

AGREEMENT
BETWEEN CITY OF SHEBOYGAN AND FOX VALLEY ATHLETICS, LLC
FOR THE MANAGEMENT AND OPERATION OF RECREATIONAL PROGRAMS
AT WILDWOOD ATHLETIC COMPLEX

This Agreement is made by and between the City of Sheboygan, a municipal corporation existing under the laws of the State of Wisconsin ("City"), and Fox Valley Athletics, LLC, a Wisconsin limited liability company ("FVA").

RECITALS

WHEREAS, The City owns a public recreational facility commonly known as Wildwood Athletic Complex located at 2213 New Jersey Ave, Sheboygan, Wisconsin; and

WHEREAS, the professional management and operation of recreational programs at Wildwood Athletic Complex is a benefit to the city and its residents and visitors; and

WHEREAS, FVA has operated adult softball leagues in Appleton, Menasha, and Neenah and desires to offer quality recreation programs to the City of Sheboygan; and

WHEREAS, the Parties desire to set forth the terms and conditions under which FVA will manage recreational programs at Wildwood Athletic Complex.

NOW, THEREFORE, the parties agree as follows:

- I. FVA Responsibilities. In addition to other responsibilities and duties otherwise set forth in this Agreement, FVA's responsibilities shall include:
 - a. Management and operation. FVA shall manage and operate all aspects of the Wildwood Athletic Complex sports facilities including, without limitation, administration, field and facility maintenance, staffing, concessions, and reservations. Such services include at a minimum, ballfield leveling, grooming, and grass mowing/trimming other than once weekly grass mowing provided by the City. FVA shall also notify the City if it becomes aware of the need for playground maintenance or tree trimming.
 - b. Services. FVA shall supply the following services:
 - i. Gas, oil, and grease necessary for equipment usage;
 - ii. Garbage bag replacement in trash and recycling receptacles and transferring full bags to the on-site dumpster;
 - iii. Flags;
 - iv. Ballfield supplies such as Diamond Mix, Turface, and chalk;
 - v. Provision of hand tools;
 - vi. Field grooming including but not limited to field mowing, grass and weed trimming, lawn rolling, infield and warning track grading;
 - vii. Cleaning restrooms, maintaining the interior of the concession stand, food service areas, and the immediate asphalt area outside of the ball diamonds.

- c. Security. FVA shall ensure the Wildwood Athletic Complex facility is secured after each use. FVA shall be responsible for maintaining possession of facility keys. Facility keys shall not be duplicated or distributed to non-FVA staff. FVA may be responsible for facility keying expenses from neglecting to maintain keys or return keys to the City.
- d. Legal Compliance. FVA shall comply with all applicable park rules, City ordinances and state laws regarding the operation of the concession stand and shall obtain all necessary permits and licenses required for such operation. FVA shall comply with all federal, state, and local laws, regulations, and rules applicable to its operations at Wildwood Athletic Complex.
- e. Concessions. FVA shall have the right, license, and privilege to provide concession services subject to the following:
 - i. FVA shall operate and manage the concession stand in a safe, efficient, sanitary, and environmentally-friendly manner. Such operation and management includes without limitation, the storage, preparation, and sale of concession items.
 - ii. Unless otherwise specifically set forth in this Agreement, FVA shall be responsible for providing all supplies and equipment necessary to deliver the services set forth in this Agreement to a level that, at a minimum, meets the demands and expectations of the customers. In acquiring supplies, equipment, goods, and services, FVA shall not use, pledge, or in any rely on the City's credit.
 - iii. Intoxicating Beverages. FVA shall refrain from selling intoxicating liquors, other than fermented malt beverages, upon the Wildwood Athletic Complex premises, and shall limit the sale of fermented malt beverages to be served only in paper or plastic cups, plastic bottles, or aluminum cans, and only sell such beverages during softball tournament activities, league play, or exhibition events taking place at Wildwood Athletic Complex. FVA's employees involved in the sale of fermented malt beverages shall be properly trained in the sale of alcohol and properly licensed as required.
 - iv. FVA shall provide food and beverages like those provided by similar facilities and generally expected by the public at comparable concession stands. Food and beverage offerings shall be based upon available kitchen facilities at the concession stand.
 - v. FVA shall arrange and accept all product deliveries to the concession stand. The City shall not be held responsible for the receipt of any product deliveries. FVA shall clarify with all vendors making such deliveries that FVA is accepting said deliveries and responsibility for same, including payment. FVA shall not use the City's name or credit to secure any such deliveries.

- vi. FVA may place temporary banners and advertising within the concession area and may place temporary sandwich board signs near the concession stand but such sandwich board signs shall be removed upon closing each day.
- f. Personnel. FVA shall employ a sufficient number of qualified personnel to ensure efficient performance of the various duties set forth in this Agreement. FVA shall be solely responsible for the salaries, benefits, tax withholding, Social Security, and other payroll deductions related to its employees. FVA's personnel are not employees of the City and no actions shall be taken or representations made to create an employment relationship between FVA personnel and the City.
- g. Honoring Existing Commitments. FVA agrees to honor the following previously agreed-upon City commitments regarding the use of the Wildwood Athletic Complex:
 - i. Youth Baseball Tournaments operated by Hit Machine Baseball Club LLC taking place on July 19, 20, 21 and July 26, 27, 28;
 - ii. Brewers Camp Baseball Academy operated by Sheboygan A's on August 5, 6, 7, 8, and 9 from 9:00 a.m. to 3:00 p.m. each day.
- h. Nondiscrimination. FVA shall not knowingly discriminate in its operations at Wildwood Athletic Complex with respect to its hiring practices and daily operations. This specifically includes discrimination against:
 - i. Any City resident(s), or organized team(s) in the activities of their organization insofar as league play, tournaments, and athletic activities are concerned;
 - ii. Any individual who attends as a participant or spectator of any FVA-sponsored athletic activities at the Wildwood Athletic Complex or any other City ballfields.
- i. Indemnification and Hold Harmless. To the extent permitted by law, FVA agrees to indemnify and defend and hold harmless the City of Sheboygan and its officers, officials, employees, and agents from and against any and all liability, loss, damage, expense, costs, and attorney fees arising out of this Agreement caused in whole or in part by FVA, its officers, officials, employees, agents, or anyone for whose acts they may be liable, except where caused by the sole negligence or willful misconduct of the City.
- j. Insurance. FVA shall file with the City a certificate of insurance naming the City, its officers, officials, employees, and agents as additional insured and providing a notice of cancellation of at least thirty days to the City. All insurance shall be in full force and effect throughout the Agreement term and shall be placed with insurers who have an A.M. Best rating of no less than A-. FVA's insurance limits shall be the minimums set forth below:

- i. General Liability: \$1,000,000 per occurrence and \$2,000,000 aggregate.
- ii. Workers Compensation: Statutory limits

II. City responsibilities. In addition to other responsibilities and duties otherwise set forth in this Agreement, and subject to available funding, the City shall be responsible for the following:

a. Equipment and supplies. Within ten days of contract execution, the City shall provide FVA with the use of the following equipment that has traditionally been kept at the Wildwood Athletic Complex:

- i. 1 Smithco ball diamond groomer;
- ii. 1 string trimmer;
- iii. 1 grease gun;
- iv. 14 picnic tables;
- v. 1 fryer;
- vi. Garbage cans;
- vii. 1 push mower;
- viii. Restroom toilet paper;

b. Services. The City shall provide the following services:

- i. Use of the existing storage garage and dumpster located on the Wildwood Athletic Complex premise and garbage collection for said dumpster;
- ii. Once weekly field mowing;
- iii. Playground maintenance.
- iv. Tree trimming as needed to correct hazards and eliminate impediments to softball or baseball games.

III. Amendments. This Agreement may be amended only by a writing signed by both Parties.

IV. Assignment. The benefits, rights, and obligations set forth herein are personal to the Parties and may not be assigned or transferred to a third party without the other Party's prior, written consent. Any attempted assignment in violation of this section shall be void. Without limiting the foregoing, this Agreement shall be binding upon, enforceable by, and inure to the benefit of the Parties, their permitted successors and assigns.

V. Authority. Each person executing this Agreement represents and warrants that the execution and delivery of this Agreement has been duly authorized, that the person executing this Agreement has the full power, authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms. If either party is an LLC, such party shall provide to the other party at the time of execution a Statement of Authority (Form 501 - WI DFI).

- VI. Costs. FVA shall have use of the Wildwood Athletic Complex at no charge during the initial term of this Agreement. FVA shall have the right to charge other designated teams, organizations, and clubs a fee for the use of the concession stand and equipment at the Wildwood Athletic Complex premises. Such fees shall be set forth in a Fee Schedule attached to this Agreement as Exhibit A.
- VII. Counterparts. This Agreement may be executed in counterparts and all such counterparts together shall constitute one and the same instrument.
- VIII. Dispute Resolution. The Parties agree to make good faith attempts to negotiate disputes but if such negotiation fails, the parties agree that disputes may be resolved in Sheboygan County Circuit Court.
- IX. Entire Agreement. This Agreement contains the entire understanding between the parties on the subject matter thereof and no representations, inducements, promises, or agreements- oral or otherwise- that are not embodied herein shall be of any force or effect. This Agreement supersedes any other oral or written agreement entered into between the Parties on the subject matter thereof.
- X. Force Majeure. Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, the failure to perform must be beyond the reasonable control and without the fault or negligence of the party.
- XI. Governing Law. This Agreement shall be construed and interpreted in accordance with Wisconsin laws.
- XII. Notice. Any notice, consent, approval, request, or other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be either personally delivered or sent via first class mail, postage prepaid, to the address below. Delivery shall be deemed effective upon person delivery or deposit in the U.S. mail.
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|---------------------|---------------------------|
| City of Sheboygan | Fox Valley Athletics, LLC |
| Attn: City Clerk | Attn: Eric Schaefer |
| 828 Center Ave. | 1139 Honeycreek Circle |
| Sheboygan, WI 53081 | Oshkosh, WI 54904 |
- XIII. Right of Entry. The City reserves the right to enter and inspect Wildwood Athletic Complex at any time for any reason and FVA acknowledges and agrees that the City has such right.

XIV. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision(s) is omitted.

XV. Taxes. FVA shall be responsible for any taxes that arise as a result of its usage of Wildwood Athletic Complex pursuant to this Agreement.

XVI. Term and Termination. This Agreement shall be in force and effect as of the date the Agreement is executed by both parties and shall expire on November 1, 2024. This Agreement may be terminated by either Party for cause if the other party defaults in the performance of their responsibilities as set forth in the Agreement. The non-defaulting party shall provide notice of intent to terminate for cause and the basis therefore to the defaulting party with thirty days' notice. The defaulting party shall have thirty days to cure the default to avoid termination. Expiration or termination of this Agreement for any reason shall not release any party from its obligations thereunder that have accrued prior to the termination or expiration.

XVII. Waiver. No failure or delay of any Party in exercising any right or power given to it under this Agreement shall operate as a waiver thereof. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach. No waiver of any breach or modification of this Agreement shall be effective unless contained in writing executed by both Parties.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the latter date written below.

Fox Valley Athletics, LLC

By: C. Eric Scholtz

(name) (title) owner

Date: 2-19-2024

City of Sheboygan

By: Ryan Sorenson

Ryan Sorenson, Mayor

Date: 5/28/24

By: Meredith DeBruin

Meredith DeBruin, City Clerk

Date: 5/28/24