

USE AGREEMENT
BETWEEN
MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION & CULTURE
AND
SOUTH MILWAUKEE BOARD OF EDUCATION

THIS AGREEMENT made and entered into this 10th day of March, 1993, by and between MILWAUKEE COUNTY authorized by Milwaukee County Board Resolution, File No. 92-790; acting through its DEPARTMENT OF PARKS, RECREATION AND CULTURE (hereinafter referred to as "County") and the SOUTH MILWAUKEE BOARD OF EDUCATION, (hereinafter referred to as "South Milwaukee").

Permission is hereby granted by the County to South Milwaukee for the use of a portion of the Oak Creek Parkway hereinafter referred to as "premises", described on Exhibit A attached herein and made a part of this Agreement, for the construction, maintenance and programming of a baseball field and related athletic activities for a period of twenty-five (25) years commencing on January 1, 1993 and ending on December 31, 2018, with an option to renew the agreement for period of like term and conditions at the option of the County. Such privilege is subject to the following terms and conditions.

1. South Milwaukee understands that the premises is a public parkway and is to remain open and accessible to the public in a manner that is compatible with both the historical uses of the parkway and the uses contemplated by this agreement. It is mutually agreed and understood that the area shall never be used exclusively by South Milwaukee.

2. South Milwaukee shall use the premises to provide athletic and recreational programming. The programming shall include but is not limited to baseball and softball for the South Milwaukee High School and the City of South Milwaukee Recreation Department. No other use shall be permitted without the prior written consent of the County.

The premises shall remain accessible to the public at all times consistent with South Milwaukee's programming.

3. The South Milwaukee shall construct at its sole cost and expense one baseball diamond. South Milwaukee shall submit for County's review and approval all plans and specifications for the baseball diamond and surrounding premises prior to the start of construction. Any additional changes which may be desired on the part of South Milwaukee from time to time over the term of this agreement shall also require the review and approval of the County. South Milwaukee shall include the County as a bidder and provide to the County all bid documents or requests for proposal for all contracted work associated with the construction of the baseball diamond.

4. Leased premises shall be defined as the area occupied by the newly constructed baseball diamond including infield, outfield, bleacher area, players area and any future area such as storage/concession which may be built or developed. South Milwaukee shall at all times provide for the maintenance, management and supervision of the leased premises and will keep all areas of the leased premises in a clean and orderly condition. The County will continue to maintain all adjacent parkway areas not defined as leased premises.

5. South Milwaukee shall be responsible for all approvals which may be required from any regulatory agencies to do any construction within the floodplain. Evidence of such approvals shall be given to the County prior to the start of construction.

6. Proper supervision over the players and spectators using the premises for South Milwaukee programed activities shall at all times be the sole responsibility of the South Milwaukee.

7. South Milwaukee is prohibited from charging any admission to the premises.

8. If there is any abuse of the land use privilege, the condition shall be corrected by the South Milwaukee immediately upon written demand of the County. Failure on the part of the South Milwaukee High School to do so may be cause for termination of this agreement.

9. South Milwaukee shall not permit any unlawful or illegal acts to occur within the premises and shall at all times obey all applicable federal, state, and local laws, ordinances, codes, and other regulatory measures.

10. The County reserves the right to terminate this agreement at any time, upon thirty (30) days written notice. Termination shall be effective on the date specified by the County in its notice to South Milwaukee. If, upon termination of this agreement, South Milwaukee fails to remove any property belonging to it within ninety (90) days after notice, the property shall become the property of the County.

All improvements to the premises over the term of this agreement shall become the property of the County upon expiration or termination of this agreement.

11. Concessions shall not be sold within the leased premises without the prior written agreement from the County.

12. To the fullest extent permitted by law, South Milwaukee agrees to be financially responsible for all loss or expense, including costs and attorney's fees by reason of liability for damages, including suits at law or in equity, caused by any wrongful, intentional, or negligent acts or omissions of South Milwaukee, or its agents which may arise out of or are connected with the activities covered by this agreement.

In accordance with applicable laws, South Milwaukee shall be responsible for defending and paying judgments on behalf of its officers, employees and agents for any claims that may arise out of South Milwaukee's negligence for acts, policies or directives that affect the activities covered by this use agreement.

South Milwaukee understands and agrees that financial responsibility for such claims or damages arising from South Milwaukee's activities, to any person or to South Milwaukee's employees and agents shall rest with South Milwaukee. South Milwaukee shall effect and maintain any insurance coverages, or formal self-retention programs usual to governmental entities, to include but not limited to liabilities under Worker Compensation Laws, Employers Liability and General, Contractual, Professional and Automobile Liability to support such financial obligations.

14. South Milwaukee shall not assign this agreement nor sublet any portion of the premises at any time during the term of this agreement.

15. South Milwaukee hereby agrees, that no person on the grounds of race, color, sex, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in association with South Milwaukee's activities.

16. Any notices required or permitted under this agreement shall be deemed sufficiently given or served if sent by registered or certified mail to the respective addresses set forth below:

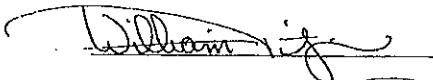
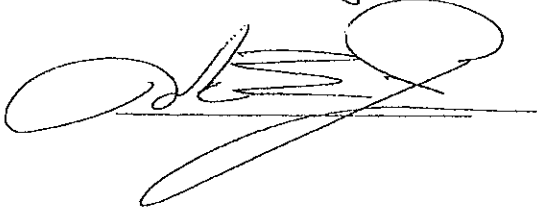
If to County: Director of Department of Parks, Recreation and Culture
9480 Watertown Plank Road, Wauwatosa, WI 53226

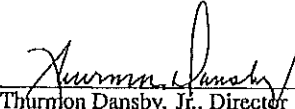
If to South Milwaukee: Superintendent, School District of South Milwaukee
1225 Memorial Drive, South Milwaukee, WI 53172

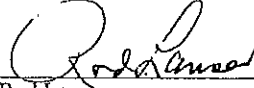
IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

In Presence Of:

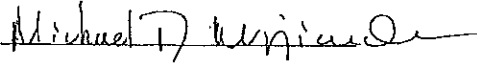
Milwaukee County:

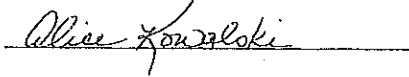



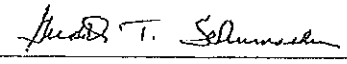

Thurmon Dansby, Jr., Director
Parks, Recreation and Culture



Rod Lanser
County Clerk

South Milwaukee Board of Education









Approved as to form and Independent Contractor status by Corporation Counsel

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(ITEM)

WHEREAS, the Parks Department has received a request from the South Milwaukee School District to enter into a use agreement with the County for a portion of the Oak Creek Parkway for athletic purposes in association with the South Milwaukee High School and Recreation Department; and

WHEREAS, the request is made as a result of the South Milwaukee School Board's construction of a new elementary school on the site of one of the high school's existing baseball fields; and

WHEREAS, South Milwaukee would remove the existing baseball and softball diamonds on the parkway land and construct a new baseball diamond for its athletic programming; and

WHEREAS, the Parks Department has reviewed the request and recommends approval of the use agreement; and

WHEREAS, on November 2, 1992, the Committee on Parks, Recreation and Culture approved the Parks Department's recommendation; now, therefore

BE IT RESOLVED, that the Director of Parks, Recreation and Culture be authorized to negotiate a use agreement with the South Milwaukee Board of Education for the use of a portion of the Oak Creek Parkway with the assistance of the Corporation Counsel and Risk Manager which has the following salient terms:

- Twenty-five year term,
- Development plans for the area would be submitted to the Parks Department for approval prior to being implemented,
- The area would remain available to the public consistent with the school's programming,
- Maintenance of the area would be the responsibility of South Milwaukee,
- Obtaining regulatory agency approvals would be the responsibility of South Milwaukee; and

BE IT FURTHER RESOLVED, that the Director of Parks, Recreation and Culture and the County Clerk are hereby authorized to execute the use agreement.

Fiscal Note: Adoption of this resolution will not result in any additional expenditure to the County.