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Muscatine, IA 52761-3840
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CITY ADMINISTRATOR

MEMORANDUM

To: Mayor Hopkins and City Council Members

From: Gregg Mandsager, City Administrator

Date: March 21, 2013

Re: Bruner Field Lease and Maintenance Agreement

INTRODUCTION:

Attached is the 2013 Bruner Field Lease and Maintenance Agreement (Lease). The City of Muscatine (City), the Muscatine Community School District (MCSD), and the Muscatine Community College (MCC) have historically had an agreement regarding the use and maintenance of Brunner Field.

RECOMMENDATION/RATIONALE:

The attached lease agreement allows for the exclusive use of Bruner Field by both MCSD and MCC. The City does not provide programming on site. Any additional use of Bruner Field would be scheduled through MCSD and MCC.

The attached lease allows for the long-term use of Bruner Field (20 years renewable) for four main reasons. This agreement allows for MCSD and MCC use of the field, maintenance of the field, for the field to be insured (a lease or ownership is required by the insurance company), and for any potential capital improvements to the site.

Given this is simply a continuation of the current and past arrangements and that it clearly lays out each entities roles and responsibilities, I recommend City Council approval of the attached lease agreement.

Attachments:

1. 2013 Bruner Field Lease & Maintenance Agreement
2. 2010 Bruner Field Maintenance Agreement
3. 2001 Bruner Field 28E Agreement

LEASE AGREEMENT

This Lease Agreement is made and entered into this ___ day of March, 2013 by and between the City of Muscatine ("City"), the Muscatine Community School District ("MCSD") and Eastern Iowa Community College District ("MCC") (MCSD and MCC are collectively the "Tenants") concerning the maintenance, operation, and lease of Tom Bruner Field.

WHEREAS the City owns certain real property in Muscatine County, Iowa locally known as Tom Bruner Field and located at: Kent-Stein Park (2136 Oneida Street, Muscatine, Iowa), upon which the City has constructed a baseball stadium and related improvements ("Premises");

WHEREAS MCSD and MCC desire to lease the Premises from the City and agree to operate and maintain the same;

NOW, THEREFORE, the parties hereby agree as follows:

1. Lease and Term. The City agrees to the exclusive lease of the Premises to MCSD and MCC, as joint and several tenants, for a Twenty (20) year period from July 1, 2013 through June 30, 2033. This agreement will renew annually thereafter, unless terminated pursuant to this Agreement.
2. Cost. MCSD and MCC agree to pay the City the sum of \$1.00 each for each year of this contract, which amount shall be due and payable on July 1st of each year.
3. Co-Principals. MCSD and MCC agree to serve as co-principals for this contract, and will be joint and severally liable for the same. As co-principals, MCSD and MCC will be responsible for the preparation and on-going maintenance of the baseball diamond and field at Tom Bruner Field.
4. Use. The Tenants shall have the right to use and operate the Premises for any baseball or non-baseball event that they sponsor, provided that they operate the Premises in a sound and professional manner. Tenants may not use the Premises, or permit any other person or entity to use the Premises, for any improper, immoral or unlawful purpose, for a use or purpose inconsistent with applicable zoning, or for any use that would constitute a public or private nuisance or would make void or voidable any insurance then in force with respect to the Premises. The Premises shall be a public facility, and the seating, parking, concession stands, restroom facilities and other specified areas thereof shall be open to the public, subject to reasonable admission fees and other reasonable restrictions.
5. Contact. Annually, a member of the City, MCSD and MCC staff will be identified as the point of contact for facility issues.
6. Maintenance. MCSD and MCC shall provide all materials and supplies necessary, and be responsible for all maintenance and preparation of the baseball

diamond and associated facilities including: dugouts, backstop, bleachers, concession stand, restrooms, outfield wooden fencing, field playing field lighting, and storage and maintenance facility during their respective seasons. Each entity will be responsible for all expenses during their seasons including field marking material, gas for the mower and three wheeler, paint for the outfield foul lines, diamond dry, repair clay for mound and plate areas and any other miscellaneous items used for the everyday care of the field. In addition, a trash dumpster will be rented by each organization during their respective seasons. Members of the Muscatine Community College and the Muscatine Community School District staff will each identify an individual who will be responsible for the day-to-day and long-term maintenance of the baseball playing surface and surrounding facility at Tom Bruner Field during each respective season. That individual will be responsible for the supervision of staff to perform any necessary work. If the Tenants fail to maintain the Premises as herein requires, the City shall have the right to do so, at the Tenants' expense, and Tenants agree to reimburse the City for the reasonable costs to do so.

The scoreboard will continue to be maintained by the MCSD during all seasons. The City will continue to maintain the exterior chain link fences, exterior parking areas, and lighting for the parking lots.

7. Utilities. The City (via Muscatine Power and Water) agrees to continue to provide all necessary utilities, free of charge, for the Premises so long as this facility continues to receive free electrical service from Municipal Power and Water due to its status as part of the City's General Fund. In the event the Premises no longer received free electrical services, the Tenants shall be responsible for the cost of any and all utilities. The City shall not be responsible to Tenants in damages or otherwise if any utility shall become unavailable or for any interruption of utility service.

8. Admissions and Concessions. Except as otherwise set forth herein, Tenants shall have the right to charge reasonable admission fees for baseball or non-baseball events that they sponsor during their respective seasons (as set forth in paragraph 3), and to retain all revenues therefrom. Tenants shall also be allowed to sell concessions on the Premises during their respective seasons, and to retain all revenues therefrom. Tenants shall supply, at their own expense, all equipment, fixtures, supplies, and staff or other persons required or necessary to sell admissions and concessions on the Premises.

9. Insurance. MCSD and MCC agree to carry all necessary and appropriate property and liability insurance for the Premises, at their sole expense. Certificates of insurance will be exchanged as necessary.

10. Scheduling. The scheduling of Tom Bruner Field will be done by the Athletic Departments of MCSD and MCC. A copy of the schedule will be provided to the City.

11. Programs. The baseball programs and associated booster programs will continue to operate as they have in the past with independent schedules, budgets and goals.

12. Advertisement. Temporary (banners) outfield and sideline fence advertising may be instituted with the City's permission. Any revenues generated by advertising will be used for the sole purpose of the maintenance and continued renovation of Bruner Field.

13. Restoration. A plan for any additional restoration and upgrading of Tom Bruner Field will be submitted to the City for approval, as required by City code, prior to any work being done.

The Tenants shall maintain ownership of any and all capital improvements installed subsequent to this agreement and paid for by them, jointly or individually, to the Premises (including but not limited to utility sheds, outbuildings, fencing, scoreboards, lighting equipment, etc...). Upon termination or conclusion of this lease agreement for any reason, the Tenants shall have the option to remove said improvements from the Premises.

14. Kent-Stein Baseball Complex. The City agrees to lease the appropriate amount of space at the field #4 site at the Kent-Stein Baseball Complex for MCSD's use and maintenance of an equipment shed and for placement of a scoreboard.

15. Termination and Amendment. This agreement may be terminated at any time upon mutual agreement of all parties.

This agreement may also be unilaterally terminated annually upon written notice of termination by one party, delivered via certified mail to the point of contact for each of the other two parties ~~prior to December 1st~~. In the event of unilateral termination by either one of the Tenants, said termination will not terminate the agreement between the other Tenant and the City. In that event the remaining Tenant will assume the rights and responsibilities of the Tenant terminating the agreement unless an amendment to this agreement is mutually agreed to by the City and remaining Tenant.

In the event of unilateral termination by the City, MCSD and/or MCC shall have the option to use the Premises for the full calendar year (January 1st through December 31st) following receipt of the notice of unilateral termination.

This agreement may be amended at any time during this period by mutual consent of the parties involved. Review of this contract and its contents shall be conducted at the request of any one party.

16. Assignment. Tenants shall not have the right to assign this Lease or let or sublet the whole or part of the Premises without the written consent of the City.

17. Indemnification. Tenants agree to and shall indemnify, defend and hold the City, City's successors and assigns, and the officers, employees, agents and contractors of the City, harmless from and against any and all claims, actions, administrative proceedings, judgments, damages, punitive damages, penalties, fines, and costs that arise directly or indirectly from or in connection with Tenants' use of the Premises, breach of this Lease, and/or any violation of governmental or insurance requirements of Tenants, provided that such indemnity shall not extend to matters that arise out of the gross negligence or willful acts of the City.

18. Force Majeure. Each party's obligations to perform under this Lease shall be excused to the extent that such performance is prevented, delayed or rendered impracticable by events beyond that party's reasonable control, provided such party shall have exercised all reasonable efforts to avoid such events. Force Majeure shall not include financial inability to perform.

19. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, the City, MCSD and MCC have executed this Lease Agreement on the day and year first written above.

CITY OF MUSCATINE, IOWA

By: _____
Mayor DeWayne M. Hopkins

MUSCATINE COMMUNITY SCHOOL DISTRICT

By: _____
Its: _____

EASTERN IOWA COMMUNITY COLLEGE DISTRICT

By: _____
Its: _____

28E AGREEMENT

An agreement concerning the maintenance and operation of Tom Bruner Field between the City of Muscatine, Muscatine Community School District and Eastern Iowa Community College District (Muscatine Community College).

AGREEMENT

This agreement is made possible under the provision of Chapter 28E of the Code of Iowa, which allows the parties of the agreement to provide joint services and facilities to the mutual advantage of all parties.

This document constitutes an agreement between the City of Muscatine, the Muscatine Community School District, and the Eastern Iowa Community College District (Muscatine Community College).

This agreement covers the five-year period from January 1, 2002 through December 31, 2006. It may be amended at any time during this period by mutual consent of the parties involved. Review of this contract and its contents will be conducted annually on or about the last day of September as desired by all parties.

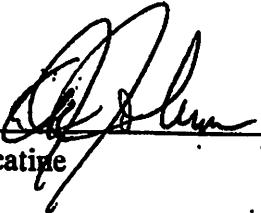
GENERAL PROVISIONS

1. **The City of Muscatine will "lease" Tom Bruner Field to Muscatine Community College for the sum of \$1.00 for each year of this contract.**
2. **Muscatine Community College will agree to serve as principal for this contract. As principal, Muscatine Community College will be responsible for the maintenance of the baseball diamond at Tom Bruner Field.**

SPECIFIC PROVISIONS

1. **A member of the Muscatine Community College staff will be identified and responsible for the day-to-day and long-term maintenance of the baseball playing surface at Tom Bruner Field. That individual will be responsible for the supervision of staff to perform any necessary work. City staff will provide general oversight when necessary and all work at Bruner Field will be carried out within recreation department operational guidelines.**
2. **The Community College will bill Muscatine Community School District for maintenance of the facility on an annual basis, not to exceed \$9,000.00. This amount may be adjusted based on the mutual agreement of all parties.**
3. **The City agrees to continue to provide all necessary utilities for the facility.**

4. All the parties to the agreement will continue to carry all necessary and appropriate liability insurance for use of the facility. Certificates of insurance will be exchanged as necessary.
5. The Community College will provide all materials and supplies necessary for the maintenance and preparation of the baseball diamond and associated facilities including: dugouts, backstop, bleachers, concession stand, restrooms, and storage and maintenance facility.
6. The City will continue to maintain the exterior chain link fences, exterior parking areas, and lighting for the parking lots. The scoreboard will continue to be maintained by the school district.
7. The scheduling of Tom Bruner Field will be done by the Athletic Department of Muscatine Community College, in cooperation with the Parks and Recreation Department of the City of Muscatine for the mutual benefit of all the parties of this agreement and the community of Muscatine.
8. The baseball programs and associated booster programs will continue to operate as they have in the past with independent schedules, budgets and goals.
9. Temporary (banners) outfield and sideline fence advertising may be instituted with the City's permission. Any revenues generated by advertising will be used for the sole purpose of the maintenance and continued renovation of Bruner Field.
10. A plan for any additional restoration and upgrading of Tom Bruner Field will be submitted to the City for approval, as required by City code, prior to any work being done.
11. The City, School District and Community College will continue to cooperate on projects associated with Tom Bruner Field which are of mutual interest to all parties.



City of Muscatine

12/20/01

Date

Muscatine Community School District

Date

Eastern Iowa Community College District

Date

Thomas L. Williams 12-10-01
Muscatine Community School District Date

Eastern Iowa Community College District Date

City of Muscatine

Date

Muscatine Community School District

Date

Leedy L. Hoffmann

12-17-01

Eastern Iowa Community College District

Date

Agreement

A contract/agreement concerning the maintenance and operation of Tom Bruner Field between the City of Muscatine, Muscatine Community School District and Eastern Iowa Community College District (Muscatine Community College).

AGREEMENT

This agreement allows the parties of the agreement to provide joint services and facilities to the mutual advantage of all parties.

This document constitutes an agreement between the City of Muscatine, the Muscatine Community School District, and the Eastern Iowa Community College District (Muscatine Community College).

This agreement covers the one-year period from January 1, 2010 through December 31, 2010. It may be amended at any time during the period by mutual consent of the parties involved. This agreement will automatically renew for subsequent one (1) year periods. Any party that desires to terminate the agreement shall provide written notice to the remaining parties by October 1st.

GENERAL PROVISIONS

1. The City of Muscatine agrees to Muscatine Community College's and Muscatine Community School District's use of Tom Bruner Field to for each year of this contract.
2. Muscatine Community College and the Muscatine Community School District will agree to serve as co-principals for this contract. As co-principals, Muscatine Community College will be responsible for the preparation and on-going maintenance of the baseball diamond at Tom Bruner Field during its associated spring and fall seasons and the Muscatine Community School District will be responsible for the preparation and on-going maintenance of the baseball diamond at Tom Bruner Field during its associated summer season. (See Field Prep- Game Day Procedures Document for specific tasks and duties).
3. The City, School District, and Community College may jointly initiate a capital campaign for the purpose of improving the physical facilities at Tom Bruner Field.

SPECIFIC PROVISIONS

Members of the Muscatine Community College and the Muscatine Community School District staff will each identify an individual who will be responsible for the day-to-day and long-term maintenance of the baseball playing surface and surrounding facility at Tom Bruner Field during each respective season. That individual will be responsible for the supervision of staff to perform any necessary work. City staff will provide general oversight when necessary and all work at Bruner Field will be carried out within recreation department operational guidelines.

1. The Community College and the Muscatine Community School District will each contribute \$1500.00 for maintenance of the facility. Community College will serve as fiscal agent of the fund. This fund will be used for; the fertilizer and weed control program, parking area gravel, general repairs to nets, cages, protective screens, warning track material, infield material, magic mix, bases, pitchers rubbers, home plates, tarps and other miscellaneous field items.
2. The City (via Muscatine Power and Water) agrees to continue to provide, free of charge, all necessary utilities for the facility.
3. All the parties to the agreement will continue to carry all necessary and appropriate liability insurance for use of the facility. Certificates of insurance will be exchanged as necessary.
4. The Community College and the Muscatine Community School District will provide all materials and supplies necessary for the maintenance and preparation of the baseball diamond and associated facilities including: dugouts, backstop, bleachers, concession stand, restrooms, and storage and maintenance facility during their respective seasons. Each entity will be responsible for all expenses during their seasons including field marking material, gas for the mower and three wheeler, paint for the outfield foul lines, diamond dry, repair clay for mound and plate areas and any other miscellaneous items used for the everyday care of the field. In addition, a trash dumpster will be rented by each organization during their respective seasons.
5. The scoreboard will continue to be maintained by the school district during all seasons.
6. The scheduling of Tom Bruner Field will be done by the respective Athletic Departments of Muscatine Community College and the Muscatine Community School District, in cooperation with the Parks and Recreation Department of the City of Muscatine for the mutual benefit of all the parties of this agreement and the community of Muscatine.
7. The baseball programs and associated booster programs will continue to operate as they have in the past with independent schedules, budgets and goals.
8. Outfield fence advertising may be instituted with the City's permission. Any revenues generated by advertising will be used for the sole purpose of the maintenance and continued renovation of Bruner Field.
9. Any plans for the restoration and upgrading of Tom Bruner Field will be submitted to the City for approval, as required by City code, prior to any work being done.
10. The City, School District and Community College will continue to cooperate on projects associated with Tom Bruner Field which are of mutual interest to all parties.

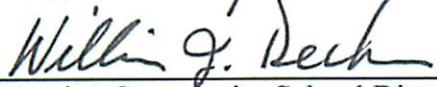


City of Muscatine



Date

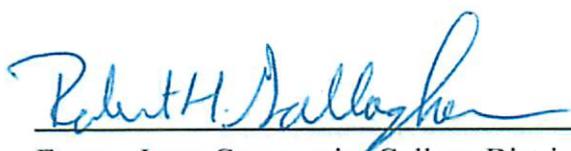
APPROVED BY MCSD BOARD 4/12/2010



Muscatine Community School District



Date



Eastern Iowa Community College District



Date