

Date November 5, 2012

**APPROVAL OF AGREEMENT FOR SHARED USE OF PARK AND RECREATIONAL FACILITIES AND DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT FACILITIES**

WHEREAS, the Des Moines Park and Recreation Department is responsible to provide recreation and leisure activities throughout Des Moines; and

WHEREAS, the Des Moines Park and Recreation Department and the Des Moines Independent Community School District need grounds and facilities to provide activities and programs and the Des Moines Independent Community School District is agreeable to sharing such grounds and facilities; and

WHEREAS, the Des Moines Independent Community School District has agreed to provide one hundred thousand dollars (\$100,000) to support the City of Des Moines Summer Playground and community gardening programs; and

WHEREAS, the Des Moines Independent Community School District has agreed that the Des Moines Park and Recreation Department will be responsible for scheduling of the subject school facilities by the public during the times that the City has priority for use of the school grounds and City park rules and park ordinances and the City park facility use permit shall apply to such school grounds; and

WHEREAS, the Des Moines Independent Community School District Board at its meeting of April 3, 2012, approved the Agreement For Shared Use of Facilities from May 1, 2011 until April 30, 2014, a copy of which is on file in the City Clerk's Office.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Agreement by and between the City of Des Moines and the Des Moines Independent Community School District, which is on file in the City Clerk's office, is hereby approved and the Mayor is hereby authorized and directed to sign said Agreement on behalf of the City and the City Clerk is hereby directed to attest to said signature.

(Council Communication 12-571 ) Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

Ann DiDonato  
Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
<b>TOTAL</b>				
MOTION CARRIED			APPROVED	

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

Date \_\_\_\_\_

Agenda Item 43

Roll Call # \_\_\_\_\_

**2012 – 2017  
AGREEMENT  
FOR SHARED USE OF  
CITY OF DES MOINES PARK AND RECREATIONAL FACILITIES  
AND  
DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT FACILITIES**

THIS SHARED USE AGREEMENT effective May 1, 2011, and extending through April 30, 2014, by and between the DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, Polk County, Iowa, hereinafter called the SCHOOL DISTRICT, and the CITY OF DES MOINES, IOWA, hereinafter called the CITY:

WHEREAS, this Agreement is entered into pursuant to the mutual benefit of the CITY and the SCHOOL DISTRICT; and

WHEREAS, on April 24, 2009, the SCHOOL DISTRICT approved the 2009-2011 Agreement for Shared Use of City of Des Moines Park & Recreational Facilities and Des Moines Independent Community School District Facilities (“the 2009 Agreement”); and

WHEREAS, on May 4, 2009, by Roll Call No. 09-743, the City of Des Moines City Council approved the 2009 Agreement; and

WHEREAS, the CITY through the Park and Recreation Department and the SCHOOL DISTRICT desire to enter into a new Agreement to provide shared use of certain facilities under each party's respective control for purposes of providing supervised recreation and summer meal programs; and

WHEREAS, the parties desire to acknowledge in this Agreement the various current agreements between the CITY and the SCHOOL DISTRICT regarding recreational and playground facilities on City and School District property, which includes some schools which have been relocated or closed to clarify the current use of such SCHOOL DISTRICT facilities as follows:

The CITY and SCHOOL DISTRICT have entered into 28E Agreements for the construction/installation of playground equipment at certain school locations, whereby the CITY provided funding for such playground equipment construction/installation, the SCHOOL DISTRICT maintains such equipment, and the CITY and SCHOOL DISTRICT share use of such playgrounds, with a term of twenty (20) years each, at the following elementary and middle school locations:

Harding Middle School, July 26, 1993 28E Agreement (City Roll Call No. 93-2811), CITY contribution of up to \$85,000;

Kurtz Transitional School (originally Brooks Elementary), July 26, 1993 28E Agreement (City Roll Call No. 93-2810), CITY contribution of \$16,000;

Jefferson Elementary School, June 21, 1994 28E Agreement (City Roll Call No. 94-2392), CITY contribution of \$25,000;

(the former) Granger Elementary School, April 21, 1997 28E Agreement (City Roll Call No. 97-1341), CITY contribution of \$25,000 (current South Union Elementary School);

Hiatt Middle School, February 16, 1998 28E Agreement (City Roll Call No. 98-436), CITY contribution of up to \$10,000; and

WHEREAS, on May 4, 1992, by CITY Roll Call No. 92-1636, the CITY and SCHOOL DISTRICT entered into a Lease Agreement for Northwest Pool to be constructed on a portion of the Meredith Middle School site with a termination date of May 3, 2022, for consideration to the SCHOOL DISTRICT of the shared use of the expanded pool parking lot which is adjacent to the Hoover High School softball field and tennis courts; and

WHEREAS, on September 28, 1998, by CITY Roll Call No. 98-3002, and per an Addendum on April 5, 2004, by CITY Roll Call No. 04-753, the CITY and SCHOOL DISTRICT entered into a 28E Agreement and 2004 Addendum for the funding, construction, and maintenance of a school “park” at Brody Middle School including basketball courts, outdoor classroom, soccer fields and goals, a walking trail, playground equipment, tennis courts, shelter, widening and improvement of the school drive, and installation of gates and expansion,, to be owned by the SCHOOL DISTRICT, , and for the shared use of such improvements by the CITY and SCHOOL DISTRICT, with a CITY contribution of approximately \$282,000, and a term until September 28, 2018 (“the Brody 28E Agreement”) and

WHEREAS, on January 23, 2006, by CITY Roll Call No. 06-175, the CITY and SCHOOL DISTRICT and Polk County entered into a 28E Agreement for the funding and construction of tennis courts, basketball courts, a baseball field, soccer fields and a walking trail on the Hoover High school grounds, to be owned by the SCHOOL DISTRICT, and for the resurfacing and enlarging of the parking lot at Northwest Aquatic Center, to be owned by the CITY, and for the shared use of such improvements by the CITY and SCHOOL DISTRICT, with a CITY contribution of \$175,000, and a term until December 31, 2026 (“the Hoover 28 E Agreement”); and

WHEREAS, this shared use agreement shall be administered by the City Manager or his/her designee and the Superintendent of the SCHOOL DISTRICT or his/her designee; and

WHEREAS, no separate entity is created by this Agreement.

NOW, THEREFORE, BE IT AGREED as follows:

- I. SCHOOL DISTRICT agrees to grant to CITY use of certain facilities at schools to be designated by the School District’s Chief Operations Officer per a written addendum to this Agreement by August 1 of each year for the following year for conducting a Fall-Winter Program of recreational activities, including for purposes of dog training and community recreation afterschool and weekends from September 1<sup>st</sup> through April 1<sup>st</sup> each year during the term of this Agreement.
- II. SCHOOL DISTRICT agrees to grant to CITY use of school facilities to be designated by the School District’s Chief Operations Officer per a written addendum to this Agreement by February 1 of each year for the following year for the conducting of a Spring-Summer Program of recreation activities from April 1<sup>st</sup> to September 1<sup>st</sup> each year during the term of this Agreement.

- A. By February 1 of each year, the School District's Chief Operations Officer shall provide a written addendum to this Agreement allowing use of the tennis courts at designated schools for purposes of tennis instruction and permits from June 1<sup>st</sup> to September 1<sup>st</sup> each year during the term of this Agreement and use of Hoover High School lighted tennis courts week night evenings August 1<sup>st</sup> through October 30<sup>th</sup> each year during the term of this Agreement.
- B. By August 1 of each year, the School District's Chief Operations Officer shall provide a written addendum to this Agreement allowing use of a swimming pool for City canoe classes, swim lessons, and life guard training.
- C. That as to all school premises included in this Shared Use Agreement, the following privileges, rights, and duties are in force:
1. CITY shall bear all costs of operating all programs except for cost of operating and maintaining facilities unless stated otherwise herein. If the SCHOOL DISTRICT incurs specific added expense attributable to a particular usage by the CITY, for custodial services and supplies as well as use of utilities, the CITY will reimburse such added expense. Such reimbursement would be for actual additional expense incurred beyond regularly scheduled working hours.
  2. CITY shall be liable for any damage to shared facilities and/or equipment resulting from CITY's use, except for normal wear and tear.
  3. CITY shall open programs to any and all that desire to participate.
  4. CITY shall supervise and direct all recreational activities, whether indoor or outdoor.
  5. CITY shall attempt to adjust times and dates should a scheduling conflict arise.
  6. CITY shall be granted shared use of additional facilities by the SCHOOL DISTRICT should such facilities become available.
  7. CITY agrees upon termination of this shared use agreement, it will leave the premises in a clean condition free of litter or debris, and CITY will remove all of its personal property from the premises.
  8. The SCHOOL DISTRICT reserves the right to deny use of these facilities due to weather conditions, construction plans or other reasons.
  9. The SCHOOL DISTRICT reserves the right to make modifications or enhancements to such facilities in the SCHOOL DISTRICT'S sole discretion.
  10. CITY represents that its activities pursuant to the provisions of this agreement will be performed and supervised by adequately trained and qualified personnel, and the CITY will observe, and cause its officers, employees, subcontractors and others affiliated with the CITY to observe all applicable safety rules.
  11. The City shall retain the revenue from any fees that are collected resulting from use of the facilities.

The SCHOOL DISTRICT shall, in accordance with its standard operating procedures and as part of its regular patrol of SCHOOL DISTRICT facilities and security practices and with its usual staff, include certain CITY park and recreation facilities, as mutually agreed to by the

CITY Park and Recreation Director and the SCHOOL DISTRICT Building Services Manager, as part of its usual surveillance “rounds” performed by its security staff in accordance with its usual schedule for such rounds. In the event that SCHOOL DISTRICT determines that entry within a CITY facility during hours closed to the public would be useful to investigate whether damage has occurred or may occur, SCHOOL DISTRICT will immediately contact the CITY Police Department via the 911 line for such investigation. SCHOOL DISTRICT may, in its best judgment, use speakers and lights from its vehicles to ask persons to leave the premises if SCHOOL DISTRICT believes that damage or injury has occurred or is likely or imminent. In such event, SCHOOL DISTRICT will ask such persons to cease activity and leave the park or facility and the CITY Police Department will be immediately contacted via the 911 line.

- III. CITY grants to SCHOOL DISTRICT use of the following facilities, based on availability, for conducting varsity athletic programs, intramurals, or physical education classes or other programs.
- A. Use of Tennis Courts .
  - B. Use of Waveland, Blank, and Grand View Golf Courses during times designated by the CITY. All student golfers will be required to pay \$1 per round for high school golf team practice, such fee subject to change upon written notice from the Park and Recreation Director. The SCHOOL DISTRICT agrees to provide the proposed practice schedule to the CITY at least two weeks before each golf season begins.
  - C. Use of park shelters on weekdays during the school year.
  - D. Use of the Nahas Aquatic Center parking lot from the last day of the swimming season to the start of the swimming season.
  - E. Use of James W. Cownie Soccer Park for high school soccer matches. Use during high demand periods will be subject to the City’s current fees.
  - F. Use of Ewing Park to conduct Cross Country races upon two week written notification to the Park and Recreation Department.
  - G. Use of Gray’s Lake for Adult Education canoe and sailing classes.
  - H. Use of park facilities as designated by the Park and Recreation Director by no later than May 1 of each year by written addendum to this Agreement for the SCHOOL DISTRICT’s summer meal program.
  - I. The Park and Recreation Director shall designate up to “Pass and Play” or similar program passes, at his discretion, for distribution to SCHOOL DISTRICT students by the SCHOOL DISTRICT in order to further the goals of the SCHOOL DISTRICT and to promote use of the CITY recreational facilities.

- J. That as to all CITY premises included in this Agreement, the following privileges, rights, and duties are in force:
1. SCHOOL DISTRICT shall bear the costs of operating all programs except for cost of operating and maintaining facilities unless otherwise agreed upon. If the CITY incurs specific added expense attributable to a particular usage by the SCHOOL DISTRICT, for custodial services as well as added use of utilities, supplies or personnel, such added expense will be reimbursed by the SCHOOL DISTRICT. Such reimbursement would be for actual additional expense incurred beyond regularly scheduled working hours.
  2. SCHOOL DISTRICT shall be liable for any damage to shared facilities and/or equipment resulting from SCHOOL DISTRICT's use, except for normal wear and tear.
  3. The SCHOOL DISTRICT shall assign an appropriate teacher\coach to supervise all activities.
  4. SCHOOL DISTRICT shall cooperate in adjusting times and dates for its activities should a scheduling conflict arise.
  5. SCHOOL DISTRICT shall be responsible for directing traffic and notifying participants and spectators of appropriate parking arrangements for all facilities.
  6. SCHOOL DISTRICT agrees that upon conclusion of each activity or event, it will leave the premises in a clean condition and upon termination of this shared use will remove all of its personal property from the premises.
  7. SCHOOL DISTRICT may install certain equipment on this area upon approval by the Park and Recreation Board and City Council, after a sketch showing the proposed location and type of equipment has been submitted to and approved by the Park and Recreation Director.
  8. The CITY reserves the right to deny use of any of these facilities due to weather conditions, construction plans, or other reasons.
  9. The CITY reserves the right to make modifications or enhancements to any such facilities at the CITY's sole discretion.
  10. The SCHOOL DISTRICT represents that its activities pursuant to the provisions of this agreement will be performed and supervised by adequately trained and qualified personnel, and the SCHOOL DISTRICT will observe, and cause its officers, employees, subcontractors and others affiliated with the SCHOOL DISTRICT to observe all applicable safety rules.

11. The SCHOOL DISTRICT shall have exclusive use of the school grounds (playgrounds, sports fields, shelters and other facilities, including the school buildings) during regular school hours (7:45am – 4:00 pm) Monday – Friday during the regular school year days (approximately August 25-June). During the regular school year, the SCHOOL DISTRICT shall have priority in scheduling use of the school premises playgrounds and sports fields and facilities during non-school hours for school sponsored uses. The SCHOOL DISTRICT agrees to provide the CITY with at least five (5) days written notice of an event or activity at such premises.
12. During the non-regular school year (approx. June 6 - August 24, from 7:00 am – 10 pm, Mon-Sun), the CITY shall have priority in scheduling use of the school grounds, including Hoover High School and Brody Middle School. The CITY agrees to provide the SCHOOL DISTRICT, the Office of Adult Community education and the appropriate school principal with at least five (5) days written notice of an event or activity at the school grounds.
13. During the times that the CITY has priority for use of the school grounds, the CITY's Park and Recreation Department will be responsible for scheduling all activities and events of school and public use of such school grounds, including the collection and retention of fees pursuant to Exhibit B for such uses, and is granted authority by the SCHOOL DISTRICT to permit use of the school grounds pursuant to the terms of this Agreement, including requiring appropriate conditions to protect school property and equipment and the adjacent properties for permits for such uses. The CITY shall use its Facility Use Permits, as shown in Exhibit A, and as amended from time to time, to permit the general public to use the school grounds during non-school hours for organized events and activities. The SCHOOL DISTRICT hereby adopts Exhibit A, and as may be amended from time to time by the CITY, subject to approval by the Board of the SCHOOL DISTRICT and the SCHOOL DISTRICT's General Counsel.

To assist in the CITY's scheduling of the school facilities, the SCHOOL DISTRICT shall inform the CITY in writing on or about January 1 of each year if any of the school sites will not be available or will have limited availability for use under this Agreement during the following calendar year.

14. The SCHOOL DISTRICT hereby adopts the CITY rules and regulations and fees associated with use of the school grounds as per Exhibit B, and as may be amended or changed by the CITY pursuant to its usual procedure. The SCHOOL DISTRICT hereby authorizes the CITY to apply and enforce such rules, regulations, and fees in its management of the use of the school grounds under this Agreement, and to apply and enforce the

SCHOOL DISTRICT rules and regulations relating to use of school grounds per Exhibit B. The CITY shall keep all fees collected for use of school sites and will report revenue in the annual report.

15. The SCHOOL DISTRICT acknowledges that some of the CITY facilities in operation at the time of execution of this Agreement may not continue to be in existence or open to the public during the entire term of this Agreement and that such resulting unavailability for use by the SCHOOL DISTRICT shall not be considered a breach of this Agreement by the CITY.

IV. The CITY grants to the SCHOOL DISTRICT the non-exclusive right to use the parking lot a on a portion of Prospect Park for SCHOOL DISTRICT bus parking.

V. SCHOOL DISTRICT agrees to provide funds to the CITY by May 1 of each year, beginning on May 1, 2011, of One hundred thousand (\$100,000) for programming, operations, and supervising the summer playground and community gardening programs at various park, school and community locations. The CITY shall submit a seasonal report to the Chief Operations Officer in September of each year during the term of this Agreement, identifying the scope of services and number of participants. Funding shall be reviewed annually with amount potentially fluctuating depending upon district priorities.

#### VI. INSURANCE

The SCHOOL DISTRICT and the CITY agree to obtain and maintain in continuous effect during the term of this agreement and while any of their respective obligations under this Agreement remain unsatisfied, the insurance coverages set forth in Attachment 1, which by this reference is hereby incorporated into this agreement, with amounts, coverages, limits, exclusions, and endorsements as therein provided.

#### VII. INDEMNIFICATION

Neither party shall, by reason of this Agreement, be obligated to defend, hold harmless or indemnify the other from any liability to third-parties; from and against any liability, loss, damage, claim or lawsuit asserted against them or any of them arising out of or in any way connected with this Agreement.

#### VIII. REMEDIES

The various rights, powers, options, elections, and remedies of either party provided in this shared use agreement, shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies, or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party is entitled as long as any default remains in any way unremedied or undischarged.

#### VIII MODIFICATION

This Agreement represents the full and complete agreement of the parties. Any modification thereof, unless agreed to herein, shall be in writing and signed by the authorized representative for each party.



IX. NOTIFICATION

Addresses for the purpose of this shared use agreement are as follows:

City of Des Moines  
400 Robert D. Ray Drive, Des Moines, Iowa 50309

Park and Recreation Director  
3226 University Avenue, Des Moines, Iowa 50311

Board of Education  
Des Moines Independent Community School District  
Community Adult Ed Director  
1915 Prospect Road  
Des Moines, IA 50310-6265

and

Chief Operations Officer  
1917 Dean Avenue  
Des Moines, IA 50316

X. DISCRIMINATION

With regard to the use of CITY and SCHOOL DISTRICT facilities pursuant to this Agreement, the CITY and SCHOOL DISTRICT shall hold such facilities as available to all persons, groups, and organizations on an equal basis and without restriction provided such persons, groups, and organizations observe all applicable Federal, State, and local laws, rules, and regulations governing the use of such facilities. Inquiries about discrimination in the use or access to such facilities may be directed to Rudy Simms, Human Rights Administrator, 237-1457, 602 Robert D. Ray Drive, Des Moines, Iowa 50309.

XI. FORCE MAJURE

In the event of forced delay in the performance by either party or obligations under this Agreement due to Acts of God or of the public enemy, strikes, lockouts, unusual delay in transportation, unavailability of materials, fire, floods, epidemics, adverse weather conditions, riots, insurrection, war, unavoidable casualties, or judicial or governmental action, other than action by the CITY, the time for performance of such obligations and for the satisfaction of the conditions precedent shall be extended for the period of the forced delays.


XII. Either party may terminate this Agreement upon 6 months written notice to the other party. In addition, this Agreement may be terminated prior to expiration of its term by mutual agreement of the parties or upon default of a material term of this Agreement upon written notice specifying the default with a 30-day cure period if such default is not remedied within said 30-day period.

IN WITNESS WHEREOF the parties have subscribed their names this \_\_\_\_ day of \_\_\_\_\_, 2012.

**CITY OF DES MOINES, IOWA**

**DES MOINES INDEPENDENT  
COMMUNITY SCHOOL DISTRICT**

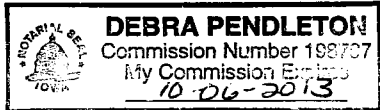
\_\_\_\_\_  
T.M. Franklin Cownie, Mayor

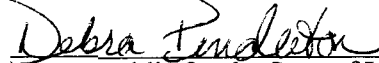
 4/3/12  
\_\_\_\_\_  
Tere Caldwell-Johnson, President

STATE OF IOWA       )  
                                  ) ss  
COUNTY OF POLK    )

On this 3<sup>rd</sup> day of April, 2012, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Tere Caldwell-Johnson, to me personally known, who did say that she is the President of the Des Moines Independent Community School District Board; ~~that no seal has been procured on behalf of said School District by authority of its Board;~~ and that the said ~~Connie Boeson, as such~~ officer acknowledged the execution of said instrument to be the voluntary act and deed of said School District, by it and by them voluntarily executed.

*D.R.*




  
\_\_\_\_\_  
Notary Public for the State of Iowa  
My Commission expires \_\_\_\_\_

STATE OF IOWA       )  
                                  ) ss  
COUNTY OF POLK    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared T. M. Franklin Cownie and Diane Rauh, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa that the seal affixed signed on behalf of the corporation, by authority of its City Council as contained in the resolution adopted by the City Council, under Roll Call No.12-\_\_\_\_\_ and that T. M. Franklin Cownie and Diane Rauh acknowledged the execution of the instrument to be the voluntary act and deed of the corporation by it voluntarily executed.

\_\_\_\_\_  
Notary Public for the State of Iowa  
My Commission expires \_\_\_\_\_

Form Approved:  
  
\_\_\_\_\_  
Ann DiDonato, Assistant City Attorney

ATTEST:  
\_\_\_\_\_  
Diane Rauh, City Clerk

**EXHIBIT A**  
**APPLICATION and Permit FOR USE OF PARK and/or FACILITY**

**Book No. :**  
**Date:**

**Contract**

**Name of Applicant:**  
 (Organization or Individual)  
**Organization Representative:**  
**Email:**  
**Daytime Phone:** **Cell Phone:**  
**Address:**  
**City/Zip:**

<b>Requested Area</b>	
<b>Dates/Hours</b>	
<b>Purpose of Use</b>	
<b>Approximate Number to Attend</b>	
<b>Special Requests</b> (additional fees may be required)	
<b>Request to bring equipment and duration it will remain in park*</b>	

\*Note: These properties remain the sole responsibility of the applicant. The Park and Recreation Department does not assume any liability or responsibility for stored properties.

**Park & Recreation Requirements and Notifications:**

- Alcoholic beverages and are not permitted
- Per City Code: Sec. 74-96 **Glass containers...** No person shall bring into, use or possess in any park a bottle, jar, drinking cup or other container made of glass, except by approval of the park and recreation director by permit for a special event or when a liquor control license has been obtained.
- Permanent markings park facilities are not permitted
- Cleanliness of the area may depend upon previous users and cannot be guaranteed
- Posting of signs and solicitation must be approved by the Park and Recreation Department
- If City staff must clean or repair the venue site, you will be charged accordingly and an invoice will be mailed to you for payment. A damage/cleaning fee may be required prior to your event occurring.
- Motorized vehicles are not allowed on park property other than parking lots and park roads, unless using a mobility assisted device.
- No driving and/or parking on the grass.
- Parking Plans must be submitted with this application.

Complete this application along with the Hold Harmless form and Park Use Plan and mail with payment (if required). Mail by <ContractRequiredBy>, otherwise your reservation will NOT be confirmed. We will send you an approved copy of this application that you must carry and show to the Park Employee and Police, if requested.

<b>Fees</b>	
<b>Additional Fees</b>	
<b>Total Cost</b>	

**RETURN ALL PAGES AND PAYMENT to:**  
**Des Moines Park and Recreation Department**  
**3226 University Ave., Des Moines, IA 50311**  
**Phone: 237-1386 Fax: 237-1407 Emergency After hours: 237-1429**

**FOR DEPARTMENT USE ONLY: Approved by**

\_\_\_\_\_  
Donald M. Tripp, Parks and Recreation Director

\_\_\_\_\_  
Date

Date received \_\_\_\_\_ Received by: \_\_\_\_\_  Cash  Check # \_\_\_\_\_  Visa/MC

**FACILITY USE APPLICATION**  
**HOLD HARMLESS AND DAMAGE RESTITUTION STATEMENT**

<Locations> from <StartDate> to <EndDate> from <EventStart> to <EventEnd> each  
date

For purposes of this section, "City" shall mean the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers and others working on behalf of the City of Des Moines and "Facility" shall mean the park and/or facility which is referred to in this Application. The undersigned, a duly authorized representative of <CompanyName>, hereinafter called Applicant, for purposes of this agreement, in consideration for the acceptance of this application, agrees to the fullest extent permitted by law, to defend, pay on behalf of, indemnify, and hold harmless the City from and against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith, including but not limited to attorney's fees, and court costs, that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss, including, but not limited to, personal injury, including bodily injury or death, property damage, including loss of use thereof, and economic damages arising out of or in any way connected or associated with Applicant's use or occupancy of the Facility.

Applicant's obligation to indemnify the City contained in this Facility Use Application is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefit acts.

The City shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by Applicant, its officers, employees, subcontractors, and others affiliated with Applicant or Applicant's activities, arising out of or in any way connected or associated with Applicant's use or occupancy of the Facility, except for and only to the extent caused by the negligence of the City of Des Moines, Iowa.

Applicant expressly assumes full responsibility for any and all damages to the facility arising out of or in any way connected or associated with Applicant's use or occupancy

of the Facility including, but not limited to, the activities of Applicant, its officers, employees, subcontractors, and others affiliated with Applicant or Applicant's activities.

Applicant shall ensure that its activities on the Facility will be performed and supervised by adequately trained and qualified personnel and Applicant will observe, and cause its officers, employees, subcontractors and others affiliated with Applicant or Applicant's activities, to observe all applicable safety rules.

Further, the undersigned agrees to be liable for any damage to the park, facility and/or equipment, except for normal wear and tear resulting from this use, and to pay in a timely fashion any and all costs associated with returning the park, facility, and/or equipment to the condition that existed prior to said use.

Company:  
**Contact Person:**  
Address:  
City: St: Zip Code:

Book No.  
**Telephone No.**

Signature:

Date: \_\_\_\_\_

**DES MOINES PARK AND RECREATION DEPARTMENT**  
3226 University Avenue, Des Moines, IA 50311  
Phone: 237-1386 Fax: 237-1407

# PARK USE PLAN

Book No. \_\_\_\_\_ :

Company: \_\_\_\_\_

Location of Event	
Dates/Hours	
Purpose of Use	
Approximate Number to Attend	

**Please submit the following information about your event:**

Day of Event: Contact Person's Name and Phone \_\_\_\_\_

Event details – type of event, etc.

Set-Up Plans

Are you having amplified sound?     **Circle one:** yes    no    If yes, a sound permit is required.

If any musical works are to be performed during the use of the facility, the undersigned states that all appropriate copyright licenses authorizing the performance of musical works have been obtained from the appropriate performing rights organizations.

Are you servicing alcohol?     **Circle one:** yes    no    If yes, an alcohol permit is required.

Security Plans (i.e., police, lighting, safety)

Parking Plans: If reservation staff have indicated a need for additional parking for your event, please describe how you will refer attendees to your event.

Will you have vendors selling anything? Type, location, etc. (Temporary Concession Permit is required)

Clean-Up Plans

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Please return this entire 3-page form by <DepositRequiredBy> to  
DES MOINES PARK AND RECREATION DEPARTMENT  
3226 University Avenue, Des Moines, IA 50311  
Phone: 237-1386 Fax: 237-1407**

## EXHIBIT B

### City of Des Moines Municipal Code park ordinances

**Park Facility Hours: Section 74-101**

Park hours: 6:00 a.m. to ½ hour after sunset Central Time

**Baseball: Section 74-106**

No one shall throw, hit or play with a baseball in any city park except in areas clearly designated by a sign posted in a conspicuous place permitting such activity.

**Peddling: Section 74-113**

No person shall sell or offer for sale, hire or lease anything in any recreation facility or park without a permit from the Park and Recreation Director.

**Alcohol: Section 74-92**

Possession or consumption of alcohol is prohibited within City parks.

**Glass containers and waste material: Section 74-96**

No glass containers are allowed within any City park.

No person shall litter the ground and all waste material shall be deposited in receptacles provided.

Park waste receptacles shall not be used for dumping trash or rubbish introduced in that form to the park.

**Dogs: Section 74-100**

No dog shall be allowed to run at large in any public park. Any dog shall be deemed to be found running at large, unless the owner carries such dog or leads such dog by a chain, strap or rope not exceeding six feet in length or keeps any such dog confined in an automobile in compliance with section 18-55 of this Code. However, a service dog, except for a vicious dog, as defined in section 18-41 of this Code, and accompanying such person shall not be deemed to be running at large, even though restraints as described in this section are not used. Such person shall keep the service dog under control and shall be liable for any damage done to the premises or facilities by the dog. No dog in a designated off leash area in any public park shall be deemed at large if such dog and owner or person given charge of the dog are in compliance with section 18-55(a)(6) of this code. Vicious dogs must be on a leash while in such designated off leash area in compliance with section 18-56 of this Code.

**Section 18-6**

All persons in charge of a dog shall pick up any excrement or droppings deposited by said animal.

**Sec. 74-178. Temporary concession fees.**

In addition to payment of all other required fees, the following fees shall be paid for use



of park facilities for temporary concession purposes related to food, beverage and novelty items less than \$10.00 each. The payment for the sale of items which cost more than \$10.00 each or special service items shall be negotiated in a separate agreement and approved by the park and recreation director and the City Manager:

No. of Persons Attending	Charge Per Day
Less than 100	\$ 50.00
100 - 999	\$ 100.00
1,000 - 1,999	\$ 150.00
2,000 - 2,999	\$ 200.00
3,000 - 3,999	\$ 250.00
4,000 - 4,999	\$ 300.00
5,000 - 5,999	\$ 350.00
6,000 - 6,999	\$ 400.00
7,000 - 7,999	\$ 450.00
8,000 - 8,999	\$ 500.00
9,000 - 9,999	\$ 550.00
10,000 and greater	\$ 600.00

**School District Rules:**

Possession or use of alcohol or tobacco products is prohibited on all school grounds

Hoover lighted tennis courts shall remain open to the public until 10:30 p.m.

## Attachment 1

### INSURANCE AND INDEMNIFICATION REQUIREMENTS

#### 1. GENERAL

The SCHOOL DISTRICT and CITY shall maintain the insurance coverages included below through either the purchase of insurance or through self-insurance and the purchase of excess insurance to protect the SCHOOL DISTRICT and CITY throughout the duration of the 28E Agreement. Said insurance or excess insurance shall be provided by an insurance company(ies), "admitted" and "nonadmitted" to do business in the State of Iowa, having no less than an A.M. Best Rating of "B+". All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the SCHOOL DISTRICT and CITY. It is agreed that the CITY'S self-insurance program meets the requirements below. The SCHOOL DISTRICT shall submit to the CITY Certificates of Insurance confirming adequate insurance coverage prior to the execution of the 28E Agreement or commencement of allowed activities under this 28E Agreement. The CITY shall submit to the SCHOOL DISTRICT a letter of self-insurance prior to the execution of the 28E Agreement or commencement of activities allowed under this 28E Agreement

#### 2. INSURANCE REQUIREMENTS

A. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: The SCHOOL DISTRICT and CITY shall maintain, during the life of this 28E Agreement, Worker's Compensation Insurance, including *Employer's Liability Coverage*, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$1,000,000 each accident for Bodily Injury by Accident, \$1,000,000 each accident for Bodily Injury by Disease, and \$1,000,000 policy limit for Bodily Injury by Disease.

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The SCHOOL DISTRICT and CITY shall maintain, during the life of this 28E Agreement, Commercial General Liability insurance on a per occurrence basis with limits of liability not less than \$2,000,000 per occurrence and/or aggregate combined single limit for Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) deletion of Explosion, Collapse and Underground (XCU), where applicable.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions "a" through "o" or any subsequent ISO equivalent or a non-ISO equivalent form). Any additional exclusions shall be clearly identified on the Certificate of Insurance and shall be subject to the review and approval of the City.

C. AUTOMOBILE LIABILITY INSURANCE: The SCHOOL DISTRICT and CITY shall maintain, during the life of this 28E Agreement, Automobile Liability Insurance with limits of liability of not less than \$2,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. UMBRELLA/EXCESS INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis and shall include the same endorsements as required of the primary policy(ies).

E. SUBCONTRACTORS: The SCHOOL DISTRICT and CITY shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of this contract meet the similar insurance requirements as are required of the SCHOOL DISTRICT and CITY.

F. CANCELLATION & MATERIAL CHANGE ENDORSEMENT: The insurance policies providing the coverages specified in A, B, C, and D above shall include the City of Des Moines, Iowa Cancellation & Material Change Endorsement. A copy of this endorsement is attached.

G. PROOF OF INSURANCE: The SCHOOL DISTRICT shall provide, the CITY with a Certificate(s) of Insurance evidencing all required insurance coverage as provided in A through D and F above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify under "Description of Operations/ Locations/ Vehicle/Special Items" the following: Re: 28E Agreement for Shared Use of City and School District Facilities The CITY shall provide the SCHOOL DISTRICT with a Letter of Self-insurance evidencing its coverage for A through D above.

### **3. WAIVER OF SUBROGATION**

A. SCHOOL DISTRICT - WAIVER OF SUBROGATION: To the extent permitted by law, the SCHOOL DISTRICT hereby releases the CITY, its elected and appointed officials, its agents, employees and volunteers and other working on behalf of the CITY, from and against any and all liability or responsibility to the SCHOOL DISTRICT or anyone claiming through or under the SCHOOL DISTRICT by way of subrogation or otherwise, for any loss or damage to property or loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this 28E Agreement. The SCHOOL DISTRICT'S policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of the SCHOOL DISTRICT to recover thereunder.

B. CITY - WAIVER OF SUBROGATION: To the extent permitted by law, the CITY hereby releases the SCHOOL DISTRICT, its elected and appointed officials, its agents, employees and volunteers and other working on behalf of the SCHOOL DISTRICT, from and against any and all liability or responsibility to the CITY or anyone claiming through or under the CITY by way

of subrogation or otherwise, for any loss or damage to property or loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this 28E Agreement. The CITY'S policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of the CITY to recover thereunder.

## **ATTACHMENT**

### **CITY OF DES MOINES, IOWA CANCELLATION AND MATERIAL CHANGES ENDORSEMENT**

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to: Risk Management Office, City of Des Moines, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.