

USE AGREEMENT FOR AMEND PARK

THIS USE AGREEMENT, made and entered into this 24 day of June, 2002, by and between the following:

THE CITY OF BILLINGS, a Montana Municipal Corporation, Billings, Montana, hereinafter designated as City,

and

THE BILLINGS AMEND PARK DEVELOPMENT COUNCIL, a non-profit corporation, hereinafter designated as the APDC;

WITNESSETH;

WHEREAS, the City owns a certain premises known as Amend Park, portions of which are suitable for playing soccer games; and other activities and events compatible with wide-open space;

WHEREAS, the APDC was established in approximately 1992 with its mission to promote, develop, and maintain Amend Park which will complement community and neighborhood needs for multi-use park facilities through the open space concept of park development with a focus on soccer;

WHEREAS, the conception, construction, and some maintenance of Amend Park has been funded almost entirely through private donations, the majority of which have come from the soccer community of players, parents, and supporters;

WHEREAS, the APDC cooperates with and is supported by the Billings Parks and Recreation Department of the City of Billings, the School District #2 Activities Office, the Yellowstone Soccer Association, the Magic City Soccer Association, and the Billings Soccer Association collectively sponsor youth and adult recreational and competitive soccer programs for more than 3,000 players annually;

WHEREAS, from its beginning, Amend Park has served as the "home" of soccer in Yellowstone County, including the site for YSA's spring and fall seasons of recreational play, BSA's site for adult recreational play, the site for Magic City Soccer Club's competitive youth soccer play, and the location for practice and competition of both JV and varsity men's and women's teams from all four high schools in Billings;

WHEREAS, the City believes that it is in the best interests of the community to continue to support APDC's efforts to secure funding to develop Amend Park and desire to manage and maintain Amend Park, as provided herein, consistent with the Park's historical development and use as a multi-use soccer complex.



NOW THEREFORE, the Parties agree as follows:

1. **SCOPE:** This agreement shall relate to the scheduling, maintenance, and development of a portion of Amend Park as further identified herein and hereafter referred to as the Premises. Amend Park, including that portion identified as the Premises, shall at all times remain a public park available for public use consistent with this agreement and City policies and regulations. All development and operation of the Park will comply with all applicable provisions of the Land and Water Conservation Funds as set forth in Exhibit "A" attached hereto and incorporated by this reference and City regulations, including any future amendments thereto.
2. **TERM:** The term of this Agreement shall be for one calendar year commencing upon the date of its execution (Anniversary Date) by the parties. This Agreement shall renew automatically for a like term upon the Anniversary Date unless terminated by one of the parties as specified herein.
3. **PREMISES:** The Premises covered by this Agreement shall include the Amend Park Soccer Complex as shown in Exhibit "B" attached hereto and incorporated herein by this reference. The Premises is a portion of Amend Park, which is located north of King Avenue East between South Billings Boulevard and the Streeter Brothers Subdivision, approximately, in Billings, Montana.
4. **TERMINATION:** Either party may terminate this agreement by providing the other notice of their intent to terminate at least ninety (90) days in advance of the Anniversary Date. Said notice shall be in writing and delivered to the other party in accordance with the notice provision hereof. Upon termination, APDC shall have a duty to leave the Premises in a condition similar to that of the Premises upon the execution of this agreement; improvements installed in accordance herewith, ordinary and reasonable wear and tear, damage by the elements, and damages for which the City has been compensated excepted.
5. **APDC'S RIGHTS & DUTIES:** In addition to the other provisions of this agreement, the APDC shall have the following rights and duties:
 - 5.1. **Schedule:** During the term of this agreement, the APDC shall have the exclusive right to schedule the soccer fields and pavilion located on the Premises utilizing the Use and Operations Committee process described herein, and to exclude all use inconsistent with scheduled uses.
 - 5.2. **Maintenance Responsibilities:** The APDC will at a minimum:
 - 5.2.1. Maintain the pavilion buildings, soccer goals and Park signage; provide playing field layout and marking;
 - 5.2.2. Provide for playing field turf maintenance and cultural practices including the fertilization of the playing fields on the Premises and the application of turf grass weed control and turf maintenance cultural treatments thereon as

- necessary to maintain a health turf; and make repairs incidental to the playing of soccer;
- 5.2.3. Provide for the mowing of the soccer playing fields, not otherwise provided for herein, as needed to maintain an acceptable playing height during scheduled soccer use;
 - 5.2.4. Clean up the premises, to include playing fields, parking lots, and surrounding areas contiguous to the playing fields on a regular basis and deposit all litter into appropriate litter collection receptacles provide by the City;
 - 5.2.5. Clean the pavilion restrooms as often as needed to provide clean, sanitary restrooms for public use as weather permits during usual Park operation hours.
- Provided, however, that:**
- 5.2.6. The APDC may contract with the City or a private contractor to perform any of their maintenance responsibilities or such additional maintenance activities that they should elect to undertake.
 - 5.2.7. The APDC shall utilize professional maintenance personnel with appropriate skills and equipment to perform necessary field maintenance work. Volunteers may be used to perform functions that do not require specialized equipment, knowledge, or skill.
- 5.3. **Utilities:** The APDC shall be responsible for all utility costs associated with the Premises with the exception of water service and electrical service related to irrigation of Amend Park.
 - 5.4. **Restroom Facilities:** Until permanent facilities are available or when permanent facilities are inoperable, the APDC shall be responsible for the furnishing and placement of adequate portable toilet units in the park for the period of this agreement. APDC shall not be responsible for placement of portable toilet units during periods in which no organized activities or events are scheduled. Restrooms will be available to the general public as weather permits during usual Park operation hours.
 - 5.5. **Fees and Charges:** The APDC may establish and charge:
 - 5.5.1. A special event fee for all approved special uses including sport camps and schools, special sporting events, and other special events;
 - 5.5.2. A fee for each individual and/or each organization for each approved Use Permit applied for based on registration records for the most recent program period of that organization. Any such fee shall be equitably applied, charged, and collected from all users, groups, organizations, or entities, public or private;
 - 5.5.3. Reasonable fees for furnishing toilets, providing field layout, line painting, goals, nets, maintenance and repair and related services and supplies for the organizations using the fields or, in the alternative, require the organization using the field to supply such at the cost of the organization;
 - 5.5.4. The forgoing notwithstanding, events scheduled by the City shall not be subject to any fee established by the APDC in accordance with this agreement.
 - 5.6. **Improvements:** The APDC shall have the right to improve the Premises in accordance with the Amend Park master plan as currently adopted or amended.

- 5.6.1. Improvements not contained in the Amend Park master plan must either be added to the master plan through a plan amendment process or separately authorized by the City Council;
- 5.6.2. In all cases, the APDC agrees to notify the City of new development proposals sufficiently in advance to allow a reasonable time period for the City to perform an administrative review and approval of the preliminary development plans and for the City to coordinate said proposal with City planned development and maintenance activities. The Oversight Committee shall perform this function;
- 5.6.3. The APDC must also secure all applicable permits and authorizations applicable under City, state, and federal law;
- ~~5.6.4. All improvements made to the Premises in accordance herewith will become the property of the City upon completion.~~
- 5.7. **Concessions:** The APDC shall be responsible for operation of any and all concessions in the Premises during all scheduled uses and events. Concessions shall include all food and beverage items as well as any other products or goods to be sold or served on the Premises. The APDC shall have the right to:
 - 5.7.1. Assign its right to operate any and all concessions to other groups, organizations or entities;
 - 5.7.2. Enter into long term agreements, up to ten (10) years, with vendors for concessions;
 - 5.7.3. Contract in whole or in part any concession services on the Premises or to operate concessions through its own employees or members;**Provided, however, that:**
 - 5.7.4. Contracts or agreements entered into by APDC for concessions are awarded through a Request For Proposal (RFP) process that:
 - 5.7.4.1. Includes an advertised notice soliciting RFP's from interested vendors appearing at least one full week in the local paper with the highest circulation and at least once in an appropriate trade publication;
 - 5.7.4.2. Is designed to solicit responses from multiple potential vendors;
 - 5.7.4.3. Includes the review of submissions by the Oversight Committee;
 - 5.7.4.4. Is free from specifications, qualifications, or requirements that bias the process toward a specific vendor.
 - 5.7.5. All agreements and contracts are first reviewed and approved as to form by the City Attorney;
 - 5.7.6. All concessions shall meet all applicable City Health, Fire, and Building Codes, including any signage associated therewith;
 - 5.7.7. All concessions comply with all existing and/or future policies adopted by the City relating to the operation of concessions.
- 5.8. **Naming:** The APDC shall have the authority to establish naming and memorial contribution opportunities and to name and designate field spaces, buildings and other structures and amenities on the Premises in recognition of charitable contributions. Provided, however, that:

- 5.8.1. The APDC shall not name any feature after a corporation, organization, or product detrimental to the health and welfare of children including, but not limited to, alcohol or tobacco products or producers, gaming organizations, or purveyors of pornography;
- 5.8.2. The APDC shall be responsible for recognizing and maintaining those names and designations during the operation of this agreement;
- 5.8.3. The APDC shall utilize the gift schedule attached as Exhibit C.
- 5.9. **Reports:** The APDC shall submit an annual report and financial statement to the City on or about March 15, 2003 and subsequent years throughout this Agreement and any renewals thereof, and shall submit a proposed operating budget showing anticipated revenues and expenditures for review by the City Council by April 1, 2003 and subsequent years throughout this Agreement and any renewals thereof.
- 6. **CITY'S RIGHTS & DUTIES:** In addition to the other provisions of this agreement and those provided by law, the City shall have the following rights and duties:
 - 6.1. **Maintenance Responsibilities:** The City will:
 - 6.1.1. Irrigate the playing fields and adjacent park areas as necessary to maintain healthy turf;
 - 6.1.2. Mow all grasses and weed areas in the Park fields during the growing season as needed consistent with historical maintenance practices;
 - 6.1.3. Control weed growth on fences, along curb lines and walkways;
 - 6.1.4. Maintain all City sewer lines, City water lines, and all underground electrical lines, electrical services, and asphalt entrances and adjacent streets.
 - 6.1.5. Empty the dumpsters serving the complex as needed;
 - 6.1.6. Turn on water lines and plumbing in the spring as early as weather permits and drain and disconnect the same in the fall as appropriate to protect plumbing systems from damage that may be caused by freezing.
 - 6.2. **Temporary Restroom Facilities:** The City shall be responsible for the furnishing and placement of adequate portable toilet units in the park during the period of any league play, event or activity organized by the City, until such time as the permanent restrooms have been constructed and made operational.
 - 6.3. **Utilities:** The City shall be responsible for water service costs and electrical service costs associated with the irrigation of Amend Park.
 - 6.4. **Cost Reimbursement:** Any expenses incurred by the APDC as a result of an event scheduled by the City shall be reimbursed to the APDC as approved by the Operations Committee.
 - 6.5. **Concessions:** The City shall honor all contracts or agreements entered into by the APDC in relation to concessions in existence at the time notice of termination is provided in accordance herewith. The City is under no obligation to honor any changes to such agreements after the notice of termination.
 - 6.6. **Right Of Entry/Inspection:** Nothing herein shall interfere with the City's right to enter the Premises in order to inspect it for APDC's compliance with this agreement,

perform maintenance activities, or other purposes consistent with the operation of a public park and fulfilling its obligations hereunder.

- 6.7. **Naming:** At the conclusion of this agreement, the City shall be responsible for recognizing and maintaining the names and designations of physical features in Amend Park made by the APDC in accordance with this agreement, including those made by the APDC in advance of this agreement as identified by Exhibit D, for as long as the named or designated features remain in the Park. Provided that the City Council will review and approve all names and designations made subsequent to the execution of this agreement.

6.7.1. City staff shall be responsible for preparing all naming and designation proposals for City Council review;

6.7.2. The City Council review shall be completed within 60 days of the receipt of a request for approval by APDC or the request shall be deemed approved; and

6.7.3. The only appropriate basis for the City Council to disapprove of a requested park feature naming or designation shall be that it violates Section 5.8.1 hereof.

7. **OVERSIGHT COMMITTEE:** A facility Oversight Committee shall coordinate the further development of the Amend Park soccer complex. Said Committee shall consist of two (2) members of the APDC Board of Directors, two (2) representatives of the City, who shall be named by the City Administrator, and one (1) member of the Park, Recreation, and Cemetery Board, who shall be named by that Board. Meetings shall be no less often than once each year. This Committee shall approve and coordinate all proposed development, capital improvement, and/or maintenance projects.

8. **OPERATIONS COMMITTEE:** The APDC shall, upon execution of this agreement, form an Operations Committee.

- 8.1. **Composition:** This Committee shall initially consist of one individual designated by each of the following groups or entities:

8.1.1. APDC;

8.1.2. Magic City Soccer Club;

8.1.3. Yellowstone Soccer Association;

8.1.4. Billings Soccer Association;

8.1.5. School District 2 Soccer representative;

8.1.6. Billings Central High School Soccer representative;

8.1.7. The City of Billings Parks and Recreation Department

The APDC can add individuals designated by other entities or groups that emerge as significant users of the Premises to the Committee as necessary and appropriate.

- 8.2. **Duties:** This Committee shall have the following duties:

8.2.1. Implement the Amend Park Use Priority Policy attached hereto as Exhibit "E" in scheduling park activities, leagues and events;

- 8.2.2. Periodically review the Amend Park Use Priority Policy and update such as necessary to implement the overall mission of Amend Park while insuring continued priority of historical park uses;
 - 8.2.3. Develop, adopt and implement a Use Request Review process for approval or rejection of Use Requests consistent with the requirements set forth in this Agreement;
 - 8.2.4. Develop, adopt, implement and periodically review APDC policy regarding assessment of fees established by the APDC in accordance with this Agreement;
 - 8.2.5. Plan, coordinate, organize and layout fields to accommodate approved Premises uses;
 - 8.2.6. Advise the APDC regarding desired improvements and changes to Premises maintenance in accordance with this Agreement.
- 8.3. This Committee may if necessary organize itself in such sub-committees as are necessary for the efficient conduct of business. This Committee shall report annually to the APDC.
9. **USE REQUESTS:** All requests for use by any person or organization shall be submitted to the Operations Committee in writing for approval at least fourteen (14) days prior to the proposed event. Approval or disapproval of all proposed uses shall be the responsibility of the Operations Committee.
10. **PROCEEDS.** The parties agree that the Net Proceeds (defined as gross proceeds less expenses and less amounts returned to sponsoring organizations for fund raising, such amounts to be negotiated between APDC and the organization and ordinarily not to exceed 12% of gross proceeds) from the APDC's operation shall be applied according to the following priorities:
- 10.1. First, to APDC's administrative expenses of operation (not to exceed 20% of net proceeds);
 - 10.2. Second, to APDC's costs to fulfill its maintenance responsibilities under 5.2;
 - 10.3. Third, to the City's costs to fulfill its maintenance responsibilities under 6.1;
 - 10.4. Fourth, to cover the costs of any additional services or maintenance the APDC may request that the City provide;
 - 10.5. Finally, any remainder shall be provided to the City for future operation and maintenance costs of Amend Park. Funds provided to the City under this paragraph will be separately accounted for and tracked to ensure that they are expended in accordance herewith.
11. **PUBLIC INPUT:** The APDC agrees to hold, at least on an annual basis, a public meeting to inform the public of the status of Amend Park and to obtain public input regarding Park use, operation and maintenance. This meeting shall be held within close proximity of Amend Park.
12. **NOTICE:** The APDC shall at all times maintain a mailing address, phone number, and designated agent accessible to the public and the City for resolution of issues relating to

this agreement and to receive notices associated therewith. The APDC shall notice the City with any changes in contact information prior to the effective date of that change.

13. **ASSIGNMENT:** This AGREEMENT is not assignable by the APDC in whole or in part without the prior written approval of the City Administrator for the City of Billings.
14. **NON-DISCRIMINATION:** The undersigned, either as an individual or on behalf of a group or organization, hereby agrees that this facility shall not be used in any manner that would discriminate against any person or persons on the basis of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin.
15. **BREACH:** Should this Agreement be violated, a notice thereof in writing shall be issued; and if said breach is not corrected within thirty (30) days of said notice, or such other reasonable period of time as the parties may agree; then this Agreement may be terminated at the option of the Party wronged through a written notice of such provided at the end of the cure period. In the event of a dispute regarding any asserted breach, the parties agree to meet in a timely fashion to attempt resolution of the asserted breach. If the parties are not able to resolve said breach or reach agreement regarding such, the parties agree to mediate the dispute prior to initiating any proceeding to terminate this Agreement based upon the alleged breach. Each party will be responsible for the payment of one-half of the mediator's costs. This paragraph shall not prevent the issuance of any other remedy at law or in equity.
16. **ATTORNEY'S FEES AND COSTS:** In the event it becomes necessary for either Party to this Agreement to retain an attorney to enforce any of the terms or conditions of the Agreement, then the prevailing Party shall be entitled to a reasonable attorney's fee and costs, including in-house counsel.
17. **INDEMNIFICATION/INSURANCE:** The APDC shall indemnify and hold harmless the City against all claims, damages, losses and expenses arising out of or resulting from their negligent acts or omissions or those of any sub contractor, agent, or anyone directly or indirectly volunteering for or employed by them.
 - 17.1. The APDC shall also require that all organizations that they schedule to use the Premises shall indemnify the APDC and the CITY and hold them harmless from, and against all claims, damages, losses and expenses arising out of or resulting from their negligent acts or omissions or those of any sub-contractor, agent, or anyone directly or indirectly volunteering for or employed by them;
 - 17.2. The APDC shall require that each organization using the Premises carry minimum liability insurance in the amount of seven hundred and fifty thousand and no/100 Dollars (\$750,000) for each accident or one million five hundred thousand and no/100 Dollars (\$ 1,500,000) aggregate (MCA Section 2-9-108(1) (1997)). Each organization shall provide APDC a Certificate of Insurance made out to the APDC and the City of Billings, and naming APDC and the City of Billings as additional parties insured. APDC shall routinely provide a copy of said certificates to the City.

18. **AMENDMENTS AND MODIFICATION:** The parties shall also have the right to mutually renegotiate the terms and conditions herein on an annual basis upon either party's request. The Parties hereby agree that any amendments or modifications to this Agreement or any provisions herein shall be made in writing and executed in the same manner as the original document and shall, after execution, become a part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this 24 day of June, 2002.

CITY: CITY OF BILLINGS, a Montana Municipal Corporation

By: Charles F. Tooley
Charles F. Tooley, Mayor

ATTEST:

By: Marita Herold
City Clerk

APDC: THE BILLINGS AMEND PARK DEVELOPMENT COUNCIL, A
Montana Corporation

By: Regina Gustaf
President APDC

~~APPROVED AS TO FORM AND CONTENT:~~

~~_____~~
Magic City Soccer Club

~~_____~~
Yellowstone Soccer Association

~~_____~~
School District No. 2

~~_____~~
Billings Soccer Association