

ULTIMATE FRISBEE FIELD USE AGREEMENT

Between the City of Madison and the Madison Ultimate Frisbee Association, Inc.
For the 2021-2025 Seasons

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”), and the Madison Ultimate Frisbee Association, Inc., a Wisconsin nonstock corporation (hereinafter referred to as “MUFA”), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, MUFA is a non-profit entity that was created in 1993 and is dedicated to providing opportunities for people to play the sport of ultimate. MUFA runs multiple ultimate leagues in the Madison area and has a history of working with the City Parks Division regarding the use of City parks to play ultimate; and,

WHEREAS, on November 22, 2016, the City and the MUFA entered into the Ultimate Frisbee Field Use Agreement for the years of 2016-2020, which Agreement granted the MUFA priority usage of certain City athletic fields by MUFA leagues for the 2016-2020 seasons. MUFA and the City would like to continue their past successful working relationship and enter into a successor agreement allowing for the ongoing priority usage of certain City athletic fields by MUFA leagues for the 2021-2025 seasons; and,

WHEREAS, MUFA has agreed, as a condition of its ongoing priority usage of the specified athletic fields on a non-exclusive basis, to pay field use fees and contribute funds to a non-reverting segregated revenue account, which funds will be used by the City to fund maintenance and improvements to the specified athletic fields.

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. The purpose of this Ultimate Frisbee Field Use Agreement (“Agreement”) is to set forth the terms and conditions upon which the City will allow MUFA priority usage of certain athletic fields in City parks as set forth in Attachment A (“Premises”) for MUFA’s ultimate leagues, on a non-exclusive basis. In addition, this Agreement will establish a segregated non-reverting fund and a fee structure that supports the shared goals of supporting the volume use of the City’s park space and providing quality maintenance of the City’s athletic fields.
2. Grant and Description of Premises. City does hereby grant to MUFA priority usage of the Premises, on a non-exclusive basis, for MUFA’s ultimate leagues, as set forth in this Agreement.

3. Conditions of Use. By entering into this Agreement, the Parties mutually agree to abide by the special terms and conditions set forth in Attachment A, which terms are incorporated herein.
4. Term and Renewal. The initial term of this Agreement shall be from June 1, 2021 through December 31, 2023. This Agreement may be renewed for two (2) additional one-year terms (for the 2024 and 2025 calendar years) upon written notice by MUFA to the City no later than December 1 of the renewal year of the Agreement, and upon mutually agreeable terms and conditions. Both parties shall meet no later than November 30 of the renewal year to discuss the continuation and/or amendment and continuation of the Agreement.
5. 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.
6. Status of Parties. It is agreed that MUFA is an independent contractor and not an employee or representative of the City, and that any persons who MUFA, either on its own or through MUFA, utilizes and provides for services under this Agreement are employees of MUFA and are not employees of the City of Madison. In addition, it is agreed that by granting MUFA the right to use the Premises for the purposes set forth herein, that the City is not granting MUFA 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 MUFA arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135.
7. 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 MUFA the right to use Premises for the purposes set forth herein.
8. Access to Premises. This Agreement gives MUFA priority usage of the Premises, on a non-exclusive basis, for its ultimate leagues. In no case shall this limited grant of rights be interpreted to preclude the City's or the public's access to the Premises. City may at all times enter in or on the Premises for the purpose of inspection, maintenance, and repair.
9. Repairs. MUFA shall give the City prompt notice of the necessity of repairs and replacements at the Premises and the City shall have a reasonable time to undertake and complete such repairs and replacements. MUFA agrees to immediately report to City any damage of Parks equipment and facilities which pose a threat to health and safety to Park users including MUFA's league participants.
10. Vacating the Premises. MUFA 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. MUFA will remove all personal property unless otherwise agreed to by the parties.
11. Weapons Prohibition. MUFA 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.

12. Assignability and Subcontracting. MUFA shall not assign or subcontract any interest or obligation under this Agreement without the City's prior written approval. All of the services required hereunder shall be performed by MUFA and employees of MUFA.
13. Amendments. This Agreement shall be binding on the parties hereto, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any change in any provision of this Agreement may only be made by a written amendment, signed by the duly authorized agent or agents of MUFA and the Parks Superintendent, or his/her designee.
14. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or MUFA 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 MUFA 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.
15. Indemnification. MUFA 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 MUFA's and/or MUFA's 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.
16. Hazardous Substances; Indemnification. MUFA 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. MUFA 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.

17. Insurance.

- A. Required Insurance. MUFA will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. MUFA shall not commence work under this Agreement, nor shall MUFA 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.
- (1) Commercial General Liability. MUFA 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. MUFA's coverage shall be primary and noncontributory and list the City of Madison, its officers, officials, agents and employees as additional insureds. MUFA 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. 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.
- C. Proof of Insurance, Approval. MUFA 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. MUFA shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. MUFA shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- D. Notice of Change in Policy. MUFA 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.
- E. Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Agreement, MUFA 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.

- F. Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

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

18. Non-Discrimination. In the performance of work under this Agreement, MUFA agrees not to discriminate against any employee or applicant for employment 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. MUFA further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
19. Nondiscrimination Based on Disability. MUFA 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.

MUFA 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.
20. Notices. All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent by mail, or hand delivered to the addresses of the parties listed below:

City: Superintendent of Parks
City Parks Division
210 Martin Luther King, Jr. Blvd. #104
Madison, WI 53703

For MUFA: Nathan Kleinhans, President
Madison Ultimate Frisbee Association, Inc.
1206 Jenifer St., Apt. 2
Madison, WI 53703

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

21. Default/Termination.

- A. In the event MUFA 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 MUFA, 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 MUFA, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of MUFA under this Agreement.
- B. Notwithstanding paragraph A., above, either Party to this Agreement may in its sole discretion and without any reason terminate this Agreement at any time by furnishing the other Party with thirty (30) days written notice of termination.

22. 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.

23. Entire Agreement. All terms and conditions of this Agreement are expressly contained herein, and the parties agree that neither the City nor the MUFA has made any representations or promises with respect to this Agreement not expressly contained herein.
24. Compliance. MUFA 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.
25. 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.
26. Authority. MUFA represents that it has the authority to enter into this Agreement and the person signing on behalf of MUFA represents and warrants that he or she has been duly authorized to bind MUFA and sign this Agreement on MUFA's behalf.
27. 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 Amendment may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Amendment may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Amendment 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 Amendment, fully executed, shall be as valid as an original.

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.

MADISON ULTIMATE FRISBEE ASSOCIATION, INC.

Nathan Kleinhans, President

Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael Haas, City Attorney

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES-21-00____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2021 and approved by the Board of Parks Commissioners at its meeting on _____, 2021.

ATTACHMENT A

Special Terms and Conditions of Use For the Ultimate Frisbee Field Use Agreement

1. League Start Dates.

- a. Spring leagues may commence no earlier than April 1, or as otherwise agreed to by the Parks Superintendent.
- b. Summer leagues may commence no earlier than June 1, or as otherwise agreed to by the Parks Superintendent
- c. Fall leagues may commence no earlier than August 15, or as otherwise agreed to by the Parks Superintendent.

2. Premises and Priority Use.

- a. The Parks Division will make available fifteen ultimate fields each year of this Agreement at the following locations, which fields shall be designated as MUFA-Priority Fields, and collectively referred to herein as the “Premises”:

- 1) Burr Jones Park: Fields #1 & #2
- 2) Glacier Hill Park: Fields #3 & #4
- 3) Manchester Park: Fields #1, #2, #3 & #4
- 4) Midtown Commons Park: Fields #1, #2, #3 & #4
- 5) North Star Park: Fields #1, #2, #3, #4, #5 & #6

If fewer than fifteen fields are made available at these locations, then other fields will be identified as temporary replacements. The temporary replacement field would be treated equal to one of the 15 MUFA-Priority Fields

- b. MUFA will have priority use of the MUFA-Priority Fields from Monday to Thursday. The Parks Division will limit athletic and other reservations on these fields for the rest of the week. These fields remain public space and the general public is able to use them when there is not a reservation.
- c. The City will guarantee field space for reservations up to 4070 hours per year. This will include approximately 600 hours of field use in the spring, 3000 hours of field use in the summer and 470 hours of field use in the fall.

3. Fees and Payment.

- a. Field Use Fee. In 2021 and 2022, MUFA shall pay the City \$4 per hour for use of a MUFA-Priority Field, including any temporary replacements, and \$25 per hour for use of any other City athletic field. These fees shall increase to \$5 and \$28 respectfully in the 2023-2025 seasons. The City will schedule MUFA on other City athletic fields only if MUFA requires more than the fifteen MUFA-Priority fields.

- b. Player Fee. The Parks Division and MUFA recognize the use of the MUFA-Priority Fields for MUFA priority scheduling will result in degraded and unsafe field conditions if additional efforts towards maintenance are not made. Accordingly, MUFA shall pay the City a \$10 fee for each player in the summer league. The funds attributable to the Player Fee shall be deposited in a non-reverting segregated revenue account to be used by the City for MUFA-Priority Field improvements and maintenance, or other ultimate fields as agreed to in writing by the Parties, in order to keep the fields at an acceptable level. The type of maintenance and improvements will be subject to the balance in the segregated non-reverting fund, and City budget authority. The Parties shall discuss planned improvements for the coming year by at least December 1 of each year of this Agreement.
 - c. Keys. All keys provided by the City must be returned to the Parks Division by November 1 of each year. MUFA will be charged \$75 per key that is not returned.
 - d. Cancellations; Credits. If inclement weather prevents MUFA from using a reserved field, MUFA will contact the Parks Division within 5 business days to reschedule or request a credit. Failure to do so will forfeit any credit for a new date and MUFA will be billed for the reservation.
 - e. Billing. City will send an invoice to MUFA at the end of each league season, with full payment due in fifteen (15) days. MUFA will receive a spring invoice, summer invoice and fall invoice. The summer invoice will include the field use payment and the player fee payment.
 - f. Late Fee. City may charge a late payment fee of 12% per annum on unpaid balance outstanding over thirty (30) days.
4. City Responsibilities.
- a. The City agrees to provide the following services at the Premises:
 - 1) All pre and post-season field maintenance. "Field maintenance" shall include mowing, straightening and repair of fence posts, over-seeding, top-dressing, sod, repair and/or replacement of signage.
 - 2) Parks Division staff will manage weeds, aerate, seed and fertilize all fields included in section 2.a. above. Fields designated as out of play for maintenance will receive additional maintenance efforts to include a second aerification, seeding and fertilizer treatment during the resting period.
 - 3) Maintenance of existing lighting systems at Premises. If lights require replacement during term of agreement, City has option to replace lighting or transfer MUFA's reservation to a comparable field. The fees above include the use of lights during the fall league.
 - 4) Daily cleaning and restocking of restrooms, if available.

- 5) Daily removal of trash from Premises.
- 6) Application of broadleaf herbicides to turf at Premises according to City policy.
- 7) Fertilization, mowing and watering of turf as deemed necessary by City.

5. MUFA's Responsibilities.

- a. Submit field reservations to the City by February 15th for the ensuing year in order to receive priority scheduling of Premises.
- b. Submit to the City an accounting of the number of players registered for the summer league one week before the summer league begins.
- c. Provide all equipment necessary for league play.
- d. Organize all league activities including but not limited to recruiting participants scheduling events.
- e. Provide City with MUFA's written policy relating to stopping play because of lightning or other unsafe playing conditions caused by weather.