CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: March 21, 2022

ITEM: Motion – Approval of Park Use Agreement – Sportsplex West, LLC

FINANCIAL IMPACT: None

BACKGROUND: The five-year Park Use Agreement between the City and West Des Moines Sportsplex West was set to expire on December 31, 2023. Sportsplex West met with City staff and discussed the possibility of renewing the Park Use Agreement for a new five-year term. With new sports complexes being built in neighboring communities, both parties saw the advantages of solidifying the successful partnership between the City and Sportsplex West by establishing a new five-year agreement now rather than waiting for the original agreement to expire.

More than 3,400 players and 286 teams participated in their Open Baseball League and Competitive Baseball League in 2021. For the first time, Holiday Park hosted three different seasons with SportsPlex West - spring, summer, and fall.

Other than the extension of the term and updated insurance requirements, no changes are being made to the current agreement. The agreement has been reviewed by the Legal Department and representatives of Sportsplex West.

The Parks and Recreation Advisory Board approved the agreement at their regular meeting on March 17, 2022.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the City Council approve the Agreement.

LEAD STAFF MEMBER: Ryan Penning, Assistant Director of Parks and Recreation

STAFF REVIEWS

Department Director	Sally Ortgies, Director of Parks & Recreation
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	
Date Reviewed	

AGREEMENT
BETWEEN THE CITY OF WEST DES MOINES
AND
SPORTSPLEX WEST, LLC
FOR PROVISION OF YOUTH BASEBALL SERVICES
AND USE OF PARKS & RECREATION PREMISES

THIS AGREEMENT ("Agreement") is made this _____ day of _____, 2022, by and between the City of West Des Moines, Iowa, an Iowa municipal corporation ("City") and Sportsplex West, LLC, ("Corporation").

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.

C. The term "Department Director" shall mean the City of West Des Moines Director of Parks and Recreation or his or her designee.

D. The term "Supervisor" shall mean the City of West Des Moines Recreation Program/Facility Supervisor or their designee.

E. The term "Corporation" shall mean Sportsplex West, its officers, directors, employees, sub-contractors, volunteers and agents.

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

G. The term "Premises" shall include the area in the attached diagram entitled Attachment A, generally described as the area in Holiday Park for baseball, excluding the softball and aquatic center areas, and bounded by the parking lot curb closest to the baseball fields.

II. Term

This Agreement shall commence on the above date of execution and shall continue until December 31, 2026 unless otherwise terminated at an earlier date as provided for herein. If both parties agree, this Agreement may be extended for one additional term, not to exceed five (5) years. Any extension of this Agreement shall be effective only if in writing and executed by both parties prior to the end of the original term. The renewal may include modifications to the original terms of this Agreement if mutually agreed to by the City and the Corporation.

III. Scope of Services

A. The Corporation hereby agrees to provide youth baseball services during the term of this Agreement at no charge to the City. Services shall include the following programs:

1. Open Recreational League. All eligible residents of West Des Moines shall be permitted to participate in the program.

2. Subject to the approval of the City, which will not be unreasonably withheld or delayed, the Corporation may change Open League fees based on common practice throughout the Midwest and the rate of inflation.

IV. Field Usage and Rental

A. The Premises shall be reserved for scheduled games, tournaments, programs, and practices according to the Corporation's annual schedule. Any use of the Premises by Corporation members or members of the general public shall be in accordance with the City's and the Corporation's field use schedule. Field rental prices are shown on Attachment B.

Additional charges may apply depending on the type of use of the Holiday Park Baseball Complex. The City reserves the right to change rental and tournament fees on an annual basis.

B. The City may close the Premises to the general public and Corporation for repairs, renovation, or preparation for games or tournaments as long as the dates and length of time are reasonable.

C. Any use of the Premises by entities or organizations on behalf of the Corporation shall require the written consent of the Director of Parks and Recreation and/or his/her designee, if that use is not directly sponsored by the Corporation. Request for approval of use must be submitted and approved by the Department prior to the Corporation contracting with any outside organization. Unless covered under the Corporation's insurance policy, proof of insurance coverage in the amounts and form as specified below in section IX of this Agreement shall be provided by the entity or organization for all non-Corporation sponsored events prior to use.

V. Facilities

A. Lighting
All field lights shall be repaired, maintained, and replaced by the City for the full term of this Agreement. Any replacement or repair of the field light fixtures, poles, bulbs, or underground wiring is the responsibility of the City. Electric meters for field lights shall be listed in the City's name with the electricity supplier and insured by the City for the full term of this Agreement. All electrical charges shall be paid for by the City.

B. Scoreboards
All scoreboards used in conjunction with Corporation activities shall be repaired, maintained, and replaced by the City.

C. Security Lighting
Security lighting along the access roads and in the parking lots at Holiday Park shall be repaired, maintained, and replaced by the City. Electrical charges from security lighting shall be paid by the City.

D. Irrigation Systems
All irrigation systems and their component parts shall be installed, repaired, maintained, and replaced by the City.

Electricity and water used for irrigation purposes shall be separately metered and paid for by the City. Electric meters and water meters for irrigation systems shall be listed in the City's name with the utility supplier and insured for the full term of this Agreement.

E. Restrooms
The City shall provide permanent restrooms on the Premises 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 City. The Corporation will have access to a key for stocking restroom supplies, provided by the City, as necessary. A City employee, City-contracted cleaning service or security guard will check, open and close all permanent restrooms within the Premises daily during the period of time the restrooms are open. Some permanent restrooms are automatically opened and closed. The Corporation will have access to a key and can open and close the permanent restroom closest to the concession building on weeknights as needed.

F. Portable Toilets
Up to four (4) portable toilets will be provided by the City within the Premises when permanent restrooms are not available during the Corporation's regular season. The City shall be responsible for the maintenance of portable toilets provided by the City. Additional portable toilets may be utilized at any time during the Corporation's regular season at the Corporation's expense. The City may require additional portable toilets for tournaments to be supplied by the Corporation at the Corporation's expense.

G. Bleachers
The City shall provide bleachers. The City shall be responsible for the installation, inspection, repair and maintenance of all bleachers within the Premises.

H. Storage
The Corporation may store equipment in the designated office area of concession and storage buildings located within the premises. All fire and building code requirements shall be followed.

VI. Concessions Operations

A. With prior written approval of the Department Director, the Corporation may contract with a third party to provide concession operations ("Concessionaire"). Request for approval must be submitted and approved by the Recreation Facility/Program Supervisor. The Concessionaire must meet all requirements of the City, including without limitation, insurance coverage. If a Concessionaire is used, then a certificate of insurance listing the Corporation and the City as additional insured must be provided before the concession operations begin. The City reserves the ability to temporarily close any concession operations until satisfactory proof of insurance is submitted to the Department Director and the Concessionaire complies with all City requirements.

The Corporation and Concessionaire must sign a separate Concession Facility Agreement. The Agreement will coincide with the Youth Baseball Agreement with the Corporation and shall be terminated on the final date of the Agreement unless terminated at an earlier date as provided for herein.

B. The Corporation and any duly contracted Concessionaire 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.

C. The Corporation and any duly contracted Concessionaire agrees to supply, repair, maintain, and replace at its sole cost and expense all equipment such as food preparation equipment, refrigeration, storage, and display equipment and other equipment and property required for the necessary operation of the concession. The Corporation shall insure such property and equipment for the full term of this Agreement, including any extensions to this Agreement. The Corporation shall be responsible for cleaning grease trap annually with a certified cleaning service.

D. The Corporation, and any duly contracted Concessionaire at the sole cost and expense of the Corporation, shall care for, maintain, and repair to the satisfaction of the Department all property and equipment assigned to the Corporation by the City for concession purposes. The Corporation shall insure such property and equipment for the full term of this Agreement, including any extensions to this Agreement.

E. The Corporation and any duly contracted Concessionaire agrees at all times to permit and allow free access to the concession operation by representatives of the Department, the Polk County Department of Health, and other city, county, state, or federal officials having jurisdiction for inspection purposes. The Corporation further agrees after any inspection and upon notification by a representative of any agency, that any part of the Premises or the facilities are unsatisfactory, the Corporation will remedy the same at once.

F. Water supply to the concession building shall be turned on by approximately April 15 of each year. The City shall be responsible for testing the backflow preventer for the concession building.

G. The City reserves the right to permit and allow non-profit organizations to hold events and to otherwise conduct authorized activities at the Holiday Aquatic Center and Holiday Park and to permit the sale of food, beverages, novelties, etc., either directly or through the concessionaires of the City's choice as incidental to and in the course of such event or activity. The Corporation shall have the first right of refusal for providing concession services to events occurring on the fields within the Premises.

H. The Corporation shall be responsible for placing the water, sewer, and electricity for the concession stand in its name and paying the bill for same for the term of this agreement, including any extensions thereof.

I. All revenue from concession operations shall remain with the Corporation.

VII. Maintenance Responsibilities

A. All requests for maintenance assistance from the City shall be submitted to the 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 Corporation shall pay the full cost of any overtime hours worked by City, if applicable.

B. The City will provide an adequate number of containers for litter and will empty all containers on a regular basis. If Department staff time is required to pick up litter within the Premises, the Corporation will be responsible for all related costs. The City will provide one (1) dumpster for use by the Corporation.

C. The City will provide copies of all needed keys. Duplicate keys must be supplied to the Supervisor-for any lock used by the Corporation. All alarm system codes and instructions for their use will be supplied to the Corporation along with a call list.

D. All roads and parking lots will be maintained by the City. At no time shall any equipment or materials be stored in roads or parking lots by the Corporation. Smaller vehicles will be allowed to enter facility for deliveries to Concession Stand but must stay on concrete pathways and must be moved immediately.

E. Under no circumstances may the Corporation permit or contract for individuals or businesses to apply fertilizer, pesticides or herbicides to any public park lands.

F. Except as provided herein, the City, at its expense, shall care for, maintain, and keep in repair and in a safe and serviceable condition all structures, such as concession stands, scoreboards, storage buildings, irrigation systems, fences, bleachers, dugouts, and benches which are used during Corporation sponsored activities. Any damaged structure, field, or equipment must be reported by the Corporation to the Department's Supervisor within twenty-four (24) hours.

VIII. Improvements

A. The Corporation shall not make any utility, field or structure additions, improvements or changes.

B. The Corporation 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.

IX. Insurance Requirements

The Corporation shall at its cost and expense, procure and maintain casualty and liability 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.

The City shall be named as additional insured under the commercial general liability policy and automobile policy. 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 Recreation Program/Facility Supervisor for the Department's records.

The Corporation shall obtain and maintain through the term of this Agreement, insurance with terms and limits of coverage equal to or in excess of those set forth in the specifications governing the Agreement, but in no event, are such terms and limits to be less than those set forth below. The limits of liability under insurance policies required by this Agreement shall in no-way limit the Corporation's actual liability.

Commercial General Liability
Including coverage for premises and operations, independent contractors, products & completed operations, contractual liability, explosion, collapse and underground hazards (XCU), personal injury/advertising injury. The limits can be satisfied by providing a primary policy or in combination with an excess liability policy. The City shall be named as additional insured on a primary and non-contributory basis. The policy will include waiver of subrogation endorsement in favor of the City of West Des Moines.

Bodily Injury & Property Damage - Each Occurrence	$1,000,000

Personal Injury & Advertising Injury - Per Person	$1,000,000
General Aggregate on the Above	$2,000,000
Products& Completed Operations General Aggregate	$2,000,000
Fire Damage Limit	$100,000
Medical Expense Limit	$5,000

Business Automobile Liability Insurance
Including coverage for all owned, non-owned and hired automobiles with limits of liability not less than the following. The limit can be satisfied by providing a primary policy or in combination with an excess liability policy. The City of West Des Moines would be added as an additional insured on a primary and non-contributory basis. The policy will include waiver of subrogation endorsement in favor of the City of West Des Moines.

Bodily Injury & Property Damage – Each Accident	$1,000,000

Workers Compensation and Employers Liability,
As required by any applicable law or regulation. The policy will include waiver of subrogation endorsement in favor of the City of West Des Moines.

Part 1- Workers Compensation Benefits	Statutory

Employers Liability:

Bodily Injury Each Accident	$500,000
Bodily Injury by Disease Policy Limit	$500,000
Bodily Injury by Disease Each Employee	$500,000

Umbrella Liability
The Corporation will maintain umbrella liability insurance on an occurrence basis in excess of the general liability, automobile liability and employer's liability insurance described above which is at least broad as all underlying policies including but not limited to additional insured and waiver of subrogation and Primary and non-contributory.

Each Occurrence Limit	$5,000,000
Aggregate Limit	$5,000,000

Property Insurance
The Corporation will have property coverage on any property required per contract that is kept on the City property against loss or damage with a limit not less than $50,000.
Any subcontractors utilized shall be subject to the same insurance requirements above.

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

C. The City recommends a bonding policy covering all members who handle money in the Corporation.

X. General Covenants, Policies and Conditions

A. All eligible residents of West Des Moines shall be permitted to participate in Open Baseball League The Corporation 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 (ADA).

B. The Corporation 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 and the Department.

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

D. The Supervisor reserves the right to cancel or postpone any activity or eject any person from the facility due to conflicts, disregarding of rules and regulations, 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 Corporation and reviewed and approved by the Department.

F. The City requires that the Corporation run a check of the State of Iowa sex offender registry on all volunteers, coaches and employees of the Corporation at least once every year. The City also requires that criminal background checks be performed on all volunteers, coaches and employees of the Corporation at least once every year.

G. Mandatory Drug and Alcohol Testing Programs. Corporation certifies that all of their employees who may operate a commercial motor vehicle are included in a substance abuse program that meets the requirements of Federal Department of Transportation Drug and Alcohol Testing regulations (Code of Federal Regulations, 49CFR, Part 382 and Part 40).

H. Right-To-Know Statement. Corporation certifies that, in accordance with the "Hazard Communication Rule", 29 CFR 1910.120 (the "Right-To-Know" Law) and the State of Iowa "Hazardous Chemicals Risk Right-to-Know Rule", employees exposed to materials on the worksite will be trained for the materials in use by the Contractor as part of the contract. Material Safety Data Sheets (MSDS) for City materials will be supplied to the Corporation upon request.

I. ADA Statement. The City does not discriminate on the basis of disability. If you believe you have been discriminated against in any program or facility, you may file a complaint alleging the discrimination with the ADA Coordinator through the City Manager's office. The TDD line for the City of West Des Moines is 222-3334.

J. FLSA Statement. "We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."

K. Discrimination. The City of West Des Moines does not discriminate on the basis of age, color, creed, disability, gender identity, national origin, race, religion, sex, sexual orientation, or veteran status. Corporation agrees not to discriminate against any employees or applicants for employment on the basis of age, color, creed, disability, gender identity, national origin, race, religion, sex, sexual orientation, or veteran status and to include a similar non-discrimination provision in all agreements associated with this professional services agreement.

L. Authority/Direction. The Corporation and his designated personnel shall respond to requests made by the City in a positive, courteous and timely manner. The City reserves the right to reject any equipment or personnel from continued or further engagement of services due to incompetence or inability of equipment to function properly for the requested services.

M. Damages. The Corporation shall be responsible for any and all damage to public property (including public utilities), private property, or personal injury due to its own or its employees' negligence, intentional or reckless conduct in maintaining facilities on Premises.

N. Independent Contractor Relationship. The Corporation and the City acknowledge that employees of the Corporation shall not be City employees and the parties further acknowledge an independent contractor relationship between the City and Corporation and that all individuals employed by the Corporation or a sub-contractor shall be employees of the Corporation only. In this regard, the Corporation shall have the right to control and direct its employees and shall have the right to hire and fire said employees.

O. Anti-Bullying Statement. The Parks & Recreation Department will not tolerate bullying* in any youth program or activity, and Corporation will do all they reasonably can to create a safe space for participants, regardless of an individual's actual or perceived age, color, creed/denomination, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes/appearance, physical or mental ability or disability, ancestry, political belief, socioeconomic status, or familial status.
**For the purposes of this statement, bullying is defined as the unwanted, aggressive use of physical, social or mental/intellectual power to control, harm or humiliate another person in a repetitive or pervasive manner.*

XI. Submittals

A. The following shall be submitted to the Supervisor by March 1 or prior to any Corporation activity taking place on the Premises.

(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 (to be submitted by April 1).
(4) Schedule of Corporation activities, including all tournaments.
(5) List of prices being charged to participants for all open and competitive league activities.

B. In addition, the Corporation shall submit the required certificate of insurance to the Supervisor on an annual basis, prior to the expiration of the existing insurance policy. If the Corporation fails to do so, then upon written demand by the City or Department, the Corporation 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 Corporation does not comply within five (5) business days, then the Corporation is in default of this Agreement. Moreover, the Corporation is in default, according to the terms of Section X – Insurance Requirements, Paragraph B, if there is no insurance coverage at any given time during the term of this Agreement.

C. A report shall be submitted by the Corporation to the Department Director by March 1 of each year of the Agreement. The report shall include, but not be limited to, current and anticipated participation figures, annual expenses and revenue and participation satisfaction survey results.

D. The Corporation agrees to work with the City to send all participants an annual survey to measure customer satisfaction with the program. The City shall develop and administer the survey through an independent service and provide survey results to the Corporation.

E. The Corporation shall attend a regular meeting of the City's Parks and Recreation Advisory Board in February each year of the Agreement to present the report and also attend any other meetings requested by the Department Director. Regular meetings with Department staff will be scheduled during the operating season.

XII. Termination

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

1. The Corporation may request to 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 City Council may deem proper upon written application showing circumstances beyond the control of the Corporation warranting such relief. The City shall respond in writing authorizing or rejecting said request. The Corporation also reserves the right to terminate this Agreement if the City does not follow through on the planned capital improvements to the ball field playing surfaces.

   - FY 21-22: Holiday Park Baseball – Phase 6 – Maintenance building improvements
   - FY 22-23: Holiday Park Baseball – Phase 7 – Fields 3 and 4 (construction)

   The Corporation may also terminate this Agreement if the Premises is not maintained properly to provide a reasonably safe playing environment for participants and spectators. The Corporation shall provide written notice of these deficiencies and give the City 10 days to respond in writing on how the City plans to remedy this situation.

2. Upon default by the Corporation of any of the terms and provisions of this Agreement, and following the recommendation of the City's Parks and Recreation Advisory Board and action taken by the City Council, this Agreement may be terminated or cancelled at the sole option of the City, provided, however, before termination or cancellation, the Department Director, shall give written notice to the Corporation, pursuant to Section XV – Notices of this Agreement, by Certified Mail, with return receipt, or personal service specifying the default or defaults and stating the Agreement may be deemed by the City's sole judgment to 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 Department Director in his or her sole discretion. A shorter time period to remedy a default may be deemed necessary by the Department Director in his or her sole discretion if the Department Director determines that the basis for the default has or will create an immediate hazard to any participants or spectators or has or will create a significant liability exposure to the City. The Department Director, in his or her sole discretion, may also direct the Corporation to immediately cease its activities related to this Agreement if the Department Director determines that an immediate hazard to any participants or spectators or a significant liability exposure to the City has or will exist. Any bankruptcy or insolvency proceedings by the Corporation shall, at the City's sole option, immediately terminate this Agreement without prior notice and the Premises
3. under the control of the Corporation shall vest with the City. Upon proper notice from the Department Director to the Corporation as herein provided, any default of this Agreement by the Corporation that is not timely cured or remedied shall constitute a material and substantial breach of this Agreement.

4. 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 City, or its assigns may pursue reimbursement of any costs directly from the Corporation, or may seek any legal or equitable remedy available, including costs and attorney fees occasioned by such action.

5. The Corporation nor any one claiming by, through or under the Corporation, 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 Corporation 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, all infield material, fencing, light poles, light fixtures, scoreboards, buildings, dugouts, batting cages, underground irrigation systems including controllers, and other fixed equipment shall remain the property of the City. No compensation shall be paid by the City to the Corporation for any of the above improvements financed by the Corporation. Portable bleachers, portable batting cages, and non-fixed equipment shall be considered property of the City, unless they were purchased or provided by the Corporation. 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.

C. All databases, contact lists, and client information shall remain the property of the Corporation.

XIII. Dispute Resolution

Any concerns or questions regarding interpretation or application of the provisions of this Agreement shall first be submitted to the Department Director. The Department Director, City Manager, members of the City Council or the City's Parks and Recreation Advisory Board may become involved in the resolution process. Upon mutual agreement of the parties, they may, but are not required to, seek to resolve any disputes by alternative dispute resolution methods prior to pursuing legal or equitable remedies.

XIV. Release of Liability and Hold Harmless

A. The City and the Corporation hereby agree to defend, 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, related 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 Corporation to pay taxes, assessments, sales taxes, withholding taxes, or other public charges levied or assessed by reason of the operation of the Corporation's activities or program.

XV. Notices

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

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

For the Corporation:
Patrick A. Yacinich
Sportsplex West
890 SE Olson Drive
Waukee, IA 50263

Sportsplex West

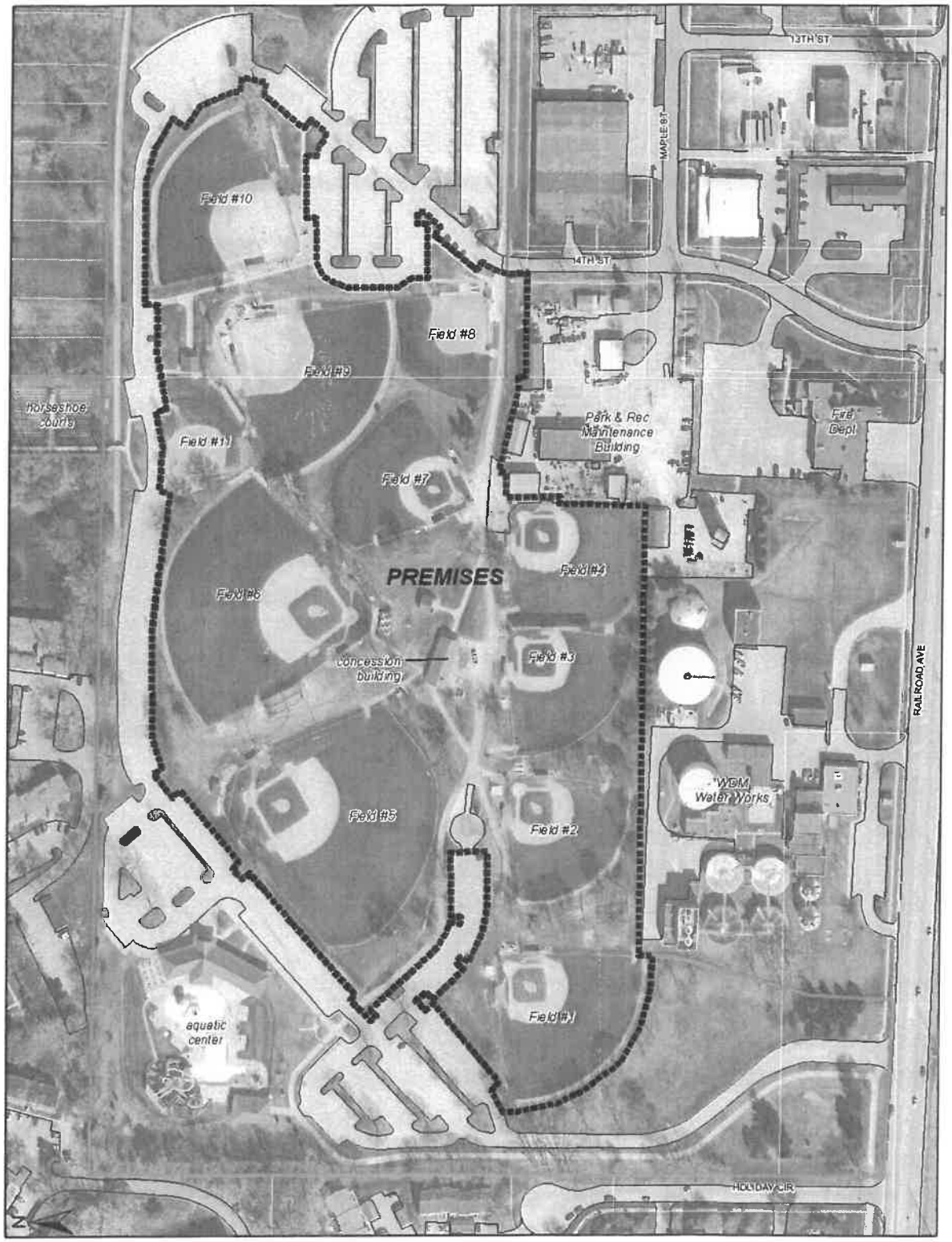
City of West Des Moines

Russ Trimble, Mayor

Attest:

Ryan Jacobson
City Clerk

Attachment A



Attachment B

Field Rental Rates

Open League games = $35 per game slot

Open League practices = $17.50 per hour

Competitive League games = $50 per game slot

Competitive League practices = $25 per hour

Premier Baseball league = $50 per game slot

Corporation sponsored programs, camps and clinics = $50 per game slot

Tournaments = $500 Deposit, $50 per game or $25 per hour, $25 per field/per day Restroom Maintenance Fee

All other rentals = $50 per game slot

Game Slot = 2 hours