CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: January 21, 2020

ITEM: Motion – Approval of Park Use Agreement – Des Moines Rugby Foundation

FINANCIAL IMPACT: None

BACKGROUND: The term of the five year Park Use Agreement between the City and Des Moines Rugby Foundation expired on December 31, 2019. The Foundation provides opportunities for nearly 100 members with USA Rugby. They also host matches for youth in the Des Moines area, including Valley High School matches and sub-state for the Iowa Youth Rugby Association.

No significant changes have been made since the last agreement was renewed in 2015. The agreement includes another five year term and has been reviewed by the Legal Department and representatives of the Des Moines Rugby Foundation.

The Parks and Recreation Advisory Board approved the agreement at their regular meeting on January 16, 2020.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the City Council approve the Agreement.

LEAD STAFF MEMBER: Ryan Penning, Superintendent of Recreation

STAFF REVIEWS

Department Director	Sally Ortgies, Director of Parks & Recreation
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	
Date Reviewed	

AGREEMENT
BETWEEN THE CITY OF WEST DES MOINES
AND THE
RUGBY FOUNDATION
FOR USE OF PARKS & RECREATION PREMISES

THIS AGREEMENT is made this ___ day of _____, 2020, by and between the CITY OF WEST DES MOINES (hereinafter called "City") and the RUGBY FOUNDATION (hereinafter called "Association").

FOR AND IN CONSIDERATION OF MUTUAL PROMISES AND COVENANTS HEREIN CONTAINED THE PARTIES AGREE AS FOLLOWS:

I. Definitions

A. The term "City" shall mean the City of West Des Moines, Iowa and where necessary shall include the Mayor and City Council Members, employees and agents of the City.

B. The term "Department" shall mean the City of West Des Moines Parks and Recreation Department. The term "Public Services Department" shall mean the City of West Des Moines Public Services Department.

C. The term "Association" shall mean the Rugby Foundation, its officers, directors, employees, volunteers and agents.

D. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to context.

E. The term "Premises" shall include the area in the attached diagram entitled Exhibit A, generally described as the area in Jordan Creek Park that includes Windsor Field.

II Term

This Agreement shall commence on the above date of execution and shall continue until December 31, 2024 unless otherwise terminated at an earlier date as provided herein.

III. Extension of Agreement

At the City's option, this Agreement may be extended for an additional term not to exceed five (5) years. Any extension of this Agreement shall be in writing and executed by the parties. If the City elects to exercise the option to renew this Agreement, it shall prove notice as indicated herein within 90 days of the expiration of the initial term of this Agreement. The renewal may include modifications to the original terms of this Agreement, if mutually agreed to by the City and the Association.

IV. Field Usage

A. The Windsor Rugby Field in Jordan Creek Park, located at approximately 3900 E.P. True Parkway so designated in the playing schedule, shall be reserved for scheduled games, tournaments, and practices according to the Association's annual schedule. Any use of the field by Association members outside their official schedule is on a first come/first served basis.

B. The general public shall be allowed to use the Premises during times outside of the Association's official schedule. The field shall not be scheduled by the Association in such a way to prohibit or purposely restrict general public use. Fields may be closed off to the general public by the Association for repairs, renovation, or preparation for games or tournaments as long as the length of time is reasonable.

C. Any use of the field so designated by the Department shall be coordinated with the schedule of the Association games and practices and shall be presented to the President of the Association by the Department.

D. Any use of the Premises by entities or organizations other than the Association shall require the written consent of the Department Director if that use is not sponsored by the Association. Unless covered under the Association's insurance policy, proof of insurance coverage with the City of West Des Moines named as additional insured shall be provided by the entity or organization for all non-Association sponsored events.

V. Maintenance Responsibilities

A. All requests for maintenance assistance from Public Services Department staff shall be submitted to the Parks Maintenance Supervisor at least seven (7) days in advance, except in emergency situations. If less than seven (7) days' notice is given in non-emergency situations, the Association shall pay the full cost of any overtime hours worked by Public Services Department staff if applicable.

B. The Public Services Department will provide an adequate number of barrels for litter and empty all containers on a regular basis. The Association is responsible for picking up all litter and debris on the ground within the Premises.

C. All grass will be mowed by the Public Services Department on a regular basis. If additional mowing is needed, the Association will be responsible for keeping grass at the height required by the Association. The Association will maintain goal posts and line the field. All sod used for repair of goal areas shall be purchased and laid by the Association.

D. The Public Services Department will fertilize Windsor Rugby Field consistent with sports turf management standards. The Public Services Department will also apply a pre-emergent product for crabgrass prevention and a grub preventative in a manner and timing as determined by the Public Services Department according to product labeling. The cost of any additional materials needed as determined by soil testing or as requested by the Association (i.e. micronutrients, lime, etc.) will be the responsibility of the Association. The Public Services Department will provide the labor and equipment to apply the material for additional applications at no cost to the Association.

E. The Public Services Department shall spray the premises for broadleaf weeds as a part of their overall system-wide weed control program with one spot spray in the spring and one spot spray in the fall. The cost of any additional materials needed (i.e. fungus control, etc.) will be the responsibility of the Association. The Public Services Department will provide the labor and equipment to apply the material for additional applications at no cost to the Association. Under no circumstances may the Association permit or contract for individuals or businesses to apply fertilizer, pesticides or herbicides to any public park lands without prior written approval from the Department Director.

F. Any additional maintenance due to irrigation of turf will be the responsibility of the Association.

G. Except as provided herein, the Association, at its expense, shall care for, maintain and keep in repair and in a safe and serviceable condition all structures such as goal posts, bleachers, etc., which are used during Association sponsored activities. Any damaged structure or equipment must be reported to the Superintendent of Recreation within 24 hours.

VI. Facilities and Improvements

A. Any field or structure improvements or changes, paint colors, and facility naming requests must be approved by the Department Director, and if applicable, the Park and Recreation Advisory Board, the Planning and Zoning Commission, and/or the City Council in advance.

B. All irrigation systems must have approval of the Department and West Des Moines Water Works prior to installation. If a well is involved, Iowa Department of Natural Resources approval shall also be required. Irrigation systems and wells will not be installed by the City. All installation, maintenance, replacement and repair of irrigation systems and wells is the responsibility of the Association.

C. Electric meters and water meters for irrigation systems shall be listed in the Association's name with the utility supplier. Electric and water use for irrigation shall be paid for by the Association.

D. All field lighting or scoreboards must be approved by the Department prior to installation. Field lighting and scoreboards will not be installed by the City.

E. Overhead light bulbs on field lights will be replaced and fixtures will be aimed by the Association. All maintenance, replacement and repair of field light fixtures, poles, and underground wiring is the responsibility of the Association.

F. All scoreboards used in conjunction with Association activities shall be repaired, maintained, and replaced by the Association.

G. Electric meters for field lights and scoreboards shall be listed in the Association's name with the electricity supplier. Electrical use of lights for Association events shall be paid for by the Association. Any electrical use of the lights in tournament play or other activities scheduled by the Department shall be paid for by the Department.

H. The Association shall not erect, post or exhibit any signs within the facility unless approval is first given by the Department Director. All signs shall comply with the ordinances of the City and any rules and regulations adopted by the Park and Recreation Advisory Board or the Department. Any signs removed or taken down by the Association shall not damage any building or facility.

I. The Association shall be solely responsible for acquiring at its own expense from corporate, federal, state, county, or local agencies or governmental units all permits for operations, improvements or changes.

VII. Insurance Requirements

A. The Association shall at its cost and expense, procure and maintain casualty and liability insurance for the term of this Agreement. The insurance provider shall be authorized to do business in Iowa and shall have received a rating of A or better in the current Best's Rating Guide. The insurance provider shall certify in writing that any policy of insurance required herein with an aggregate limit of liability has not been reduced by paid or reserved claims at the time of issuance or renewal of the policy or certificate covering the operation and/or event.

The City of West Des Moines shall be named as additional insured under the commercial general liability policy and automobile policy. The original certificate of insurance shall be delivered to the City Clerk, City of West Des Moines, P.O.Box 65320, West Des Moines, Iowa 50265. A copy of the certificate shall also be submitted to the Superintendent of Recreation for the Department's records.

The Association shall obtain and maintain through the term of this agreement, insurance with terms and limits of coverage equal to or in excess of those set forth in the specifications governing the agreement, but in no event, are such terms and limits to be less than those set forth below. The limits of liability under insurance policies required by this Contract shall in no-way limit the Association's actual liability.

(1) **Commercial General Liability,**
Including coverage for premises and operations, independent contractors, products & completed operations, contractual liability, explosion, collapse and underground hazards (XCU), personal injury/advertising injury. The limits can be satisfied by providing a primary policy or in combination with an excess liability policy. The City shall be named as additional insured on a primary and non-contributory basis. The policy will include waiver of subrogation endorsement in favor of the City of West Des Moines.

Bodily Injury & Property Damage - Each Occurrence	$1,000,000
Personal Injury & Advertising Injury - Per Person	$1,000,000
General Aggregate on the Above	$2,000,000
Products & Completed Operations	$2,000,000

General Aggregate	
Fire Damage Limit	$100,000
Medical Expense Limit	$5,000

(2) **Business Automobile Liability Insurance**

Including coverage for all owned, non-owned and hired automobiles with limits of liability not less than the following. The limit can be satisfied by providing a primary policy or in combination with an excess liability policy. The City of West Des Moines would be added as an additional insured on a primary and non-contributory basis. The policy will include waiver of subrogation endorsement in favor of the City of West Des Moines.

Bodily Injury & Property Damage – Each Accident	$1,000,000

(3) **Workers Compensation and Employers Liability,**

As required by any applicable law or regulation. The policy will include waiver of subrogation endorsement in favor of the City of West Des Moines.

Part 1- Workers Compensation Benefits	Statutory

(4) **Employers Liability:**

Bodily Injury Each Accident	$100,000
Bodily Injury by Disease Policy Limit	$300,000
Bodily Injury by Disease Each Employee	$300,000

(5) **Umbrella Liability**

The Association will maintain umbrella liability insurance on an occurrence basis in excess of the general liability, automobile liability and employer's liability insurance described above which is at least broad as all underlying policies including but not limited to additional insured and waiver of subrogation and Primary and non-contributory.

Each Occurrence Limit	$1,000,000
Aggregate Limit	$1,000,000

(6) **Property Insurance**

The Association will have property coverage on any property required per contract that is kept on the City property against loss or damage with a limit not less than $50,000.

Any subcontractors utilized shall be subject to the same insurance requirements above.

B. Upon failure of the Association to furnish, deliver and maintain such insurance as above provided, this Agreement may, at the election of the city, be forthwith declared suspended, discontinued or terminated. Failure of the Association to procure and/or maintain the required insurance shall not relieve the Association from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Association concerning indemnification. All required insurance shall be in effect and continued during the term of this Agreement.

C. The City recommends a bonding policy covering all members who handle money in the Association.

VIII. General Covenants, Policies and Conditions

A. All eligible residents of West Des Moines shall be permitted to participate in the Association's program. The Association shall comply with all federal, state, and municipal equal opportunity laws and regulations prohibiting discrimination including but not limited to adherence and compliance with the Americans with Disabilities Act.

B. The Association shall encourage all participants to abide by all federal, state, county and city laws, ordinances and regulations including all regulations adopted and established by the City Council, Parks and Recreation Advisory Board, and the Department.

C. The Department Director or his/her designee reserves the right to cancel or postpone any activity or eject any person(s) from the facility due to conflicts, disregarding of rules and regulations of the Parks, adverse weather, or uncontrollable circumstances.

D. Discrimination. The City of West Des Moines does not discriminate on the basis of age, color, creed, disability, gender identity, national origin, race religion, sex, sexual orientation, or veteran status. Association agrees not to discriminate against any person on the basis of age, color, creed, disability, gender identity, national origin, race religion, sex, sexual orientation, or veteran status and to include a similar non-discrimination provision in all agreements associated with use of park and recreation premises.

E. Anti-Bullying Statement - The Parks & Recreation Department will not tolerate bullying* in any youth program or activity, and The Association will do all they reasonably can to create a safe space for participants,

regardless of an individual's actual or perceived age, color, creed/denomination, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes/appearance, physical or mental ability or disability, ancestry, political belief, socioeconomic status, or familial status. **For the purposes of this statement, bullying is defined as the unwanted, aggressive use of physical, social or mental/intellectual power to control, harm or humiliate another person in a repetitive or pervasive manner.*

F. Overflow parking in the parking lot located on City-owned property at the northeast corner of 39th Street and E.P.True Parkway will be allowed for Association events. This shall be limited to matches held according to the Association's schedule. No parking shall occur on grass areas.

IX. Termination

A. At the expiration of this Agreement or any extension thereof, or sooner as hereinafter set forth, the Association shall surrender the Premises and all City property thereon, in as good condition as when taking possession by the Association.

(1) The Association may be relieved in whole or in part of any or all of the obligations of this Agreement for such stated periods of time as the City may deem proper upon written application showing circumstances beyond the control of the Association warranting such relief. The City shall respond in writing authorizing or rejecting said request.

(2) Upon default by the Association of any of the terms and provisions of this Agreement, this Agreement may be terminated or canceled at the option of the City, provided, however, before termination or cancellation, the City, shall give written notice to the Association's President or other officer by Certified Mail specifying the default or defaults and stating the Agreement will be canceled and forfeited ten (10) days after giving of such notice unless such default or defaults are remedied within such grace period. Any bankruptcy or insolvency proceedings by the Association shall, at the City's option, immediately terminate this Agreement and the Premises under the control of the Association shall vest with the City.(3) If the City is required to expend any money to fulfill the terms, conditions and obligations of the Association, either during the term of this Agreement by reason of default or after termination of this Agreement, the Park and Recreation Advisory Board, the City, or its assigns may pursue reimbursement of any

costs directly from the
Association, or may seek any legal or equitable remedy available including costs and attorney fees occasioned by such action.

(4) The Association nor any one claiming by, through or under the Association, shall not have the right to file or place any Mechanic's Lien or other lien of any kind or character whatsoever, upon the Premises, facilities, or building controlled by the Association under this Agreement, and notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service or labor for any improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien thereon.

B. If this Agreement is terminated and is not extended, all fencing, light poles, buildings, and underground irrigation systems including controllers shall remain the property of the City. No compensation will be paid by the City to the Association for the above improvements. Scoreboards, goals, light fixtures, and bleachers shall be considered the property of the Association, unless they were originally purchased by the City, and may be removed from the site. If any property is removed upon expiration of this Agreement, the Premises shall be restored to as good condition as existed upon commencement of this Agreement.

X. Dispute Resolution

A. Any concerns or questions regarding interpretation or application of the provisions of this Agreement shall first be submitted to the Superintendent of Recreation. The Department Director, City Manager, and members of the Park and Recreation Advisory Board or the City Council may become involved in the resolution process. The parties may seek to resolve any disputes by alternative dispute resolution methods prior to pursuing legal or equitable remedies.

B. The laws of the State of Iowa shall govern and any judicial action under the terms of this Agreement shall be exclusively within the jurisdiction of the district court for Polk County, Iowa.

XI. Submittals

A. The following shall be submitted to the Superintendent of Recreation by March 15 of each year or prior to any activity taking place on the Premises:

(1) Roster of current officers' names, e-mail addresses and phone numbers.

(2) List of emergency contact names, e-mail addresses and phone

numbers.

(3) Schedule of Association activities.

(4) Current Association by-laws.

B. In addition, the Association shall submit the required certificate of insurance to the City Clerk and to the Superintendent of Recreation on an annual basis, prior to the expiration of the existing insurance policy. If the Association fails to do so, then upon written demand by the City or Department, the Association must provide the City or Department with the required certificate of insurance within five (5) business days of the date of the written demand. If the Association does not comply within five (5) business days, then the Association is in default of this Agreement. The Association is in default, according to the terms of Section VII – Insurance Requirements, Paragraph B, if there is no insurance coverage at any given time during the term of this Agreement.

C. An annual report shall be submitted by the Association to the Superintendent of Recreation no later than March 15 of each calendar year which shall include, but not be limited to current participation figures, expenses and revenue, evaluation comments, and any facility improvement requests. The Association shall attend a regular meeting of the Parks and Recreation Advisory Board to present the annual report.

D. All tournaments or other activities outside regular league play shall be communicated to the City. The Association shall submit Tournament Communication forms to the Superintendent of Recreation a minimum of thirty (30) days prior to the tournament or activity.

XII. Release of Liability; Hold Harmless

A. The City and the Association hereby agree to indemnify and hold the other party, its elected officers, agents, employees, successors, and assigns, harmless from any and all claims, demands, actions, judgments, settlements, or other costs, including reasonable attorneys' fees, which the party may indur or sustain due to negligent, reckless, or willful conduct attributed to the party, related to the execution of this Agreement. For the purposes of this Section, "City" includes those persons described in Section I – Definitions, Paragraph A, as well as West Des Moines Water Works. As a condition of this Agreement, each party must provide the other party with prompt notice of any such claim, demand, or action and all necessary information and assistance so that the indemnifying party, at its option, may defend or settle such claim, demand, or action. In the event that any such claim, demand, or action is caused by the joint or concurrent negligence of both parties, then the loss, expense, or claim

shall be borne by each party in proportion to its respective negligence in causing said loss, expense, or claim.

B. The parties specifically agree that the City is not liable for any failures by the Association to pay taxes, assessments, sales taxes, withholding taxes, or other public charges levied or assessed by reason of the operation of the Association's activities or programs.

XIII. Notices

Notices to be sent pursuant to this Agreement shall be sent to the other party by certified mail, with return receipt and addressed as follows:

For the City:
Ryan Jacobson, City Clerk
City of West Des Moines
4200 Mills Civic Parkway
PO Box 65320
West Des Moines, IA 50265

For the Association:
President, Rugby Foundation

RUGBY FOUNDATION

_____
President

CITY OF WEST DES MOINES

_____
Steven K. Gaer, Mayor

Attest:

_____
Ryan T Jacobsen, City Clerk