

**FACILITY USE AGREEMENT 2020  
CITY OF MITCHELL**

This agreement (“Agreement”) entered into this \_\_\_\_ day of August 2020 between the City of Mitchell a municipal corporation, by and through its Park and Recreation Board, (the “City”) and the Mitchell Christian School (“Athletic Club”), as follows:

**WITNESSETH**

1. Subject to the terms, provisions and mutual obligations of the parties as provided in this agreement, the City shall allow the Athletic Club the use of the Firesteel Park (the “Facility”), including access to the park trails and all pertinent property for a trail run event and parking to be held on September 5, 2020. This is non-exclusive use of the park trails and pertinent property.
2. The City shall retain the final management and control authority in respect to the Facility. Athletic Club shall have no management or control authority in respect to the Facility except as permitted by the City.
3. During the term of each Seasonal Use Period, or any time the Athletic Club shall use the Facility, Athletic Club 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 Athletic Club 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 Athletic Club. 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. The Athletic Club shall be responsible for insuring any of its personal property that is stored on site at its sole risk. Athletic Club agrees to indemnify and hold harmless the City from any and all liability arising from the use of the Facility for the program carried on by the Athletic Club.

4. For activities within the Facility sponsored solely by the Athletic Club, all revenue generated in connection with the activity shall be retained by the Athletic Club.
  - a. Athletic Club shall meet with the Park Supervisor prior to the event to discuss the goals and details for the trail run.
  - b. Athletic Club 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.
5. The Athletic Club agrees to use the Facility in a responsible manner for the purpose of conducting a trail run event 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.
  - b. Athletic Club shall be subject to any exclusive product supplier agreements to which the City is a party (only Pepsi products may be sold). Athletic Club shall maintain its right to retain all profits from sales.
  - c. Observe and comply with all State and Federal laws and City Ordinances applying to the operation of said concession stands. Food handler requirements must be met.
  - d. The Athletic Club shall, prior to or on September 6th, reimburse or pay all non-insured expenses for repair or replacement to the Facility, and any other City items or equipment, arising from Athletic Club's use of the Facility during the event, normal wear and tear excepted. The City shall be responsible for normal repair and maintenance for the Facility.
6. Athletic Club shall make no alteration, addition, or improvement to the Facility without the advance consent and approval of the City.
  - a. Athletic Club 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 conduct a trail run at the Facility.
7. The City and Athletic Club 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 Athletic Club shall each designate a contact person to coordinate use of the facility.

8. 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 the Athletic Club in writing.
9. The Athletic Club shall have no right to assign any of the rights or benefits under this Agreement without prior written consent of the City.
10. Athletic Club agrees to engage in useful communication with the City and other Users to coordinate schedules and share use of the Facility.
11. 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.

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 August, 2020.

CITY OF MITCHELL, SOUTH DAKOTA  
PARK AND RECREATION BOARD

By: \_\_\_\_\_  
Title: Board President

Approved and adopted by the \_\_\_\_\_, this \_\_\_\_ day of August, 2020.

ORGANIZATION:

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