

MEMORANDUM

December 30, 2013

TO: Kenneth Fields, City Manager

FROM: Teresa Allen, Public/Support Services Administrator

SUBJECT: Agreement with Lake Wales Highlander Bombers

SYNOPSIS: Approval of the agreement authorizes the Highlander Bombers Baseball Club-Academy to assist the Lake Wales Little League with the mowing and maintenance of the Northwest Complex from January 7, 2014 through September 30, 2014 at no cost to the City and it establishes the complex as their home base.

RECOMMENDATION

Staff recommends that the City Manager take the following action:

1. Approve the agreement with Lake Wales Lake Wales Highlander Bombers for the mowing and maintenance of the Northwest Complex for the period January 7, 2014 through September 30, 2014 for a compensation of zero dollars (\$ 00.00).

BACKGROUND

The Highlander Bombers Baseball Club-Academy is requesting that the City of Lake Wales enter into an agreement for the maintenance of the Lake Wales Northwest Complex (Fraiser Field) and to establish the complex as their home base.

The Lake Wales Little League will continue the maintenance of softball fields 1 and 2 at the complex until the current agreement ends September 30, 2014. The Lake Wales Highlander Bombers have agreed to assist Little League with this maintenance at no cost to the city until the city negotiates an annual compensation agreement with the Bombers for the maintenance of the complex for the period beginning October 1, 2014 and ending September 30, 2015.

City staff met with representatives of both leagues and established that there is no conflict of interest for either league if the city enters into this agreement and feel that this arrangement will be beneficial to the city, the leagues and the community.

The league shall implement Section 18-137 of the Lake Wales Code of Ordinances governing league use of city-owned fields (attached).

OTHER OPTIONS

Do not approve the agreement request

FISCAL IMPACT

There is no impact on the current FY13'14 budget

ATTACHMENTS

Lake Wales Highlander Bombers Agreement

Exhibit A: League use of field

AGREEMENT

THIS AGREEMENT, entered into this _____ day of January 7, 2014 by and between the City of Lake Wales, a Florida Municipal Corporation (hereinafter referred to as the “**City**”), P.O. Box 1320, Lake Wales, Florida, 33859-1320 and the **Lake Wales Highlander Bombers Baseball Club-Academy** (hereinafter referred to as the “**Contractor**”).

WITNESS That the **City** and the **Contractor** in consideration of the mutual covenants hereinafter set forth; do mutually agree as follows:

ARTICLE 1) SCOPE OF WORK. The **Contractor** agrees to maintain in good condition:

All of the City of Lake Wales Northwest Complex (Fraiser Field)

In such a manner to provide superior playing surface for all types of sports activities which may occur on these fields. The **Contractor** agrees to mow, trim, irrigate, fertilize, apply weed killer, herbicide and all other activities related to keeping the fields in good condition. The **Contractor** agrees to maintain and operate the irrigation system as needed. The **Contractor** is not responsible for any work outside of the perimeter fences. The **City** will maintain the area on the outside of the perimeter fence.

The **Contractor** is responsible for supplying fuel, fertilizer, weed killer and any other chemical or substance needed for maintenance of the area.

ARTICLE II) TERM OF AGREEMENT. The contract resulting from this Agreement shall commence upon execution by both parties and will initially be for a period of eight (8) months. The contract may be renewed for four (4) additional twelve (12) month periods, up to a maximum of sixty (60) months upon mutual agreement of both parties. If any such renewal results in changes of the terms or conditions, such changes shall be reduced to writing, as an addendum to this contract and such addendum shall be executed by both parties. Renewal of the contract shall be subject to appropriation of funds by the City of Lake Wales for its Recreation Department. The initial contract period is to start January 7, 2014. Notice of intent to renegotiate a change in price for the contract must be delivered to the Support Services Director no later than May 31 of any year.

ARTICLE III) COMPENSATION. The **Contractor** shall receive and accept as full compensation for performance of work in accordance with this Agreement an annual sum of

\$00.00 for the work at the Northwest Complex (Fraiser Field)

Note: The Lake Wales Highlander Bombers will receive no compensation for the maintenance of the Northwest Complex for the period January 7, 2014 thru September 30, 2014. In May 2014 the City will negotiate an annual sum for fiscal year October 1, 2014 thru September 30, 2015. See Article VII, Additional Consideration

The parties hereto agree that the services to be rendered pursuant to this Agreement are not intended to be a profit generating vehicle for the **Contractor**.

ARTICLE IV) ASSIGNMENT. The **Contractor** shall not pledge or assign any monies due hereinunder and shall not assign this Agreement or any portion of the duties set forth without prior written consent of the **City**.

ARTICLE V) WORK RESPONSIBILITY. The **Contractor** shall properly safeguard against any or all damage or injury (including death) to the public and to its employees and shall be solely responsible for any damage or injury (including death) from his undertaking of the work to any person or persons or thing. The **Contractor** will solely and without qualification be responsible for all methods and results, for use of equipment and personnel, for the safety of its employees and other persons, for the protection of public and private property, and for compliance with all Local, State, and Federal laws and regulations in performance of work under this Agreement. The **City** will not have any right to hire or fire, nor any power of supervision or direction over the work methods, nor use of equipment or personnel, nor for or over the safety of the **Contractor's** employees or other persons, nor for or over the protection of public or private property, nor for the **Contractor's** compliance with Local, State or Federal laws and regulations in performance of work under this Agreement, for these are solely the responsibility of the **Contractor**.

ARTICLE VI) INDEMNIFICATION. The **Contractor** shall indemnify and save harmless the **City** and all its officers, agents and employees, from all suits or actions at law or equity of any kind whatsoever arising out of, connected with or caused by any operation or matter related to this Agreement, including, among other things, injury to property and injury to and death of any persons, including employees of the **Contractor** or any Subcontractor, and shall, if required to the **City**, produce evidence of settlement of any such suit or action before final payment shall be made by the **City**. The provisions of this indemnification agreement shall include all accidents, injuries, and claims made, whether or not caused in whole or in part, by any act, omission, or negligence of the **City**, its officers, agents or employees, or by any act, omission, or negligence of the **Contractor** or any Subcontractor, its officers, agents or employees. The **Contractor** shall at his own expense defend any such claim, action, or proceeding, groundless or not, which may be commenced against the **City** by reason thereof or in connection therewith, and the **Contractor** shall pay any and all judgements which may be recovered in any such action, claim, proceeding, or suit, and defray any and all expense including court costs and attorney fees, which may be incurred in or by reason of such action, claim, proceeding, or suit.

ARTICLE VII) ADDITIONAL CONSIDERATION. The **City** agrees to fulfill the current Agreement with the Lake Wales Little League for the maintenance of softball fields 1 and 2 at the Northwest Complex which ends September 30, 2014. The Lake Wales Little League and the Lake Wales Highlander Bombers will work out a use schedule to ensure that each league has access to the fields for practices. In addition all scheduling of events at the Norwest Complex will be coordinated by the Lake Wales Highlander Bombers. The Bombers have agreed to assist Little League with maintenance at no cost to the city until September 30, 2014 the end of the current agreement with the Lake Wales Little League. The City will negotiate an agreement with the Lake Wales Highlander Bombers league for continued maintenance of the Northwest Complex that will become effective October 1, 2014.

ARTICLE VIII) COMPLIANCE WITH CITY PURCHASING ORDINANCE. The Contractor is not authorized to obligate the City for the purchase of equipment or other items necessary for performance of this contract unless prior authorization has been granted in writing by the City Manager. If such prior written authorization has been granted, the following purchasing procedures must be followed for the purchase of any item, including equipment.

(a) *Authorization.* Regardless of the cost of the purchase, the City Manager or his designee must authorize all purchases before the purchase is made. Authorized designee is the Purchasing Agent. The City Commission must authorize all purchases which cost \$10,000.00 or more.

(b) *Competitive bidding.*

- 1) Informal competitive bidding will be required for the purchase of any item when the cost exceeds \$500 but does not exceed \$24,999.
- 2) Competitive sealed bidding will be required when the cost of the item is \$25,000 or more.
- 3) In order to ensure compliance with state laws governing the expenditure of public funds, the Contractor shall provide specifications for the item to be purchased to the City's purchasing agent who shall prepare the invitation to bid and perform all other tasks required by the bid process.

(c) *Award of bid.* Purchase awards shall be made to the qualified bidder with the lowest responsive bid. When all other factors are equal, bids shall be awarded to a local purchasing source.

(d) *Documentation.* All purchases must be documented and authorized on standard forms or vouchers provided by the finance department. The issuance of a purchase order will be required prior to any purchase regardless of the cost of the purchase.

(e) *Payment by City for purchase by Contractor.* Unless the item purchased by the Contractor has been approved by the City Commission as additional consideration and incorporated into Article VII of this Agreement by amendment, the payment by the City for such purchase shall reduce the payment due to the Contractor under Article III by the amount of the purchase. Purchases made by the Contractor which do not comply with the City's purchasing ordinance shall be paid for by the Contractor.

(f) *Applicability.* The requirements of this Article apply if the Contractor is purchasing equipment or any other item that will be paid for by the City either by reimbursement to the Contractor or by direct payment to a vendor.

ARTICLE IX) LEAGUE USE OF FIELDS. With respect to the fields specified in Article I of this Agreement, Contractor shall implement Section 18-137 of the Lake Wales Code of Ordinances governing league use of city-owned fields. Section 18-137 is attached to this Agreement as "Exhibit A".

ARTICLE X) PUBLIC RECORDS. Contractor acknowledges that it is acting on behalf of a Public agency and that this Agreement is subject to the provisions of §119.0701, Florida Statutes, and that Contractor must comply with the Public records laws of the State of Florida. Contractor shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed.
- d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.+

Kenneth Fields
City Manager

Victor Martinez
President
Lake Wales Highlander Bombers

Witness

Witness

ATTEST

City Clerk

EXHIBIT A

Chapter 18, Article V. Parks, Recreation and Other Community Facilities

Sec. 18-137. League use.

(a) General usage requirements.

- (1) Leagues shall sign a facility usage agreement on a form provided by the city incorporating the provisions of this section. Said agreement shall be valid for a single season, and a new agreement shall be executed before the start of each season.
- (2) The league shall provide a league representative and alternate representative to act as a liaison with the city. Designated representatives shall serve for a full season.
- (3) The league will submit a typed list with the names, addresses, and phone numbers of all board members before the start of the current season.
- (4) During the term of the facility usage agreement, the league, at its own expense, shall keep in force comprehensive liability insurance from an insurance company licensed in the State of Florida and acceptable to the city. Insurance shall be provided with a minimum limit of one million dollars (\$1,000,000.00) per occurrence combined single limit to include: Premises operations, independent contractors, products, completed operations, broad form contractual, and personal injury. A certificate of insurance, naming the City of Lake Wales as an additional insured, along with an endorsement, shall be submitted to the city for approval no later than fifteen (15) calendar days prior to the initial use covered in the facility usage agreement. A 30-day written notice of cancellation is required.
- (5) A board member representing the league shall be present at all league activities on city facilities. The representative shall maintain control of coaches, referees, participants, spectators, lights and cleanliness of facility.
- (6) The league shall provide all staff and equipment essential to the proper operation of the program.

(b) Maintenance and repair of facilities.

- (1) The city is responsible for the general maintenance of all electrical, plumbing, potable water and structural related repairs at each facility. The league shall not be authorized to perform any repairs without the express permission of the city.
- (2) Damaged city property or city property in need of repair shall be immediately reported to the city.

(3) The league shall be responsible for the maintenance inspection of field safety prior use by any individual participant or coach. Responsibilities include, but are not limited to:

- A. Maintenance and operation of scoreboards.
- B. Placing of debris in proper containers after each event.
- C. Keeping restrooms free of liter.

(4) Any and all authorized improvements made to the buildings or property become the property of the City of Lake Wales.

(c) Concessions.

(1) The league shall obtain certification as required by the department of health and rehabilitative services for the operation of the concession stand. All certificates shall be posted in a conspicuous location in the concession building. A copy of certificate shall be forwarded to the city for file purposes.

(2) The league will provide and assure certification of a concessions manager to monitor food preparation, protection and health practices. A copy of the certificate shall be forwarded to the city for file purposes.

(3) The city shall inspect and approve all electrical appliances used by the league for electrical safety. Appliances discovered to be substandard or found to be violating standards or codes shall be removed to reduce liability. Repaired appliances may be used upon inspection and approval of the city.

(4) The league shall be responsible for the overall cleaning and operation of concession stands.

(Ord. No. 2007-46, § 1, 9-18-07)

