

**USE AGREEMENT
BETWEEN CITY OF MADISON
AND
MADSON METROPOLITAN SCHOOL DISTRICT**

**RE: SCHOOL ATHLETIC PROGRAMS
2006 - 2007**

This Use Agreement is by and between the City of Madison, hereinafter referred to as "City" and the Madison Metropolitan School District, hereinafter referred to as "MMSD".

WHEREAS, MMSD and the City's Parks Division have an ongoing relationship whereby MMSD uses athletic facilities in City parks for MMSD school athletic programs; and

WHEREAS, MMSD has requested that the Parks Division continue to provide non-exclusive use of softball diamonds, baseball fields, soccer fields, tennis courts, golf courses and cross-country courses in various City Parks for spring semester 2006 and the 2006-2007 academic year; and

WHEREAS, MMSD will pay all related maintenance costs and permitting fees as well as provide adequate general liability insurance as part of this agreement.

LET IT THEREFORE BE RESOLVED that the parties do mutually agree as follows:

1. PREMISES

City hereby grants MMSD non-exclusive use of various softball diamonds, baseball and soccer fields, tennis courts, golf courses and cross-country courses located in City parks ("Premises") described as follows:

See Attachment A which is incorporated herein.

2. CONSIDERATION

MMSD shall perform duties and responsibilities as set forth in Section 3 in return for the use of Premises for its school athletic programs. MMSD shall pay the City for MMSD's use of Premises and supportive services provided by City as set forth in Attachment B incorporated herein.

3. SCOPE OF SERVICES. Scope of Services sets forth the responsibilities of each party. See Attachment C which is incorporated herein.

4. TERM AND RENEWAL

The term of this Agreement shall be from January 1, 2006 through June 30, 2007. This Lease shall commence upon the signature of the Mayor. The agreement is renewable for three (3) one-year terms upon mutual agreement of the parties as to terms of the renewal.

5. AMENDMENT

This Agreement may be amended upon the mutual consent and agreement of the parties by a written document executed by persons or successors of persons who executed this Agreement.

6. IMPROVEMENTS

All improvements, additions, and betterments made by MMSD shall become a part of City property, and therefore a part of the Premises. MMSD agrees, however that it shall not make, construct or install any improvements, additions, betterments or structures of any kind anywhere in Premises or on adjacent City property without first obtaining City's written permission. All improvements, additions, or betterments made by MMSD shall be made at MMSD's own expense unless otherwise agreed to in writing by both parties.

7. REPAIRS

MMSD shall give City prompt notice of the necessity of repairs and replacements and City shall have a reasonable time to undertake and complete such repairs and replacements. MMSD agrees to immediately report to City any damage of Parks equipment and facilities which poses a threat to health and safety to Park users including MMSD's program participants.

8. ASSIGNMENT AND SUBLETTING OF LEASE

MMSD shall not assign this Agreement without prior written consent of City.

9. RIGHT OF ENTRY

City may at all times enter in or on the Premises for the purpose of inspection, maintenance, and repair.

10. NON-DISCRIMINATION

During the terms of this Agreement, MMSD and City, each for itself, agrees to abide by its own Civil Rights Compliance Plan (CRC) for meeting equal opportunity/nondiscrimination requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and Americans with Disabilities Act (ADA) of 1990. In so doing, the parties shall thereby ensure nondiscrimination and equal opportunity for recipients of services in all areas relating to

meaningful access to and delivery of its programs and its services as required under the foregoing regulations.

11. EQUAL OPPORTUNITY EMPLOYMENT

During the term of this Agreement, MMSD and City, each for itself, agrees to abide by its own affirmative action plan and in so doing, to make all employment related decisions without regard to race, religion, sex, disability, national origin, age, sexual preference, marital status, military discharge status or physical appearance and to provide equal opportunity, including, but not limited to, the following: employment, upgrading, demotion, transfer, layoff, termination, training, rates of pay, or any other form of compensation. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth additional bases and exceptions shall be permitted only to the extent allowable in state or federal law.

12. NOTICES

All notices to be given under the terms of this Agreement shall be in writing and signed by the person sending the same, and shall be hand delivered or sent by registered or certified mail, return receipt requested, and postage prepaid, to the address of the parties specified below:

FOR THE CITY: James Morgan, Superintendent of Parks
City Parks Division
Madison Municipal Building, Room 120
215 Martin Luther King, Jr. Blvd.
Madison, WI 53703

FOR THE MMSD: Roger Price, Secretary
MMSD Board of Education
545 West Dayton Street
Madison, WI 53703

COPY TO: Pam Nash
Assistant Supt. Secondary Schools
545 West Dayton Street
Madison, WI 53703

Either party shall give five (5) days written notice to the other party regarding any changes.

13. VACATING THE PREMISES

MMSD agrees to vacate the Premises at the end of the term and leave the Premises in a state of cleanliness and repair to City's satisfaction. MMSD will remove all personal property unless otherwise agreed to in writing by the parties.

14. NOTICE OF BREACH AND RIGHT TO CURE

If MMSD commits waste or breaches any covenant or condition of this Agreement, City shall give MMSD written notice of such breach requiring MMSD to repair the waste, vacate the premises, remedy the default, or otherwise comply with the Agreement on or before a date ten (10) days after the giving of the notice. If the MMSD fails to comply with such notice City may declare this Agreement terminated and institute action to expel MMSD from the Premises without limiting liability of MMSD.

15. TERMINATION

A. City shall have the right, at its sole option, to declare this Agreement void, terminate the same, re-enter and take possession of the Premises under the following conditions:

- i. Use of the Premises for an illegal purpose;
- ii. Lapse or failure of any insurance coverage required by this Agreement;
- iii. Destruction of the premises by fire, tornado, civil disturbances or acts of God, or so damaged as to become untenable or damaged in excess of 50% of the appraised value;
- iv. The institution of bankruptcy proceedings against MMSD and the adjudication of MMSD as bankrupt pursuant to such proceedings;
- v. MMSD files a voluntary petition in bankruptcy;
- vi. MMSD abandons the Premises;
- vii. MMSD defaults in the performance of any material terms or condition of this Agreement.

B. Notwithstanding any other provision of this Agreement, either party may terminate this Agreement upon thirty (30) days written notice to the other party.

16. INDEMNIFICATION INSURANCE

A. Indemnification

MMSD shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of its agents or employees acting within the scope of their employment in accordance with Sec. 895.46(1), Wis. Stats. City shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of its agents or employees acting within the scope of their employment, in accordance with sec. 895.46(1), Wis. Stats. The obligations of the parties under this paragraph shall survive the expiration or termination of this Agreement.

B. Insurance

MMSD shall obtain and maintain during the term of this Agreement commercial general liability insurance issued by a company or companies authorized to do business in the State of Wisconsin with liability coverage provided for therein in the amount of at least \$1,000,000 in the aggregate for bodily injury, death and property damage. The Lessee shall also obtain and maintain during the term of this Agreement an insurance policy covering the following risks to City-owned personal property stored, held or used on the Premises: fire, extended coverage, vandalism, and malicious mischief. Such policies shall name the City as additional insured. MMSD and the insurer shall give City thirty (30) days advance written notice of cancellation, non-renewal or material change to any policies required by this Agreement. Thirty (30) days prior to commencement of this Agreement, MMSD shall furnish City with a certificate of insurance and certified copies of the required policies.

17. ENTIRE AGREEMENT

All terms and conditions of this Agreement are expressly contained herein, and the parties agree that neither the City nor the MMSD has made any representations or promises with respect to this Agreement not expressly contained herein.

18. COMPLIANCE

MMSD shall comply with all applicable laws and regulations of the City of Madison, County of Dane, State of Wisconsin, U.S. Government, and any other governmental authority having jurisdiction over the Premises.

19. INDEPENDENT CONTRACTOR

The parties agree that MMSD's relationship to City is that of an independent contractor and that nothing contained in the Agreement shall be construed as creating any other type of relationship. MMSD's employees or any persons hired by MMSD, such as scorekeepers, umpires, coaches or any other subcontractors, shall not be considered employees of City in any respect.

20. LAW APPLIED

The parties agree that this Agreement shall be governed by, construed and enforced according to the laws of the State of Wisconsin and Wisconsin courts.

ATTACHMENT A

City of Madison and MMSD School Athletic Programs

Parks Facilities reserved for Madison Metro School District - July 1, 2006

Warner Baseball
Bowman Baseball
Garner Baseball

Bowman Softball - 2 diamonds
Olbrich Softball - 4 diamonds
Elver Softball - 2 diamonds

Breese Stevens Soccer Stadium
Rennebohm Soccer Field

Quann Tennis Courts - 10 courts
Rennebohm Tennis Courts - 5 courts
Reindahl Tennis Courts - 7 courts

Warner Soccer Fields for Tournament - 4 fields

Cross-country courses at Warner and Yahara Golf Course

Glenway, Odana, Monona, Warner and Yahara Golf Courses

ATTACHMENT B

City of Madison and MMSD School Athletic Programs - 2003

- I. Fees for 2006-2007 Effective July 1, 2006*
- A. Facility or Sport:
1. Warner Baseball - \$236.97 per game.
 2. Breese Stevens - \$355.45 per game.
 3. Baseball and Soccer lights, when used -- \$14.22 per quarter hour.
 4. Warner Enclosed Field - \$142.18; Warner Fields #2, 3 & 4 - \$100 per field.
 5. Golf - \$6.50 per 9 holes / person; \$16.00 per player for sectionals, regionals, or invitationals hosted by MMSD.
- B. Labor, when necessary for clean-up or extra preparation - \$42.65 per hour.
- C. No charge for other facilities, as long as no special maintenance is required.
- II. Fees for 2006. There will be an adjustment of fees beginning January 1, 2006 pursuant to City fee schedule. (2005 fees in place until July 1, 2006)
- III. Payment
- A. City shall bill MMSD monthly by date, per event, or specific usage of City facility, except golf, which shall be billed as hereinafter set forth. MMSD shall remit payment within thirty (30) days of receiving invoice.
- , Golf: MMSD shall order tickets in advance of the event and keep records of tickets issued and tickets unused. At the end of the Golf season, MMSD shall notify City of tickets used and City shall invoice MMSD pursuant to fee schedule above.
- B. City may charge a late payment fee of 12% per annum on unpaid balance outstanding over thirty (30) days.

* Fees for 2005 will be in effect until July 1, 2006.

ATTACHMENT C

City of Madison and MMSD School Athletic Programs - 2003

SCOPE OF SERVICES

I. City Responsibilities.

A. Provide the following services:

1. All pre- and post-game field maintenance. "Field maintenance" shall include edging, filling holes, adding diamond mix to turf-free areas of diamond, leveling, straightening fence posts, repair of dugouts, overseeding, top-dressing, sodding, repair or replacement of signage, resetting of mound and base pegs, adding clay to batter's box.
 2. Maintenance of existing lighting systems at Premises. If lights require replacement during term of agreement, City has option to replace lighting or transfer MMSD's game/event to a comparable park facility.
 3. Daily cleaning and restocking of restrooms.
 4. Daily cleaning of bleacher and parking lot areas.
 5. Daily removal of trash from Premises.
 6. Fertilization, mowing and watering of turf as deemed necessary by City.
 7. Dragging fields prior to first game of day.
 8. Marking fields for play in accordance with standard field marking. If multiple MMSD activities scheduled for field in same day, City agrees to drag and mark field once prior to the beginning of the first MMSD activity.
 9. Application of drying materials as necessary.
 10. Parks Division restroom facilities will be activated by April 17, 2006.
- B. Notify MMSD of Spring 2006 field schedule availability by January 15th, assuming Madison Mallards has provided its schedule to City by January 1st as required by contract.
- C. Notify MMSD by March 1st of confirmation of baseball/softball scheduling of Premises, assuming MMSD has complied with Section II.A.
- D. Notify MSCR no later than 1:00 p.m. on the day of a scheduled game that the field cannot be ready for play due to rain or other circumstances beyond the City's control. If the City has not cancelled the game by 1:00 p.m., the game can still be cancelled or stopped by the umpire.

II. MMSD Responsibilities.

- A. Submit field and other facility reservations to the City thirty (30) days prior to the ensuing semester in order to receive priority scheduling of Premises.
- B. Reimburse City for costs of use and maintenance of Premises according to agreed upon payment schedule.
- C. Provide all bases necessary for softball and baseball games and provide MMSD players with key to base storage box as necessary.
- D. Organize all school athletic program activities including but not limited to scheduling games and rainouts; hiring, training and paying umpires and scorekeepers.
- E. Cease play and not begin any new baseball or softball inning by 11:00 p.m.

- F. Provide City with MMSD's written policy relating to stopping play because of lightning or other unsafe playing conditions caused by weather.
- G. Contract and assume costs of portable toilets for locations in which restrooms are not available (Yahara Golf) or during interim times when seasonal restrooms are not activated (Olbrich ball diamonds, Warner soccer and baseball, etc.).
- H. Advise interscholastic booster clubs who sell food and non-food products at park facilities, that those organizations will be responsible for securing appropriate permits from Public Health and the Parks Division prior to any event.
- I. MMSD shall be responsible for disposing of any trash or debris left by MMSD athletic field users after each instance of field use.
- J. MMSD shall not schedule practices or games on Parks athletic fields prior to April 1 of each spring season.