

**McKinley Park
USE AGREEMENT**

This Use Agreement ("Agreement") is made this 1st day of June, 2019 (the "Effective Date"), by and between the City of West Allis, a Wisconsin Municipal Corporation (hereinafter the "City"), and the West Allis-West Milwaukee Recreation and Community Services Department of the School District of West Allis-West Milwaukee, et al., a unified school district organized and existing under Chapter 120, Subchapter II, of the Wisconsin Statutes (hereinafter the "Department").

RECITALS

A. The City leases McKinley Park located in the City of West Allis, Wisconsin (the "Park"). The Park is more particularly described on Exhibit A attached hereto.

B. The Park contains improvements and facilities, including, but not limited to: baseball fields, tennis courts, irrigation system(s) open green play space, playground equipment and a park building (the "building"), which building includes exterior access to building restrooms (collectively, the "facilities").

C. The Department desires to utilize the Park for West Allis-West Milwaukee Recreation and Community Service Department programs which commence on June 1, 2019, and run seasonally in the summer, fall and winter-spring sessions, and the City desires to allow the Department use of the Park for the Term (defined below).

D. The City and the Department desire to enter into this Agreement to set forth their agreement with regard to the Department's use of the Park.

NOW, THEREFORE, in consideration of the foregoing and the provisions, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Recitals. The parties acknowledge and agree that the above recitals are true and correct and are incorporated into this Agreement by reference.

2. Consideration. The parties acknowledge and agree that the Department's compliance with the provisions, covenants and agreements contained in this Agreement applicable to it will require it to expend significant personnel and financial resources, and that the expenditure of such resources is good, valuable and adequate consideration for the City's provisions, covenants and agreements contained herein.

3. Use. The City hereby agrees to provide the Department exclusive use of the facilities during the Department's regularly scheduled programs during each season during the Term. The Department will also have access to and exclusive use of the baseball fields in order to prepare and maintain the baseball fields for the Department's use.

4. Term. The Term of this Agreement shall be in effect May 15 – November 15 each calendar year following the Effective Date (the "Initial Term") unless earlier terminated or extended as provided for herein. This Agreement shall automatically renew for successive one (1) year periods (each a "Renewal Term") unless one party gives the other party at least ninety (90) days' written notice prior to the end of the then current Term that it is not renewing the Agreement. This Agreement may be terminated by the

City upon giving the Department ninety (90) days' written notice that the owner of the Park intends to develop the Park in accordance with a development agreement between West Quarter West, LLC and the City. As used herein, "Term" means the Initial Term and any Renewal Term(s) elected by the Department.

5. Duties of the Parties

a) During the Term, the Department shall have the duty to:

(i) Repair any damage or deterioration to the fencing, grass, or backstops within the Park that results from normal wear and tear.

(ii) Repair any damage or deterioration to the facilities, fencing, grass, backstops, fixtures, or any other structures within the Park that occurs during or as a result of the Department's use of the Park.

(iii) Repair, improve, maintain, or upgrade the facilities, fencing, grass, backstops, fixtures, or any other structures of the Park to meet the needs of the Department for any Department-sponsored event.

(iv) Maintain the Park by cutting grass, controlling weeds, by mechanical and/or chemical means.

(v) Remove trash and recyclables that accumulate during all Department-sponsored events as soon as practicable after the end of each event.

(vi) Clean all facilities used during all Department-sponsored events as soon as practicable after the end of each event.

b) During the Term, the City shall be responsible for the following:

(i) Removal of trash and recyclables for which the Department has no duty to remove.

(ii) Repair any damage or deterioration to the facilities, fencing, grass, backstops, fixtures, or any other structures within the Park that is not the duty of the Department,

6. Authority of the Parties

a) During the Term, the Department shall have the authority to:

(i) Hang youth sports banners on baseball field fencing,

(ii) Schedule exclusive usage of the Park or any part of the Park without any fee or permit required by the City,

b) During the Term, the City shall have the authority to:

(i) Allow public access to the Park or any area of the Park during any time in which the Department has not set aside the Park or any area of the Park for its exclusive use.

(ii) Schedule exclusive usage of the Park or any part of the Park without any fee or permit required by the Department, subject to the following:

1. The City shall request exclusive usage from the Department at least 15 days prior to the date of usage requested
2. Within 7 days after receiving the request, the Department shall confirm the date requested or, if the Department has already scheduled an event for that date and time, respond with at least one proximate available date.

(iii) Enter the Park to make upgrades or repairs to any land, structures, fixtures, or equipment in the Park, or clean any facilities in the Park.

7. Notices. All notices, requests, demands and communications hereunder will be given by email or by first-class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to the Department: WAWM Recreation and Community Services
 1205 South 70th Street
 West Allis, WI 53214
 Attn: Director
 Email: stram@wawmsd.org

If to the City: City of West Allis
 7525 West Greenfield Avenue West Allis, WI 53214
 Attn: City Administrator
 Email: rgrill@westalliswi.gov

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

8. Severability. If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement or the Department's intended use of the Park, then the Agreement may be terminated by either party on ninety (90) days' prior written notice to the other party hereto.

9. Miscellaneous.

a. Assignment. Neither party to this Agreement shall assign, sublet or transfer any of its obligations, responsibilities, rights or interests under this Agreement without the written consent of the other party. Any assignment, subletting or transfer by a party to this Agreement in violation of this Section 9.a. shall be void and without force or effect.

b. Amendment/Waiver. This Agreement shall not be amended, modified, or revised unless done in writing and signed by an authorized agent of the City and an authorized agent of the

Department. No provision contained in this Agreement may be waived except in a writing signed by both parties.

c. Bind and Benefit. The terms and conditions contained in this Agreement will run with the Park and be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

d. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

e. Governing Law. This Agreement will be governed by the laws of the State of Wisconsin.

f. Interpretation. Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to be "including but not limited to;" (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) use of the terms "termination" or "expiration" are interchangeable; and (v) reference to a default will take into consideration any applicable notice, grace and cure periods.

g. Default and Waiver. In the event of default by either party, the sole and exclusive remedies of the aggrieved party shall be an action for specific performance of this Agreement and/or an action for actual damages only, and not for special, indirect, incidental or consequential damages. No waiver by either party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

h. Further Action. If at any time after the Effective Date any further action is necessary or desirable to carry out the purposes of this Agreement, each party will take such further action (including the execution and delivery of such further instruments and documents) as the other party reasonably may request, all at the sole cost and expense of the requesting party (unless the requesting party is entitled to indemnification therefor under this Agreement).

i. Execution. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one Agreement. Electronically transmitted copies of signatures on this Agreement shall have the same force and effect as original signatures.

j. Each provision herein shall be binding upon and inure to the benefit of the City and the Department and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

**WEST ALLIS-WEST MILWAUKEE RECREATION
AND COMMUNITY SERVICES DEPARTMENT OF
THE SCHOOL DISTRICT OF WEST ALLIS-WEST
MILWAUKEE, ET AL.**

By: _____
Michele Strasser, Director

CITY OF WEST ALLIS

By: _____
Dan Devine, Mayor

ATTEST:

By: _____
Steven A. Braatz, Jr., City Clerk

EXHIBIT A

Description of McKinley Park

Parcel F:

Parcel 1 of Certified Survey Map No. 6524, recorded on June 2, 1998 as Document No. 7541705 and as corrected by Affidavit of Correction recorded June 22, 1998 in Reel 4334, Image 719, as Document No. 7551660, being a redivision of Lot 2, Block 2, Assessors Plat No. 263, being a division of the Northwest 1/4 and the Northeast 1/4 of the Southwest 1/4 of Section 34, Township 7 North, Range 21 East, in the City of West Allis, County of Milwaukee, State of Wisconsin.

Tax Key No.: 440-0004-001
Address: 8xx South 72nd Street

Parcel G:

Parcel 3 of Certified Survey Map No. 3890, recorded on June 2, 1980, as Document No. 5406074, being a redivision of Block 4, and vacated alleys, of Resubdivision of Block 4, of Otjen Pullen and Shenner's Subdivision, together with a portion of vacated street lying East of Block 4, and vacated West Walker Street vacated by Resolution No. 27751 recorded as Document No. 7536629, located in the Southwest 1/4 of Section 34, Township 7 North, Range 21 East, in the City of West Allis, County of Milwaukee, State of Wisconsin.

Tax Key No.: 440-0213-003
Address: 1000 South 72nd Street

Parcel H:

Parcel 2 of Certified Survey Map No. 3890, recorded on June 2, 1980, as Document No. 5406074, being a redivision of Block 4, and vacated alleys, of Resubdivision of Block 4, of Otjen Pullen and Shenner's Subdivision, together with a portion of vacated street lying East of Block 4, located in the Southwest 1/4 of Section 34, Township 7 North, Range 21 East, in the City of West Allis, County of Milwaukee, State of Wisconsin.

Tax Key No.: 440-0213-002
Address: 10xx South 72nd Street