



City of Saginaw

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Recreation & Community Services Department
333 W. McLeroy Blvd., Saginaw, Texas 76179
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Council Agenda Background

To: Nan Stanford, City Manager

From: Keith C. Rinehart, Director of Recreation & Community Services

Date: December 15, 2015 – City Council Meeting

PRESENTER:

Keith C. Rinehart, Director of Recreation & Community Services

ITEM:

Consideration and approval of a Field Usage Agreement with Eagle Mountain Soccer Association (EMSA)

DISCUSSION:

The current field usage agreement has expired and is time to consider renewal. This field usage agreement was revised by City staff with a few minor changes that have been reviewed by the City Attorney. Some changes are noted below:

- EMSA shall be responsible for payment of the utility water bill generated by the use of the City-owned park irrigation systems and the water utility deposit to set up the initial account. EMSA shall have access to the irrigation control system and the scheduling of watering turf areas
- Have all of its coaches and assistant coaches certified for coaching youth by national or state accredited coaching certification program that is recognized and approved by the CITY. All coaches must have background checks and certified as child safe during the 2016 season and for each additional season if contract is renewed.
- EMSA shall not make any permanent improvements without approval of the City of Saginaw. Permanent improvements will be subject to City inspection and must meet the designated City Codes.

EMSA again wishes to use the fields at William Houston Memorial Park. This agreement has also been discussed with the EMSA and received their approval of the field usage agreement.

December 11, 2015

RECOMMENDATION

City staff is recommending that the City Council approve the Field Usage Agreement that would allow the Eagle Mountain Soccer Association to utilize the soccer fields at William Houston Memorial Park as game fields only.

ATTACHMENTS:

- Field Usage Agreement

If you have any questions, please feel free to contact me at 817-230-0351.

Thank you,

Keith C. Rinehart

Keith C. Rinehart
Director of Recreation & Community Services
City of Saginaw

FIELD USAGE AGREEMENT – SOCCER

THE STATE OF TEXAS §

KNOW BY ALL THESE PRESENTS:

COUNTY OF TARRANT §

This non-exclusive Soccer Field Usage Agreement ("**Contract**") is entered into by and between the City of Saginaw, ("**City**"), and Eagle Mountain Soccer Association ("**EMSA**");

WHEREAS; City owns William Houston Park known as the "Contract Premises"; and

WHEREAS; EMSA wishes to utilize a portion of said Contract Premises for the purpose of operating a youth soccer league therein during the term of this Contract;

NOW THEREFORE; City and EMSA in consideration of the mutual covenants herein agree as follows:

1. **Term:** The term of this Contract shall begin upon mutual execution hereof and shall terminate on December 31, 2016, subject to the provisions concerning termination as stated herein. This Contract shall be for a term of one year. However, this Contract can be terminated with or without cause by either party by giving 30 days written notice to either party.
2. **Option to Renew:** This Contract may be automatically renewed at the option, but not the obligation, of the parties conditioned upon the following:

If not in violation of any obligation hereunder, EMSA shall be given the option to renew this Contract for a like term upon conditions set forth by the City. If EMSA should desire to renew this Contract, it shall do so by giving written notice by December 1 or the end of the contract year for which the extension is requested. The Contract may be renewed for no more than two (2) additional terms of one (1) year each, under the same terms and conditions of this Contract.

3. **Location:** City grants authorization to EMSA to use the location at William Houston Park (700 Park Center, Saginaw, Texas 76179).
4. **Use of Facilities:**
 - City retains joint use of the Contract Premises during the term of this Contract, subject to EMSA's right to exclusive control of the Contract Premises during its use for youth sport soccer purposes. EMSA must not deny access to and use of the Premises to the general public for unorganized activities when the Contract Premises are not being used for youth sport soccer purposes by EMSA.
 - City retains the right to use or cross the Contract Premises with utility lines and/or easements. City may exercise this right without compensation to EMSA for damages to the Premises and any improvements to the Contract Premises, from installing, maintaining, repairing, or removing the utility lines and/or easements. City must use reasonable judgment in locating the utility lines and/or easements to minimize damage to the Contract Premises and any improvements.

- At any time the soccer facilities are not being used by EMSA, City may assign such facilities to other associations or parties.
- EMSA understands and agrees that at times weather and/or field conditions, as well as maintenance issues, and safety concerns may result in City denying the use of certain fields on dates for which approval has been granted. When this occurs, the City shall make reasonable efforts to designate other City-owned fields and dates to facilitate EMSA's soccer program.
- City shall at all times have the right to inspect its facilities being used by EMSA and all EMSA sponsored activities related to the use of such facilities.

5. **Obligation of the City:**

CITY agrees to:

- Provide the following maintenance and repairs in a manner generally equal to normal CITY maintenance and repair of similar City recreational facilities:
 - Maintain all turf areas on the fields to include mowing, weed control, fertilizing and herbicide spraying.
- Provide sand, soil, etc. to be used in leveling or backfilling low areas when deemed necessary.
- Haul off trash that has been deposited in trash receptacles as warranted.
- Maintain structural integrity of restrooms, including repair or replacement of damaged roofs, doors, and windows.
- Maintenance of any field irrigation system and watering schedules of turf areas.
- Maintenance of any adjacent City-owned park irrigation systems and the scheduling of watering turf areas.
- Maintain restroom facilities.
- Maintain, repair or replace parking areas.
- List EMSA's soccer program on the City's web site; provide a meeting place (Recreation Center lobby) for registration; and take calls for information and refer interested parties to EMSA when necessary.
- Reserve the right to utilize the Soccer Facilities when EMSA league games are not scheduled. If the Contract Premises is no longer owned by the City, the Contract shall be considered terminated.

6. **Obligations of EMSA:**

EMSA shall:

- At no cost or expense to the CITY, provide the following maintenance repair:
 - Maintain soccer nets, cables, and net clips.
- Be responsible for daily game day policing of all litter on their field(s) to include playing areas, fences, backstops, bleachers, and adjacent grounds.
- Be responsible for payment of the utility water bill generated by the use of the City-owned park irrigation systems and the water utility deposit to set up the initial account. EMSA shall have access to the irrigation control system and the scheduling of watering turf areas.
- Maintain a one hundred dollar (\$100) deposit per season to ensure daily game policing of litter. CITY will draw upon that deposit based on the actual cost of cleaning. If the deposit shall be drawn upon, EMSA shall promptly make up any deficiency.
- Maintain and provide the supplies for and the actual lining and chalking of fields for all games.
- Submit to CITY for approval for permanent improvements/construction on the fields or adjacent grounds.
- Provide Certified Officials and the expense of the same at no cost to the CITY.
- Not place or permit to be placed any sign or advertisement upon premises without prior consent of the City of Saginaw. EMSA shall not remove any sign placed by the CITY from the game fields. EMSA Sponsor Banners may be displayed during the game and removed immediately after the game ends.
- Furnish to the Recreation and Parks Departments a listing of a complete Game Schedule for the season. The complete game schedule and times shall be submitted at least 14 days prior to the first regular season game. The schedule may be adjusted as the season progresses and will serve as a guide for maintenance of the Facilities. Game schedules must be approved by the City before being distributed to teams.
- Allow one non-voting City Official to attend EMSA meetings.
- Schedule and meet with a Recreation and Parks representatives to approve schedule, fields, and guidelines prior to the season.
- Notify the City about EMSA meetings and times.
- Permit the City to perform an audit of any revenues generated by EMSA, upon demand.

- Make determinations on soccer field closures due to weather and communicate these closures to players and coaches.
 - Not discriminate against any person or persons because of race, color, religion, sex, disability, or national origin.
 - Have all of its coaches and assistant coaches certified for coaching youth by national or state accredited coaching certification program that is recognized and approved by the CITY. All coaches must have background checks and certified as child safe during the 2015/2016 season and for each additional season if contract is renewed.
 - Ensure CITY that all coaches, assistant coaches, board members, and any other official for EMSA have had a Statewide Criminal history background check completed before being assigned to coach a team.
 - Not engage in any business on the premises or do anything that shall be in violation of any existing state or federal laws or City Ordinances, or use the same in a manner as to constitute a nuisance. The City reserves the right to exclude any individual or group from its facilities based on conduct, which it determines in its discretion to be objectionable or contrary to City interests.
 - Agree that all facilities are for scheduled and approved events only and not for practice without permission from the City.
 - Agree to provide sufficient notice of all scheduled make-up game times (preferably one week notice).
 - Follow rules that have been established by the City concerning conduct at city fields.
 - Request in writing any/all non-game activities which are soccer related such as camps, clinics, and registration. This written request must be presented at least thirty (30) days in advance in writing to the City Staff for approval.
 - Not make any permanent improvements without approval of the City of Saginaw. Permanent improvements will be subject to City inspection and must meet the designated City Codes.
 - Prior to the season, provide a copy of the Rules and Regulations, Charters, Constitution, By-Laws, Financial Statements, Directory of Officers, and provide public notification of any meetings or elections concerning the EMSA organization.
7. **Assignment:** No assignment of Contract or any right or interest therein by either party is effective without the prior written consent of a duly authorized representative of the other party.
8. **Force Majeure:** The parties will exercise every reasonable effort to meet their respective obligations but are not liable for delays resulting from force majeure or other causes beyond their

reasonable control for reasons including, without limitation, the following: acts of God, or delays of suppliers, subcontractors, utility companies or other carriers.

- 9. INDEMNITY:** EMSA COVENANTS TO FULLY INDEMNIFY, SAVE, AND HOLD HARMLESS THE CITY OF SAGINAW, ITS OFFICERS, EMPLOYEES, OR AGENTS (“INDEMNITEES”) FROM, AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LOSSES, COSTS, LIABILITIES, EXPENSES, AND JUDGEMENTS RECOVERED FROM OR ASSERTED AGAINST CITY ON ACCOUNT OF INJURY OR DAMAGE TO PERSON (INCLUDING, WITHOUT LIMITATION ON THE FOREGOING WORKER'S COMPENSATION AND DEATH CLAIMS), OR PROPERTY LOSS OR DAMAGE OF ANY KIND WHATSOEVER, TO THE EXTENT ANY DAMAGE OR INJURY MAY BE INCIDENT TO, ARISE OUT OF, BE CAUSED BY, OR BE IN ANY WAY CONNECTED WITH, EITHER PROXIMATELY OR REMOTELY, ANY ACTIVITY ASSOCIATED WITH EMSA'S BUSINESS INCLUDING BUT NOT LIMITED TO: THE OPERATION AND MANAGEMENT OF A COMPETITIVE AND RECREATIONAL SOCCER LEAGUE; THE EXERCISE OF RIGHTS UNDER THIS CONTRACT; AN ACT OR OMISSION, NEGLIGENCE, OR MISCONDUCT ON THE PART OF EMSA OR ANY OF ITS AGENTS, SERVANTS, EMPLOYEES, PATRONS, GUESTS, LICENSEES, INVITEES, OR OTHER PERSONS HAVING INVOLVEMENT IN, PARTICIPATION WITH, OR BUSINESS WITH EMSA, WHETHER AUTHORIZED WITH THE EXPRESS OR IMPLIED INVITATION OR PERMISSION OF EMSA (COLLECTIVELY “EMSA'S INVITEES”); INCLUDING ANY INJURY OR DAMAGE RESULTING, PROXIMATELY OR REMOTELY, FROM THE VIOLATION BY EMSA, OR EMSA'S INVITEES OF ANY LAW, ORDINANCE, OR GOVERNMENT ORDER OF ANY KIND; INCLUDING ANY INJURY OR DAMAGE IN ANY OTHER WAY ARISING FROM OR OUT OF EMSA'S EXERCISE OF RIGHTS UNDER THE CONTRACT; **AND INCLUDING INJURY, LOSS, OR DAMAGE CAUSED BY THE SOLE OR CONTRIBUTORY NEGLIGENCE OF THE INDEMNITEES.**

EMSA COVENANTS AND AGREES THAT IF CITY IS MADE A PARTY TO ANY LITIGATION AGAINST EMSA OR IN ANY LITIGATION COMMENCED BY ANY PARTY, OTHER THAN EMSA RELATING TO THIS CONTRACT, EMSA SHALL, AT ITS OWN EXPENSE, UPON RECEIPT OF REASONABLE NOTICE REGARDING COMMENCEMENT OF LITIGATION, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND CITY IN ALL ACTIONS, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, AND ACTIONS.

- 10. Insurance:** EMSA must secure and maintain at EMSA's expense during the term of Contract, a Commercial General Liability insurance policy with the limits and requirements shown on the attached and incorporated Exhibit “A”. The Certificate of Insurance must be sent to the Director and must provide 30 days written notice of cancellation, intent to not renew or material change of any coverage required herein. EMSA will provide copies of all insurance policies to the City Attorney upon the City Manager's written request.

The amount of all required insurance policies is not deemed to be a limitation on EMSA's agreement to indemnify and hold harmless indemnitees, and in the event EMSA or indemnitees become liable in an amount in excess of the amount or amounts of the policies, then EMSA must save indemnitees harmless from the whole liability.

- 11. No Debts:** EMSA must incur no debt or obligations on the credit of the CITY.

12. **Notices:** All notices, demands, requests or replies provided for or Contracted by EMSA must be in writing and may be delivered by any one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service; (3) by prepaid telegram; or (4) by deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above will be deemed effective two (2) business days after deposit with the United States Postal Service. Notice by telegram or overnight express delivery service will be deemed effective one (1) business day after transmission to the telegraph company or overnight express carrier. All such communications must only be made to the following:

If to City:
City of Saginaw
Attn: Director of Recreation & Community Services
633 West McLeroy Blvd.
Saginaw, TX 76179
817-230-0351

If to EMSA:
Eagle Mountain Soccer Association
Attn: President / Chairperson
P.O. Box 79669
Saginaw, TX 76179
817-438-8855

It is imperative that any change of address must be made by sending notice as set out above.

13. **Waiver.** No waiver of any breach of any term or condition of Contract waives any subsequent breach of the same.

14. **Severability.** If any clause or provision of Contract is illegal, invalid or unenforceable under present or future law effective during the term of Contract, then the remainder of Contract is not affected thereby, and in lieu of each such clause or provision, a clause or provision (as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable) will be added to Contract automatically.

15. **Entirety Clause.** Contract contains all terms and conditions agreed to by City and Concessionaire. Upon mutual execution, Contract displaces any and all prior agreements, Contracts, leases or contracts whether written or verbal, whether express or implied.

SIGNED IN DUPLICATE THIS _____ DAY OF _____, 2015.

CITY OF SAGINAW

Gary Brinkley, Mayor of Saginaw, Texas

Legal form approved _____, 2015

By: _____
Bryn Meredith, City Attorney

EMSA

President, Eagle Mountain Soccer Association

Address

City

State

Zip Code