

REINDAHL PARK FIELD USE AGREEMENT

Between the City of Madison and Madison FC, Inc.
For the 2018-2022 Seasons

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”) and Madison FC, Inc., a Wisconsin non-stock corporation (hereinafter referred to as “Club”), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, in the Parks Master Plan for Reindahl Community Park, located at 1818 Portage Road, a significant portion of land is designated for the development of adult-sized soccer fields; and,

WHEREAS, since 2003, the Club has entered into a series of field use agreements relating to the Club’s use of soccer fields in Reindahl Park, the most recent agreement expiring on November 15, 2017; and,

WHEREAS the Parks Division has experienced an increase in demand for field reservations since the original agreement, which necessitated changes to terms and use fees;

WHEREAS, the Parties have a mutual interest in entering into a new field use agreement at Reindahl Park.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Purpose of Agreement. The purpose of this Use Agreement Between the City of Madison and Madison FC, Inc. for Reindahl Park (the “Agreement”) is to grant the Club priority scheduling over five of the Reindahl Park soccer fields.
2. Premises. The City parkland covered by this Agreement (the “Premises”) are the five soccer fields at Reindahl Community Park, located at 1818 Portage Road in the City, identified as Area A on Attachment A, which is hereby incorporated into and made a part of this Agreement. This Agreement does not extend any rights or responsibilities to Club over other soccer fields in Reindahl Park.
3. Term. The initial term of this Agreement shall be for a period of three (3) years, for the 2018, 2019 and 2020 seasons, and shall run from January 1, 2018 through November 15, 2020. This Agreement may be renewed for two (2) additional one-year terms, for the 2021 and 2022 seasons, upon written notice by Club to the City no later than July 31 of the final year of then existing Agreement.

4. Fee. The Club shall pay the City \$6,500 annually. Each calendar year, payment may be made in two installments of \$3,250, due June 1 and October 1.
5. Responsibilities of the Parties. The City agrees to provide priority scheduling to the Club over the Premises seven days per week and the Club agrees to use and maintain the Premises, subject to the conditions set forth in this Section.
 - a. Use of the Premises. Club's use of the Premises shall be as follows:
 - (1) Field Access. Club may have access to Premises seven days a week.
 - (2) Use Plan. Club will submit its Spring, Summer and Fall schedules to the Parks Division at the same time as schedules are provided to team members. Club may not have access to Premises for games or practices before April 1 nor after December 1, however Club may have access to Premises before April 1 and after December 1, as weather permits, for field maintenance activities. Club agrees to submit to Parks staff a summary of the maintenance activities the Club performed on the Premises at the end of each season.
 - (3) Hours of Use. Club and its participants shall vacate Reindahl Park by 10:00 p.m. each evening.
 - (4) Restrictions on Use. Club shall only use the Premises for the Club's own soccer programs, practices and games with the Club competing and for no other purpose without the City's prior written consent. Club will not rent out the fields or allow any other groups to use the fields for any games or practices. Club agrees to direct any person or organization that wishes to use or rent Premises to the Parks Division. Club shall not permit or allow any of its employees, agents, invitees or contractors to engage in any criminal activity on or about the Premises.
 - (5) Unavailability. City reserves the right to make the Premises unavailable to Club for up to two weekends of three (3) days during each calendar year. Weekend means Friday through Sunday. City shall give Club notice of at least sixty (60) days prior to any such weekend. City shall provide an alternate site for Club's regularly scheduled games at a site mutually agreeable to the parties
 - (6) Park Shelters. A reservation on the soccer field is not related to a park shelter reservation. If a park shelter reservation is desired, the transaction must be made through the reservation desk at the Parks Division office.
 - (7) Parking. Parking for the participants of Club's soccer schedule will be in designated parks parking lots and participants must park within those designated areas. The City makes no representations as to parking availability at Reindahl Park and Club understands that the Park's parking lots will remain open for general public use.

- (8) Special Events. Club agrees that no special events, camps or tournaments may be held at the Premises or at adjacent park lands unless Club has gained prior approval from the Parks Division and complied with all necessary permit requirements.
 - (9) Right of Entry. Club's usage of the Premises is not exclusive and City may at all times enter in or on the Premises for the purpose of inspection, maintenance, and repair. In addition, when not in use by the Club, the Premises shall be available for use by the public.
- b. Club Responsibilities. As a condition of the use of the Premises pursuant to this Agreement, Club agrees as follows:
- (1) Maintenance. The Club shall keep the Premises clean and in a condition usable for safe recreational and competitive soccer. Club may provide and use its own equipment, labor, and materials to maintain the Premises to its desired standard. However, if requested by Club or if Club does not provide sufficient mowing of the fields, the City will include the Premises on the regular mowing schedule. Any weed control provided by Club must conform to City's pest management program, including the use of a certified application and pre-posting fields to be sprayed, with supporting documentation provided upon request. At the end of the Fall season, Club will submit a summary of its maintenance activities during the previous year to the Parks Division.
 - (2) Field Rotation. Club understands and agrees that it is important to rest fields, that is to "rotate their usage", for reasons including, but not limited to, weather conditions, field conditions, or a special event at Reindahl Park. Club agrees to mark fields that are in rotation and not available for play.
 - (3) Soccer Equipment. Club agrees to furnish all necessary flags, goals, and nets on site of Premises. Flags, goals, and nets may be moved as necessary. Goals must be secured to minimize hazards and must be removed from Premises at the conclusion of the Agreement. Any Club equipment left at the Premises shall be done so at the Club's sole risk.
 - (4) Accessible Facilities. Club shall have installed a minimum of one handicap accessible portable toilet. Club shall also be responsible for regular maintenance and pumping of the toilet. If the Club fails to abide by this provision, City shall perform this service and invoice the Club for the cost of such service.
 - (5) Refuse. Club agrees to walk the Premises after games or practices to ensure that they remain free of debris. The Parks Division shall provide trash barrels at the parking lot and will assume responsibility for emptying the barrels at the parking lot on a weekly basis. Club agrees to place bagged garbage at the parking lot for collection by Parks staff.

- (6) Utilities. The City shall not provide any utilities. If Club wishes to access water service or to make adjustments to utility access, Club agrees to make arrangements through the City's Water Utility and pay the water charges directly to the City's Water Utility.
- (7) Vending. Club shall not conduct nor invite any sales or concessions unless Club has gained prior approval from the Parks Division and complied with Sec. 8.17, Madison General Ordinances.
- (8) Signage. Club may have temporary signage on Premises only with prior written or email approval by the Superintendent of Parks.
- (9) Damages to Premises. Club shall be responsible for repair of damages to Premises, excepting normal wear and tear, within ten (10) days written notice by City. If such repair is not completed to the satisfaction of City, Club shall pay actual cost of restoration, such cost determined solely by the Parks Division. In addition, the Parks Division reserves the right to request a \$500 damage deposit for Club's special use of Premises. The deposit, if requested, shall be submitted ten (10) days prior to the special event, and may not be released until thirty (30) days after the event
- (10) Storage. Club may install a storage container, not to exceed 40-feet long x 8-feet wide x 8.5-feet high, at the Premises. Club agrees to be responsible for safely and securely installing the container, locking the container, repairs to the container, and replacement of any items missing or stolen from the container.
- (11) Improvements. Club agrees 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 the City's written permission. All permitted improvements, additions, and betterments made by Club to the Premises during the term of this Agreement shall be City property and thereafter a part of the Premises. All improvements, additions, or betterments made by Club shall be made at Club's own expense unless otherwise agreed upon by both Parties. Any improvements made by Club without the City's permission shall be removed at no cost to the City.
- (12) Neighborhood Cooperation. Club agrees to work cooperatively with other users of the soccer fields and the Reindahl park neighborhood.
- (13) Weapons Prohibition. Club shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Agreement, other than while at Club's or subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Agreement, except

vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m).

- c. City Responsibilities. In addition to those responsibilities set forth above, the City agrees as follows:
 - (1) Maintenance Responsibilities. City's responsibility for maintenance of the Premises shall be limited to the following items:
 - (a) Provision and weekly emptying of trash barrels in the parking lot and on paved paths.
 - (b) The City will mow the park outside the Premises. The City will mow the Premises on the regular maintenance schedule, if requested by Club or if Club does not adequately mow the Premises.
 - (c) The City will aerate the Premises once a year, if requested by Club and weather allows. Club shall provide the City at least thirty (30) days notice of a time period that aeration will not impede use of Premises.
 - (2) Repairs. Except as set forth in Subsection 5.a(8) and Subsection 5.b(9), Club shall give the City prompt written notice of the necessity of repairs and replacements and the City shall have a reasonable time to undertake and complete such repairs and replacements.
- d. Vacating the Premises. Within thirty (30) days after the end of the term, Club agrees to vacate the Premises, remove all personal property, and leave the Premises in a state of cleanliness and repair to City's satisfaction. Club's personal property includes soccer equipment, mowers, trimmers, shovels, rakes, and other equipment used in the conduct of Club programs and field maintenance. By agreement between Club and the Parks Superintendent, the Parties may amend the terms of the removal of Club's personal property.
- e. Advertising. It is understood that in the operation and conduct of this Agreement, City does not grant Club the right to sell or distribute any goods or services provided by City, nor does City grant Club the right to use a City trade name, trademark, logo type, advertising, or other commercial symbol. In any commercial advertisement or announcement, Club may use the name of the City Park where the Premises is located, but any such advertisement or announcement must also indicate that Club's activities are not associated with or affiliated with the City.
- f. Subcontracting. Either party may contract with a third party to perform any duties set forth in this Agreement, with the understanding that any of Club's third party contracts are subject to the prior written approval of the City.

6. Indemnification and Insurance.

- a. Indemnification. Club shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, 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 Club's and/or Subcontractor's 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. Club 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. Club 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 Coverage. Club will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated. Club shall not commence work under this Agreement, nor shall Club 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. Club shall procure and maintain during the life of this Agreement, 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 Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Club's

coverage shall be primary and list the City of Madison, their officers, officials, agents and employees as additional insureds. Club shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

- (b) Property Insurance. Club shall be solely responsible for carrying personal property insurance sufficient to cover loss of all personal property on the Premises. Such personnel property includes, but is not limited to, Club installations and equipment. The City shall not be liable for any damage to or loss of property of Club 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. Club shall provide to the City certificate(s) of insurance showing the type, amount, class of operations covered, effective dates and dates of expiration of policies for approval by the City Risk Manager, prior to commencing work under this Agreement. Club shall provide the certificate(s) to the City's representative at the time of signing the contract, or sooner. Club shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- (4) Notice to City of Changes in Coverage. Club and/or its 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

7. 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 Madison, WI 53703

Club: Norman Arendt
Madison FC, Inc.
PO Box 7578
Madison, WI 53707

Either party shall give thirty (30) days written notice to the other party regarding any changes to the name or address of the notice recipient.

8. 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.
9. Nondiscrimination Based on Disability. Club 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 assurance of compliance with Section 39.05 is provided by Club 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.

Club 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.

Club 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).

10. Default/Termination.

- a. In the event Club 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 Club, 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 Club, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Club under this Agreement.
- b. Notwithstanding Subsection (a), either party may terminate this Agreement upon sixty (60) days written notice to the other party.

11. Disclosures and Acknowledgement. With full and complete knowledge, Club accepts Premises, and any improvements made thereto during the course of this Agreement, in an "as is" condition.

12. 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.

13. 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. Any other

change in any provision of this Agreement may only be made by a written amendment, signed by the duly authorized agent or agents who executed this Agreement.

14. Assignability/Subcontracting. Club shall not assign or subcontract any interest or obligation under this Agreement without the City's prior written approval.
15. 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.
16. Joint Preparation. Each Party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
17. Status of Parties. It is agreed that Club is an independent contractor and not an employee or representative of the City, and that any persons who Club 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.
18. 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.
19. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Club 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 Club 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.
20. 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 Agreement remain in full force and effect.

21. 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.
22. Compliance with Applicable Laws. The Parties shall become familiar with, and shall at all times comply with and observe, all federal, state and local laws, ordinances and regulations which in any manner affect the services or conduct of the Parties and their agents and employees in the performance of this Agreement.
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. 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.
25. Authority. The Parties represent that they have the authority to enter into this Agreement. The person signing on behalf of Club represents and warrants that he has been duly authorized to bind Club and sign this Agreement on Club’s behalf.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.
MADISON FC, INC.

Norman Arendt, Interim President

Date

CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

Approved as to form:

David P. Schmiedicke, Finance Director

Date

Michael P. May, City Attorney

Date

Eric Veum, Risk Manager

Date

Execution of this Agreement by City was approved by the Board of Parks Commissioners on _____
and was authorized by Resolution Enactment No. RES - _____, ID No. _____, adopted by the Common
Council of the City of Madison on _____, 2017.

ATTACHMENT A

Map of Premises

