

WARNER PARK STORAGE AREA USE AGREEMENT

Between the City of Madison and Warner Park Cardinals Youth Football Program, Inc.

THIS AGREEMENT, is made and entered into by and between the City of Madison, a Wisconsin municipal corporation (“City”), and Warner Park Cardinals Youth Football Program, Inc., a Wisconsin non-profit corporation (“Program”), and is effective as set forth herein.

WITNESSETH:

WHEREAS, the Program is a non-profit corporation, that formed in 1972 for the purposes of organizing and teaching youth football on the north-side of the City, and currently oversees football teams and cheerleading squads for 4th through 8th graders; and,

WHEREAS, the Program uses the City’s athletic fields at Warner Park as its home fields, but is in need of on-site equipment storage to assist its operations; and,

WHEREAS, the City has available storage space at Warner Park to accommodate the Program and the Parks Division is agreeable to allowing the Program to use this space, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to grant the Program the permission to use City storage space within Warner Stadium at Warner Park, which space is depicted on Attachment A (the “Premises”), to store youth football equipment, and also permitting the Program to distribute equipment and uniforms at the Premises at the beginning of each season and throughout the season as needed.
2. Term and Effective Date. This Agreement shall become effective on May 1, 2016 and shall expire on April 30, 2019.
3. Special Conditions of Use. In entering into this Agreement, Program agrees to the following special terms and conditions regarding the Program’s use of the Premises:
 - a. Use of Premises. City does hereby grant to Program the permission to store youth football equipment at the Premises during the term of this Agreement. Program shall keep the Premises in a neat and orderly manner. Program will clean up and remove trash at the Premises following any use thereof. Removal of trash will constitute taking filled trash barrels to the curb for pickup by City staff.
 - b. Distribution of Equipment. City further grants Program the permission to distribute youth football equipment to Program participants for up to five (5) days on a Monday, Tuesday, Wednesday or Thursday before the football season begins without paying the standard field rental fees. Generally, no practice may occur on the nearby playing fields during equipment distribution. However, if Program

would like to conduct practice on equipment distribution days, Program shall receive written approval from the City Parks Division and pay the associated field rental fees, including any lighting fees. Because Warner Stadium has many other users, WPYF shall coordinate with the Parks Division ahead of time on accessibility of the Premises to its users and shall reserve dates as necessary.

- c. Surrender of Premises. Within ten (10) days of the expiration of this Agreement or the termination of this Agreement under Section 9, Program agrees to vacate and surrender the Premises, remove all personal property therefrom, and deliver possession of the same to the City, in as good condition as the Premises was in at the commencement of the Agreement, with the exception of unavoidable wear and tear through careful use and with the exception of damage by fire or other casualty beyond the control of Program. Program may be granted additional time to vacate and surrender the Premises under this Subsection by written agreement with the Parks Superintendent, or his/her designee. Any damages to the Premises beyond normal and expected wear and tear shall be the responsibility of the Program. If these damages are not repaired by the Program before surrender of the Premises to the City, the City shall cause the repairs to be made and deduct the cost thereof from the security deposit. Any balance still owing by Program after deduction from the security deposit shall be due within thirty (30) days of the invoice. All equipment and other property of the City on the Premises shall remain the property of the City after the termination of this Agreement. No fixtures, whether or not purchased by Program, shall be removed without the permission of the City. Any property of Program remaining on the Premises thirty (30) days after surrender of the Premises will become the property of the City.
- d. Signs Prohibited. No advertising signs or billboards shall be permitted at the Premises, except temporary ones used while at the location and removed upon vacating for the day.
- e. Weapons Prohibition. Program shall prohibit, and shall require its contractors and subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, while using the Premises under this Agreement, except with the prior consent of the Parks Division.

4. Use Fee and Damage Deposit.

- a. Use Fee. Program shall pay to the City an annual use fee to cover the cost of using the Premises for storage and equipment distribution purposes under this Agreement. The fee is as follows:

Year 1 (May 1, 2016 through April 30, 2017): \$300
Year 2 (May 1, 2017 through April 30, 2018): \$325
Year 3 (May 1, 2018 through April 30, 2018): \$350

Payment shall be due no later than May 31. Failure to pay the fee on time is a default under Section 9.

- b. Damage Deposit. Program will pay a \$250 damage deposit that will be held by the City for the duration of the Agreement. Any unused amount will be returned to Program at the end of the Agreement. After each year of the Agreement, City will inspect the Premises and determine whether any repair or replacement of City property is needed. The City Parks Division Maintenance Supervisor or designee shall notify Program within a reasonable time of its determination, but in no case later than December 1st each year of the Agreement, regarding any necessary maintenance work. City shall undertake the repair or replacement of Premises as it deems necessary and Program agrees to reimburse City for all costs associated with such repair or replacement. Payment is due within thirty (30) days of the billing.
5. Advertising. It is understood that in the operation and conduct of this Agreement, City does not grant Program the right to sell or distribute any goods or services provided by City, nor does City grant Program the right to use a City trade name, trademark, logotype, advertising, or other commercial symbol without permission of the Park Superintendent or his or her designee. However, in any commercial advertisement or announcement, Program may use the name of the City Park where the Premises is located.
6. Assignment and Subcontracting. Program shall not assign this Agreement or any interest therein. Program may not subcontract the use of Premises without prior written approval of the City.
7. Disclosures and Acknowledgement. With full and complete knowledge, Program accepts Premises, and any improvements made thereto during the course of this Agreement, in an "as is" condition.
8. Indemnification and Insurance.
 - a. Indemnification. Program shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Program' acts or omissions in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.
 - b. Hazardous Substances; Indemnification. User represents and warrants that its use of the Premises will not generate any hazardous substance, and it will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. User further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole

negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.

c. Insurance.

- (1) Required Insurance. Program will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. Program shall not commence work under this Agreement, nor shall Program allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.
 - (a) Commercial General Liability. During the life of this Agreement, the Program shall procure and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the City of Madison's Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Program's coverage shall be primary and noncontributory, and list the City of Madison, its officers, officials, agents and employees as additional insureds. Program shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary and noncontributory basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.
 - (b) Property Insurance. Program shall be solely responsible for carrying personal property insurance sufficient to cover loss of all personal property on the Premises. Such personal property includes, but is not limited to, Program installations and equipment. The City shall not be liable for any damage to or loss of property of Program or others located on the Premises except to the extent such damage or loss was caused by the City's sole negligence or willful act.
- (2) Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

- (3) Proof of Insurance, Approval. The Club shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. Club shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. The Club shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- (4) Notice of Change in Policy. The Club and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.
- (5) Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Agreement, Club shall immediately cease use of the Premises and the provision of the services under this Agreement until such time as proof of the required insurance is provided to the City Risk Manager consistent with the requirements of this Section.
- (6) Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City of Madison
Attention: Risk Manager
210 Martin Luther King Jr. Blvd., Room 406
Madison, WI 53703-3345

9. Default and Termination.

- a. In the event Program shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of the City, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Program, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Program, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Program under this Agreement.
- b. In the event that Program shall violate any of the provisions of Section 3, the Superintendent of Parks may, in his/her sole discretion, and in addition to any other remedies which the City may have at law or in equity, including specific performance, suspend the use of Law Park and the adjacent water ski jumps by Program for up to two weeks, and impose a security deposit requirement in an

amount sufficient to pay the costs of City supervision and related costs necessary to enforce compliance with the provisions of Section 3.

- c. Notwithstanding the above, either Party may terminate this Agreement for any reason at any time by mailing written notice of termination to the other with at least ten (10) days advance notice.
10. Binding on Parties; Amendments. This Agreement shall be binding on the parties hereto, their respective heirs, devisees and successors and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto unless the same be in writing signed by the duly authorized agent or agents who executed Agreement, except that for terms only affecting City and Program, or where specifically set forth in this Agreement, only those Parties need enter into a written amendment of the terms of this Agreement for it to be effective.
11. Status of Parties. It is agreed that Program is an independent contractor and not an employee or representative of the City, and that any persons who Program utilizes and provides for services under this Agreement are employees or volunteers of Program and are not employees or volunteers of the City of Madison. In addition, it is agreed that by granting Program the right to use the Premises for the purposes set forth herein, that the City is not granting Program the right to sell or distribute any City goods or services nor is there a community of interest, as that term is defined at Wis. Stat. Sec. 135.02(1), between the City and Program arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135.
12. Notices. All notices required to be given under the terms of this Agreement shall be personally delivered or sent, postage prepaid, by depositing the same in United States mail addressed as follows:

City: Superintendent of Parks
City of Madison Parks Division
210 Martin Luther King, Jr. Blvd., Room 104
PO Box 2987
Madison, WI 53701

Program: Jon Schwichtenberg, Director
Warner Park Youth Football
PO Box 14483
Madison, WI 53714
13. Title to be Retained by City. City shall retain title and ownership of Premises together with all buildings, fixtures and improvements thereon without any payment whatsoever to Program.
14. Non-Discrimination. In the performance of the services under this Agreement the Club agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source

of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. Club further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

15. Nondiscrimination Based on Disability. Program shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Programs and Activities." Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance. Under Section 39.05(3)(b)4, "City financial assistance" includes any arrangement by which the City provides or otherwise makes available assistance in the form of the lease of, and the permission to use, City property.

Program assures that, in providing any service at the Premises, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- a. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- b. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
- c. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
- d. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
- e. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- f. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
- g. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

Program shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General

Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

16. No Realty. It is expressly understood and agreed that this Agreement is not a lease or a conveyance of realty, but merely a granting to Program the right to use the City's Premises for the purposes set forth herein. There is, therefore, no conveyance of any riparian rights to Program, but only permission to make use of the riparian rights the City has as owner of the Premises.
17. Third Party Rights. This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
18. Choice of Law and Forum Selection. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within Dane County, State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.
19. Compliance with the Law. Program agrees to comply with all laws and ordinances of the United States, the State of Wisconsin, Dane County and the City of Madison, and shall obtain and keep in good standing all licenses and permits that may be necessary for its use of the Premises as set forth herein.
20. Entire Agreement. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the parties.
21. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Program shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Program therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
22. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this contract remain in full force and effect.
23. Counterparts; Electronic Delivery. This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy

(.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.”

24. Authority. Program represents that it has the authority to enter into this Agreement and that the person signing on behalf of Program represents and warrants that he or she has been duly authorized to bind Program and sign this Agreement on Program’s behalf.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

WARNER PARK CARDINALS YOUTH FOOTBALL, INC.



Jon Schwichtenberg, Director

3-9-16

Date

FOR THE CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Approved:

David P. Schmiedicke, Finance Director

Date

Eric Veum, Risk Manager

Date

Approved as to form:

Michael P. May, City Attorney

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES-16-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2016.

Attachment A - Map of Premises



