in the spring and one spot spray in the fall. The cost of any additional materials needed (i.e. fungus control, etc.) will be the responsibility of the Association. The Public Services Department will provide the labor and equipment to apply the material for additional applications at no cost to the Association. ~~Additional broadleaf control or other pesticide/herbicide use may be requested by the Association to be done by the Department. Any cost of additional spraying shall be borne by the Association.~~ Under no circumstances may the Association permit or contract for individuals or businesses to apply fertilizer, pesticides or herbicides to the Premises or any other public property without prior written approval from the ~~Superintendent of Parks~~Department Director.

K. Except as provided herein, the Association, at its expense, shall care for, maintain and keep in repair and in a safe and serviceable condition all structures such as concession stands, irrigation systems, fences, goals, bleachers, and benches which are used during Association sponsored activities. Any damaged structure or equipment must be reported to the Superintendent of ~~Parks~~ Recreation within 24 hours. Restrooms, parking lots, roadways, and security lighting shall be maintained by the City as above-mentioned.

L. The Association will be responsible for maintaining the fields within the Premises in a safe and usable condition. The City will have the right to inspect the fields and request that deficiencies be remedied within a reasonable timeframe. If deficiencies are not timely remedied, the City will have the right to cancel or postpone any activity taking place on the deficient field or fields. Any failure by the Association to timely remedy deficiencies to the satisfaction of the City shall constitute a default of this Agreement and the City may elect to terminate this Agreement, pursuant to Section XI – Termination of this Agreement.

VIII. Improvements

A. Any field or structure improvements or changes, paint colors, and facility naming requests must be approved by the Department Director, and if applicable, the Parks and Recreation Advisory Board, the Planning and Zoning Commission, and/or the City Council in advance. Exterior paint will be provided by the Public Services Department with labor supplied by the Association.

B. The Association shall not erect, post or exhibit signs within the facility unless approval is first given by the Department Director. All signs shall comply with the ordinances of the

City and any rules and regulations adopted by the Parks and Recreation Advisory Board or the Department. Any signs removed or taken down by the Association shall not damage any building or facility.

C. The Association shall be solely responsible for acquiring at its own expense from corporate, federal, state, county, or local agencies or governmental units all permits for operations, improvements or changes.

IX. Insurance Requirements

A. The Association shall at its cost and expense, procure and maintain insurance for the term of this Agreement. The insurance provider shall be authorized to do business in Iowa and shall have received a rating of A or better in the current Best's Rating Guide. The insurance provider shall certify in writing that any policy of insurance required herein with an aggregate limit of liability has not been reduced by paid or reserved claims at the time of issuance or renewal of the policy or certificate covering the operation and/or event.

B. The City of West Des Moines shall be named as an additional insured under each policy or certificate. The original certificate of insurance shall be delivered to the City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, Iowa 50265. A copy of the certificate shall also be submitted to the Superintendent of ~~Parks~~ Recreation for the Department's records. Each policy and certificate shall have endorsed thereon: "No cancellation of or change in this policy shall become effective until after ten (10) days written notice by registered mail to: "City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, Iowa 50265".

The policy shall provide the following amounts of insurance coverage. The City reserves the right to review and revise the insurance coverage amounts as deemed necessary.

Worker's Compensation and Employers Liability	Statutory Requirements
Commercial General Liability	
General Aggregate Liability	$2,000,000
Products Completed Operation Aggregate Limit	$1,000,000
Personal and Advertising Injury Limit	$1,000,000
Each occurrence limit	$1,000,000
Comprehensive automobile & motor vehicle/ Liability insurance for vehicles owned, non-owned or rented and underinsured and uninsured automobile & vehicle liability	$500,000 per occurrence
Medical payments (any one person)	$5,000

Legal liability to participants $5,000

C. Upon failure of the Association to furnish, deliver and maintain such insurance as provided, this Agreement may, at the election of the City, be forthwith declared suspended, discontinued or terminated. Failure of the Association to procure and/or maintain the required insurance shall not relieve the Association from any liability under this Agreement, nor obligations of the Association concerning indemnification. All required insurance shall be in effect and continued during the term of this Agreement.

D. The City recommends a bonding policy covering all members who handle money in the Association.

X. General Covenants, Policies and Conditions

A. All eligible residents of West Des Moines shall be permitted to participate in the Association's programs. The Association shall comply with all federal, state, and municipal equal opportunity laws and regulations prohibiting discrimination including adherence and compliance with the Americans with Disabilities Act.

B. The Association shall encourage all participants to abide by all federal, state, county and city laws, ordinances and regulations including all regulations adopted and established by the City Council, Parks and Recreation Advisory Board, and Department.

C. Emphasis should be given in communications to participants that parking is to take place in lots designated for Association use. There is to be no parking on the grass or in non-designated parking spaces.

D. The Department Director or his designee reserves the right to cancel or postpone any activity or eject any person(s) from the facility due to conflicts, disregarding of rules and regulations of the Department, adverse weather, or uncontrollable circumstances. Safety of the participants prevails.

E. The City requires that all active coaches receive training for youth sports coaches as provided by the Association and reviewed and approved by the Department.

XI. Termination

A. At the expiration of this Agreement or any extension thereof, or sooner as hereinafter set forth, the Association shall surrender the Premises and all City property thereon, in as good condition as when taking possession by the Association.

(1) The Association may be relieved in whole or in part of any or all of the obligations of this Agreement for such stated periods of time as the Parks and Recreation Advisory Board may deem proper upon written application showing circumstances beyond the control of the Association warranting such relief. The City shall respond in writing authorizing or rejecting said request.

(2) Upon default by the Association of any of the terms and provisions of this Agreement, this Agreement may be terminated or cancelled at the option of the City, provided, however, before termination or cancellation, the City,

shall give written notice to the Association's President or other officer by certified mail or personal service specifying the default or defaults and stating the Agreement will be cancelled and forfeited ten (10) calendar days after giving of such notice unless such default or defaults are remedied within such time period. A longer time period to remedy a default may be granted by the City, at its sole discretion. The City must determine that it has exhausted oral and written communications to the Association in an effort to have the Association sufficiently address and remedy the City's concerns prior to issuing the Notice to Cure Default, unless the basis for the Notice to Cure Default is that the default has or will create an immediate hazard to any soccer participants or spectators or has or will create a significant liability exposure to the City. Any bankruptcy or insolvency proceedings by the Association shall, at the City's option, immediately terminate this Agreement and the facility under the control of the Association shall vest with the City. Upon proper notice from the City to the Association as herein provided, any default of this Agreement by the Association that is not timely cured or remedied shall constitute a material and substantial breach of this Agreement. If the City is required to expend any money to fulfill the terms, conditions and obligations of this Agreement, either during the term of this Agreement by reason of default or after termination of the Agreement, the Parks and Recreation Advisory Board, the City, or its assigns may pursue reimbursement or any costs directly from the Association, or may seek any legal or equitable remedy available, including costs and attorney fees occasioned by such action.

(3) The Association nor any one claiming by, through or under the Association, shall not have the right to file or place any Mechanic's Lien or other lien of any kind or character whatsoever, upon the premises, facilities, or building controlled by the Association under this Agreement, and notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service or labor for any improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien thereon.

B. If this Agreement is terminated and is not extended, all fencing, buildings, light poles, and underground irrigation systems including controllers shall remain the property of the City. No compensation will be paid by the City to the Association for the above improvements. Scoreboards, light fixtures, bleachers, and concession stand equipment shall be considered property of the Association, unless they were originally purchased by the City, and may be removed from the site. If any property is removed upon expiration of this Agreement, the Premises shall be restored to as good condition as existed upon commencement of this Agreement.

XII. Dispute Resolution

Any concerns or questions regarding interpretation or application of the provisions of this Agreement shall first be submitted to the Superintendent of ~~Parks~~Recreation. The Department Director, City Manager, member of the City Council or the Parks and Recreation

Advisory Board may become involved in the resolution process. The parties may seek to resolve any disputes by alternative dispute resolution methods prior to pursuing legal or equitable remedies.

XIII. Submittals

A. The following shall be submitted to the Superintendent of ~~Parks~~ Recreation by March 15 of each year or prior to any activity taking place in Raccoon River Park:

(1) Roster of current officers' names, e-mail addresses and phone numbers.
(2) List of emergency contact names, e-mail addresses and phone numbers.
(3) Roster of coaches who have satisfactorily completed an approved training program for youth sports coaches.
(4) Schedule of Association activities.
(5) Current Association by-laws.

B. In addition, the Association shall submit the required certificate of insurance to the City Clerk and to the Superintendent of ~~Parks~~ Recreation on an annual basis, prior to the expiration of the existing insurance policy. If the Association fails to do so, then upon written demand by the City or Department, the Association must provide the City or Department with the required certificate of insurance within five (5) business days of the date of the written demand. If the Association does not comply within five (5) business days, then the Association is in default of this Agreement. The Association is in default, according to the terms of Section IX – Insurance Requirements, Paragraph B, if there is no insurance coverage at any given time during the term of this Agreement.

C. An annual report shall be submitted by the Association to the Superintendent of ~~Parks~~ Recreation no later than March 15 of each calendar year which shall include, but not be limited to, current participation figures, latest fiscal year-end and interim financial statements, evaluation comments, field use and practice policies, and any facility improvement requests. The Association shall attend a regular meeting of the Parks and Recreation Advisory Board to present the annual report no later than the Board's regular May meeting.

D. All tournaments or other activities outside regular league play shall be communicated to the City. The Association shall submit Tournament Communication Forms to the Superintendent of ~~Parks~~ Recreation a minimum of thirty (30) days prior to the tournament or activity.

E. Minutes from all Association meetings shall be submitted to the City or posted to the Association's website within sixty (60) days following the meeting.

XIV. Release of Liability and Hold Harmless

A. The City and the Association hereby agree to indemnify and hold the other party, its elected officers, agents, employees, successors, and assigns, harmless from any and all claims, demands, actions, judgments, settlements, or other costs, including reasonable attorneys' fees, which the party may incur or sustain due to negligent, reckless, or willful conduct attributed to the party, relate to the execution of this Agreement. For the purposes of this Section, "City" includes those persons described in Section I – Definitions, Paragraph A, as well as West Des Moines Water Works. As a condition of

this Agreement, each party must provide the other party with prompt notice of any such claim, demand, or action and all necessary information and assistance so that the indemnifying party, at its option, may defend or settle such claim, demand, or action. In the event that any such claim, demand, or action is caused by the joint or concurrent negligence of both parties, then the loss, expense, or claim shall be borne by each party in proportion to its respective negligence in causing said loss, expense, or claim.

B. The parties specifically agree that the City is not liable for any loss or damage sustained by reason of any defects, deficiencies, or impairments of the electrical apparatus or wires furnished for the concession operations, lighting, or scoreboards, by reason of any loss of water supply or electrical current which may occur from time to time from any cause, or for any loss resulting from fire, water, tornado, explosion, vandalism, civil commotion or riot, or any act of God.

C. The parties also specifically agree that the City is not liable for any failures by the Association to pay taxes, assessments, sales taxes, withholding taxes, or other public charges levied or assessed by reason of the operation of the Association's activities or programs.

XV. Notices

Notices to be sent pursuant to the Agreement shall be sent to the other party by Certified Mail, with return receipt and addressed as follows:

For the City:
Director of Parks & Recreation
4200 Mills Civic Parkway
P.O. Box 65320
West Des Moines, IA 50265

For the Association:
President, WDM Soccer Club
P.O. Box 25023
West Des Moines, IA 50265

WEST DES MOINES SOCCER CLUB

_____

~~Pete Olberding~~Chuck Ebeusberger, President

CITY OF WEST DES MOINES

_____

Steven K. Gaer, Mayor

Attest:

_____

~~Jody E. Smith, Deputy City Manager/~~Ryan Jacobson, City Clerk