



## AGENDA ITEM SUMMARY FORM

**MEETING DATE:** 8/22

**PREPARED BY:** R. Corey Almas, Director of Public Services

**AGENDA ITEM CONTENT:** DPS - Special Event - Cyclocross Race

**AGENDA ITEM SECTION:** Reports

**BUDGETED AMOUNT:** N/A

**FUNDS REQUESTED:** N/A

**FUND:** N/A

**EXECUTIVE SUMMARY:**

Mr. David Hesano, of Morning Cranks, LLC (MCLLC) has approached DPS requesting the use of Civic Center Park for a Cyclocross Bike Race event over the weekend of September 29 - October 1, 2022. As this is a Special Use under the Pavilion and Park Rental guidelines, the Park Use Agreement requires the approval of City Council.

**RECOMMENDATION:**

Staff recommends that Council approve the event subject to compliance with the Policy on Uniform Insurance Requirements for Special Events, and authorize the Mayor and City Clerk to sign the Park Use Agreement on behalf of the City. Mr. Hesano will be present at the meeting to answer any questions about the event.

## **PARK USE AND RELEASE, INDEMNIFICATION, DEFEND AND HOLD HARMLESS AGREEMENT**

This AGREEMENT is made on this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between Morning Cranks, LLC, an organization whose address is 25896 Salem Rd, Huntington Woods, MI 48070 (hereinafter "MCLLC") and the CITY OF MADISON HEIGHTS, a Michigan Municipal Corporation, whose address is 300 West Thirteen Mile Road, Madison Heights, Michigan 48071 (hereinafter "CITY"). In this Agreement, either MCLLC and/or the CITY may also be referred to individually as a "Party" or jointly as "Parties."

WHEREAS, MCLLC desires to use City Park Land for the purpose of conducting a Cyclocross Bike Race event; and;

WHEREAS, the CITY deems it to be in the public interest to promote recreation, including sports in its park system under the conditions as hereinafter set forth; and,

WHEREAS, the parties do hereby covenant and agree as follows:

**NOW THEREFORE**, the CITY, for and in consideration of the covenants to be performed by MCLLC, does hereby permit MCLLC to use the property of certain parks as hereinafter described for the sole purpose of cycling; The park(s) to be used by MCLLC for the Cyclocross Bike Race event are: Civic Center Park located at 360 W 13 Mile Road, Madison Heights, MI 48071.

### **TERM**

The term of this Agreement shall begin September 29, 2022 and end October 1, 2022. Specific dates for the use of said park by MCLLC are hereinafter set forth and the same may be modified from time to time upon mutual consent of the parties hereto:

### **COVENANTS OF ASSOCIATION**

MCLLC does hereby covenant and agree with the CITY that MCLLC will:

1. MCLLC agrees to submit a completed event schedule, itinerary, course map of all park usage to the Director of Public Services or designee (30) days prior to the start of the event.
2. Use and occupy said park(s) in a careful and proper manner and in particular shall not permit any vehicles to be driven on turf unless supervised by a designated employee from the Department of Public Services; not permit the use of a loud speaker system, unless approved by Director of Public Services or designee; and shall not erect or place any buildings, tents, mobile carts, or similar facilities without written permission from the Director of Public Services or his designee; and,
3. Not use or occupy said park(s) for any unlawful purpose; and will conform and obey all present and future laws, ordinances, and all rules and regulations of all governmental authorities or agencies, respecting the use and occupation of the park(s); and,
4. Release, indemnify, defend and hold harmless the CITY, its Council, officers, administrators, employees, police officers, fire fighters, attorneys, affiliates, successors and assigns, or anyone claiming by or through the CITY (collectively the "CITY"), from any and all liability arising, directly or

indirectly, from the event, the dates of which are specified above, including but not limited to the use of property and equipment owned by the CITY for adult sports, races, and games, that take place during the term of this Agreement and regardless of when said liability claims are made or filed. In the event any suit, proceeding, claims, liabilities, losses, damages, costs, charges or expenses (collectively the "Liability Claims") shall be brought against the CITY (as defined above), for activities that take place during the term of this Agreement and regardless of when said Liability Claims are made or filed, MCLLC hereby covenants and agrees to assume the Defense thereof and defend the same at its own expense, and pay all costs, charges, attorney fees, including the expense of an attorney designated by the City to participate in or monitor the Liability Claims, and any other expenses related thereto, including any liabilities, settlements or judgments incurred or resulting therefrom. Notwithstanding the foregoing, this Park Use and Release, Indemnification, Defend and Hold Harmless Agreement excludes acts of gross negligence and willful misconduct solely attributable to the CITY; and,

5. Agree that MCLLC sponsored events run by a third party will require City Council approval (to be requested by MCLLC) and will require an executed and notarized Indemnification, Defend, and Hold Harmless Agreement from the third party vendor; and,
6. Agree to maintain with the CITY a valid Certificate of Insurance (Acord) including coverages and limits as required by the City's Risk Manager and naming the CITY as an additional insured for the purpose of the activities contained in this Agreement; and,
7. Leave the park, at the expiration or prior to the termination of this Agreement and any renewal or extension thereof, in as good condition as received, reasonable wear and tear excepted; And shall be inspected and approved by the Director of Public Services or designee; and
8. Be responsible for all damage to property, public or private, that may be caused by this operation in the performance of this Agreement; A deposit payment of \$500 is required; Said payment must be received no later than (30) days prior to the event as requested by the CITY; and,
9. Provide supervision, officiating, and equipment to perform the activities contained in this Agreement and to insure the safety of participants and the public. MCLLC agrees to move any equipment as requested by the Director of Public Services or designee; and,
10. Assist the CITY in their effort to adequately maintain the park they are assigned. This assistance may include but not be limited to volunteer labor, donation of materials, and financial assistance for such maintenance as re-sodding, top dressing, aeration, fertilization and overseeding; and,
11. Restrict use of certain portions of the park thereof if requested by the CITY; and,
12. If an event is held at the CITY'S park and is run by a third party that provides revenue back to MCLLC, MCLLC shall reimburse the CITY for all costs incurred by the CITY to support such event. MCLLC agrees to disclose the revenue percentage split with the third party by providing the CITY: with a copy of MCLLC'S operating and/or financial agreement with the third party.

#### **COVENANTS OF CITY**

The CITY does hereby covenant and agree with MCLLC that the CITY will:

1. Open and close the Park Shelter building restrooms at parks; and,
2. Provide access to parking; and,
3. Traffic control devices; for example (cones, barricades, signs etc.); and,
4. Allow for the setup of food trucks, event sponsors, vendors; with written permission from the Director of Public Services; and,
5. Schedule other park users so as to minimize the potential for conflict with MCLLC activities during the periods specified above under TERM. In the event of a conflict, the CITY will make a good faith effort to find an alternative location for potential conflicting events; and,
6. The CITY reserves the right to determine who may use: the parks outside normal use by MCLLC.

### **MUTUAL COVENANTS**

It is mutually agreed by and between the CITY and MCLLC that:

1. This Agreement and all covenants and provisions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that no assignment by, from, through or under MCLLC in violation of any of the provisions hereof shall vest in the assigns any right, title or interest whatsoever;
2. These agreed upon parks are owned and held by the City of Madison Heights for the use and benefit of the general public, and should the CITY determine that said parks are needed for any purpose whatsoever, the CITY shall have the right and privilege of canceling and terminating this Agreement upon giving to MCLLC (30) day notice in writing of its intentions to cancel, and terminate this Agreement. MCLLC also shall have the right and privilege of canceling and terminating this Agreement upon giving the CITY (30) day notice in writing of its intentions to cancel or terminate this Agreement; and,
3. If MCLLC shall at any time be in default in the performance of any of the covenants or provisions of this Agreement, and MCLLC shall fail to remedy such default within fifteen (15) days after written notice thereof from the CITY, it shall be lawful for the CITY to cancel this Agreement, and thereupon this Agreement and everything herein contained in the part of the CITY to be done and performed shall cease and terminate, without prejudice, however, to the right of the CITY to recover from MCLLC all damages due up to the time of such entry; in case of any such default and entry by the CITY, the CITY may reschedule usage of said parks for the remainder of said term.
4. Nothing contained herein, including the indemnity provisions stated above, shall constitute a waiver of governmental immunity or other defenses to claims or lawsuits alleged by any person or entity.
5. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan.
6. This Agreement contains the entire agreement between the parties and fully supersedes any and all prior agreements or understandings between the parties. This Agreement shall not be changed or

supplemented orally. If any provision(s) of this Agreement shall be found to be invalid or unenforceable, the remainder shall not be affected.

IN WITNESS THEREOF, the parties hereto have hereunto signed this Park Use and Indemnification, Defend, and Hold Harmless Agreement this 18<sup>th</sup> day of AUGUST, 2022  
Morning Cranks, LLC ("MCLLC")

By: [Signature]  
David Hesano, on behalf of  
MCLLC, Sponsoring Organization

[Signature]  
Witness

STATE OF MICHIGAN )  
COUNTY OF OAKLAND )  
On this 18<sup>th</sup> day of August, 2022, before me, a notary public in and for said County and State, personally appeared the above named David Hesano to be personally known, who being by me duly sworn, did say that they have read the foregoing Field Use And Indemnification, Defend And Hold Harmless Agreement, that the same was explained to them by their representatives, and that they fully understand the contents thereof, and that they have signed said Field Use And Indemnification, Defend And Hold Harmless Agreement as their own free act and deed and on behalf of the aforesaid organization.

**COURTNEY ESQUIVEL**  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires 01-09-2029  
Acting in the County of

Courtney Esquivel, Notary Public  
Wayne County, Michigan  
acting in the County of Oakland  
My Commission expires: 01-09-2029

CITY OF MADISON HEIGHTS ("CITY")

By: [Signature]  
Roslyn Grafstein  
Mayor

[Signature]  
Witness

By: [Signature]  
Cheryl Rottmann  
City Clerk

[Signature]  
Witness

Team & Sponsor Temporary Canopy Area

Announcer & Timekeeping

Overflow Parking

Parking Area A

Civic Center Park Madison Heights

Restrooms & Changing Area

Parking Area B

Registration Pavillion

Agnello St

where High School

Madison Heights Police Department

Brush St

Event Entrance

W 13 Mile Rd