

**FACILITY USE AGREEMENT BASEBALL/SOFTBALL/SOCCER  
CITY OF MITCHELL**

Agreement made this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Mitchell SD, by and through its' Park, Recreation and Forestry Board, (hereafter called "City") and Dakota Wesleyan University (hereafter called "DWU") as follows:

- I. Term of Agreement:
  - A. This Agreement shall commence as of the date first stated above and shall extend for a term of five (5) years thereafter. DWU shall have the right during the first twelve (12) months of the term to terminate the Agreement upon thirty (30) days' written notice with any applicable user fee to be prorated to the last day the Agreement remains in effect.
- II. The City shall provide and/or perform the following functions within the Facility:
  - A. The City shall retain the final management and control authority in respect to the Facility. DWU shall have no management or control authority in respect to the Facility except as permitted by the City.
  - B. Oversee and coordinate the scheduling of the Facility and maintain a master schedule regarding the use of the Facility.
  - C. Provide supplemental manpower as required for the daily maintenance and upkeep for the diamond/field and other necessary maintenance duties during the Seasonal Use Period consistent with the Sports Complex policy manual.
  - D. Provide comprehensive general liability insurance, including products, bodily injury and
    - a. property damage with combined single limits of \$1,000,000 for each occurrence.
  - E. Be responsible for structures and equipment repair and maintenance considered Routine
    - a. and not attributed to DWU's use of the facilities.
- III. DWU Right and Duties:

DWU shall:

- A. DWU agrees to abide by all rules and guidelines in the Sports Complex policy manual.
- B. DWU shall, on an annual basis, prior to or on December 31 of each year, reimburse or pay all non-insured expenses for repair or replacement to the Facility, complex, bleachers, scoreboards and any other City items or equipment, arising from DWU's use of the Facility during the Seasonal Use Period or Off Season, normal wear and tear excepted. The City shall be responsible for structural and equipment repair and maintenance for the Facility.

- C. During the term of each Seasonal Use Period, or any time DWU shall use the Facility, DWU shall have in force the following insurances:
- a. Comprehensive general liability insurance, including products, bodily injury and property damage with combined single limits of \$1,000,000 for each occurrence. Insurance policies required by this paragraph shall name DWU as insured and the City of Mitchell as an additional insured.
  - b. A copy of additional insured endorsements required hereunder shall be delivered to the City prior to any use of the Facility by DWU. Such policies or certifications shall provide that the insurance coverage may not be cancelled or materially changed unless thirty (30) days advance notice is given to the City.
  - c. DWU shall be responsible for insuring any of its personal property that is stored in the building and stores such personal property in the building at its sole risk. DWU agrees to indemnify and hold harmless the City from any and all liability arising from the use of the Facility for programs carried on by DWU. Such agreement to indemnify and hold harmless does not include any sports program that the City would sponsor and supervise, or which may be operated within the Facility by any person or entity other than DWU.
  - d. The parties shall reassess insurance needs at least once per contract year to determine whether or not the coverage required by this agreement is adequate.
- D. For activities within the Facility sponsored solely by DWU, all revenue generated in connection with the activity shall be retained by DWU.
- a. Revenue generated by the City for the letting of the Facility to persons or parties other than DWU at any time while this agreement is in effect shall be retained by the City. DWU shall have no authority to rent the Facility to other parties.
  - b. Revenues generated by DWU as a result of selling advertising panels which are affixed to the Facility shall be retained by DWU. The placement and size of advertising panels within the Facility building must be approved by the City prior to sale and placement. Cost of panel sales will be addressed in an advertisement plan approved by the City.
  - c. Per previous agreement with the Park and Recreation Board, DWU shall have no advertisement regarding specific alcoholic beverages or tobacco products, via signage sponsorship. City retains a general right to reject content it deems inappropriate for its Facility.

- E. DWU agrees to use the Facility in a responsible manner for the purpose of conducting youth and recreational baseball programs in cooperation with the City, and shall not allow the Facility to be misused.
  - a. Food serving or preparation areas must be approved by the city prior to all events.
- F. Nothing in this Agreement shall limit DWU from cooperating with the City in caring for, maintaining, supervising, and/or constructing improvements, in the furtherance of this Agreement. DWU shall make no alteration, addition, or improvement to the Facility without the advance consent and approval of the City.
  - a. It is anticipated that DWU will construct multiple permanent improvements on the Facility premises. The parties acknowledge that any permanent improvements to be placed on the Facility premises shall have prior approval from the City and shall meet all applicable City codes and ordinances, including any planning and development requirements of City for such improvements. DWU will be responsible for obtaining all necessary permits and approvals and for providing any required paper work, fees and/or exhibits required to obtain the permits or approvals or to otherwise complete the planning and development review process. Any construction of buildings or any other improvements at or on the Facility premises shall be in conformity with the regulatory codes of the City and subject to the written approval of the Parks and Recreation Director or his designee prior to issuance of building permits for construction.
  - b. Scoreboards may be purchased – at DWU sole expense – and installed by DWU upon prior approval by the City. DWU shall be solely responsible for the maintenance of said scoreboards at DWU sole expense.
  - c. All improvements to the Facility premises, upon completion of construction, shall be deemed to be the sole property of the City.
- G. DWU shall not allow any lien to be placed against said improvements or the complex in general for any unpaid labor or materials and agrees to indemnify the City for any amounts of said liens and to hold the City harmless from any of DWU's improvement expenses arising from this Agreement.
- H. Pay the City user fees according to the following schedule:
  - a. DWU agrees to pay to the Lessor as rent for use of the Facility the sum of thirteen thousand dollars (\$13,000.00) per year. Fees for each year, if this agreement is renewed annually, shall not increase for the 2021,

2022, 2023, 2024, and 2025 Seasonal use periods so long as DWU provides donations as pledge in the Artificial Turf Agreement.

- b. This annual user fee includes all operation and maintenance costs of the use of the facilities with the exception of being final approval of field lights usage to be obtained from the City facilities supervisor.
- c. Reimburse the City for all non-insured expenses incurred in respect to the repair of any property damage to the facility which is attributable to negligent use of facilities by DWU. Negligent use to be determined by the Mitchell Park, Recreation and Forestry Board.

#### IV. Scheduling and Usage of the Facilities:

- A. The Sports Complex Supervisor shall establish and maintain a master schedule for the facilities and MSHA agrees to engage in useful communication with the City and other User Groups to coordinate schedules through the Sports Complex Supervisor.
  - a. DWU Soccer (Pepsi Cola Soccer Complex)
    - i. All spring and fall practices/games shall be on a master rotation schedule along with Mitchell High School, Mitchell Soccer Association, Mitchell Park and Recreation Department and Mitchell Christian School. This master schedule to be determined by the City facility supervisor.
  - b. DWU Baseball (Cadwell Sports Complex)
    - i. Drake Field – Spring use for practice and home games January through March 31<sup>st</sup>. Fall use for practice from August through freeze or turf dormancy (to be determined by the City facility supervisor).
  - c. Cadwell Stadium – Spring use from April 1<sup>st</sup> through spring GPAC baseball season for home games and tournaments.
  - d. DWU Softball (Cadwell Sports Complex)
    - i. Cadwell Sports Complex Diamond C – all practices and games to be held on Diamond C.
  - e. DWU games and tournaments shall have first priority to the use of the Facility to the extent required to accommodate such activity. Use of the Facility during DWU games and tournaments by other groups may be allowed to the extent it does not conflict with activities. If other activities are displaced due to DWU games and tournaments, the City shall use reasonable efforts to accommodate such other activities at times that do not conflict with the DWU activities and DWU shall fully cooperate with such accommodation.

- V. The City and DWU shall make good faith efforts to accommodate the needs of each respective entity in order to maximize the overall use of the Facility. City and DWU shall each designate a contact person to coordinate use of the facility.
- VI. This Agreement constitutes the entire agreement between the parties and shall not be modified unless mutually agreed by the City Park and Recreation Board and DWU in writing.
- VII. DWU shall have no right to assign any of the rights or benefits under this Agreement without prior written consent of the City.
- VIII. DWU agrees to engage in useful communication with the City and other User Groups to coordinate schedules and share use of the facilities.
- IX. If any section, or portion thereof, of this Agreement is found to be void, unenforceable, or unconstitutional, the improper portion shall be severed and the remaining provisions will remain in full force and effect to the maximum extent permitted by law.
- X. In the event of a material breach of this Agreement, the non-breaching party shall provide written notice of the breach to the breaching party. The breaching party shall then have an opportunity to cure the breach within Seven (7) days of receiving the notice. If the breach is not cured, the agreement may be terminated by the non-breaching party. The non-enforcement of this provision by either party shall not constitute a waiver as to future or subsequent breach.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Approved and adopted by the Park & Recreation Board of the City of Mitchell, South Dakota, this \_\_\_\_ day of February, 2020.

CITY OF MITCHELL, SOUTH DAKOTA  
PARK AND RECREATION BOARD

By: \_\_\_\_\_

Title: Mitchell Park & Recreation Board President

Approved and adopted by the Dakota Wesleyan University, this \_\_\_\_ day of January, 2020.

DAKOTA WESLEYAN UNIVERSITY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

In witness whereof, the parties have executed this Agreement as the day and year first written above.