

VILLAGE OF WATERLOO

RESOLUTION NO. 06-09-20-08

A Resolution of the Village of Waterloo, Nebraska, Regarding the Risk of Exposure to COVID-19 Through the Use of Municipal Property for Sports or Recreational Activities.

Recitals

WHEREAS, the novel coronavirus, COVID-19, has been declared a worldwide pandemic by the World Health Organization, is extremely contagious, and is believed to spread mainly from person-to-person contact;

WHEREAS, on March 13, 2020, the Governor of the State of Nebraska declared a state of emergency related to COVID-19 within the entire State of Nebraska, and this state of emergency remains in effect;

WHEREAS, directed health measures are in effect for every County in the State of Nebraska through May 31, 2020, and are likely to be extended by the Governor in some form for most or all Counties after May 31, 2020;

WHEREAS, on May 21, 2020, the Governor announced that the directed health measure prohibiting all organized team sports, youth and adult, would be relaxed by the State of Nebraska beginning June 1, 2020, in order to permit the planned reopening of certain adult and/or youth team sports;

WHEREAS, a copy of the *June 1st Statewide Sports Reopening Guidelines* is attached to this Resolution and incorporated herein as part of these Recitals;

WHEREAS, it is anticipated that future guidance from the State of Nebraska will permit additional team sports and other recreational activities;

WHEREAS, players, coaches, officials, and others who participate in such games, practices, or other recreational activities, and spectators who attend such activities risk the dangers of illness, disease, medical complications, injury or death, caused by or related to COVID-19, by voluntarily entering the municipal property and/or facilities on which such activities take place, by watching such activities, and by participating or authorizing the participation of a minor, in such games, practices, or other recreational activities; and

WHEREAS, it is the intent of the Village of Waterloo to permit the resumption of adult and/or youth team sports and other recreational activities on municipal property and/or facilities, in accordance with the directed health measures and other laws and guidance issued by the State of Nebraska, including, but not limited to, the *June 1st Statewide Sports Reopening Guidelines* and such further laws and guidance that may be issued in the future, provided that every individual, organization, or group sponsoring such activities, and all participants and spectators, fully assume the health risks associated with these activities, including the inherent risk now present in any such activities as a result of the presence of COVID-19 in the State of Nebraska, and provided that

participants in such activities sign an agreement that releases the Village of Waterloo, its elected and appointed officials and employees, and all other participants in adult and/or youth team sports or other recreational activities from liability associated with exposure to COVID-19 in the course of such activities.

NOW, THEREFORE, BE IT RESOLVED by the Village Board of the Village of Waterloo that any individual, organization or group sponsoring adult and/or youth team sports or other recreational activities that wishes to use the playing or practice fields, courts, grounds, and/or other facilities of the Village of Waterloo for games, practices, or other recreational activities will be required to enter into the *COVID-19: License and Management Agreement for Use of Municipal Property for Sports or Other Recreational* attached hereto. These License Agreements will be maintained by the Municipal Clerk and shall constitute an addendum to any other contract, license agreement, lease, or agreement allowing the use of the municipal property and/or facilities of the Village of Waterloo by the same individual, organization, or group.

BE IT FURTHER RESOLVED that, in order to enter the playing or practice fields, courts, grounds, and/or other facilities of the Village of Waterloo to participate in games, practices, or other recreational activities, all players, coaches, officials and other participants must sign the agreement titled *COVID-19: Participants Agreement for Sports or Other Recreational Activities* in substantially the same form as attached hereto. Each team wishing to participate on or use the municipal property and/or facilities of the Village of Waterloo must provide copies of signed *Agreements* for all participants affiliated with the team, together with a roster containing a complete list of the names of all players, coaches, officials, and others affiliated with the team. Copies of these documents must be provided to and shall be maintained by the Municipal Clerk.

BE IT FURTHER RESOLVED that, for the avoidance of doubt as to the risk assumed by participants and spectators, in order to encourage compliance with directed health measures and guidelines, and in order to promote public safety, the applicable provisions of the *June 1st Statewide Sports Reopening Guidelines*, shall be posted on all practice and playing fields, courts, grounds, and/or other facilities where adult and/or youth practices and/or games or other recreational activities occur. If the *June 1st Statewide Sports Reopening Guidelines*, are subsequently modified or updated, the applicable provisions of the modified or updated guidelines shall be posted in the same manner.

BE IT FURTHER RESOLVED that all participants and spectators shall comply with all federal, state and local laws and regulations, all directed health measures and guidelines, and all security policies or procedures established by the Village of Waterloo relating to COVID-19 or other safety or hygiene precautions while present on municipal property and/or facilities, understanding that the Village of Waterloo may elect to deny entrance to its playing or practice fields, courts, grounds, and/or other facilities to any non-complying participant or spectator, or to require a non-complying participant or spectator to leave the premises at any time.

BE IT FURTHER RESOLVED that officials and employees of the Village of Waterloo are authorized to execute the directives set forth in this Resolution.

PASSED THIS 9 DAY OF June, 2020

ATTEST:

Melissa Johnson

Melissa Johnson
Clerk



Travis Harlow

Travis Harlow
Chairperson

**COVID 19: License and Management Agreement
for Use of Municipal Property for Sports
or Other Recreational Activities**

This License and Management Agreement (the "License"), dated for reference purposes only as of the ____ day of _____, 2020, is entered into by and between the Village of Waterloo, Nebraska ("Licensor") and _____ ("Licensee").

RECITALS

- A. Licensor owns the real estate legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Real Property").
- B. The Licensee desires to license a portion of the Real Property as identified on Exhibit "B" attached hereto and incorporated herein by this reference (the "Premises").
- C. The Premises includes a playing field, court, or other grounds suitable for sports and other recreational activities, and may include associated improvements and structures included therewith, all as more particularly described on Exhibit "B".
- D. Licensee is involved in organizing adult and/or youth team/group sports or other recreational activities in the municipality.
- E. Licensor recognizes the additional requirements associated with operating the Premises as a result of the ongoing COVID-19 and novel coronavirus situation and is not able to ensure that operation of the Premises during all practices, games, and other events follows the current applicable rules for safe operation.
- F. Licensee desires to utilize the Premises for adult and/or youth team/group sports or other recreational activities and is willing to enter into this License in order to manage the Premises in accordance with the applicable rules for safe operation.
- G. Licensor desires to enter into this License whereby Licensee shall license and manage the Premises for Licensor, subject to the following terms.

NOW THEREFORE, Licensor and Licensee agree as follows:

1. Licensed Premises. Licensor desires to license to Licensee the Premises, as defined above, consisting of approximately _____ acres [or _____ square feet] of real property as further described on Exhibit "B". Such area includes the municipal playing field(s), court(s), grounds, and/or the

structures and improvements associated with the playing field(s), court(s), or grounds, including, but not limited to (if any), the bleachers, stands, restroom facilities, drinking fountain(s), and concession stand. Licensor licenses the Premises to Licensee, and Licensee licenses the Premises from Licensor, for the License Term, and Licensee agrees to pay the license fee, and to perform all of Licensee's obligations described herein. The parties agree that Licensee shall have the non-exclusive right to use the Premises and such other portions of the Real Property as is necessary for Licensee to access and use the Premises.

2. Management. The parties acknowledge and agree that Licensee shall be solely responsible for the operation and management of the Premises during the License Term when the Premises are being utilized pursuant to this License. Licensee shall be responsible for operating and managing the Premises in accordance with all applicable rules and regulations of any governmental entity with jurisdiction over the Premises, including, but not limited to, the *June 1st Statewide Sports Reopening Guidelines* issued by the State of Nebraska, attached hereto as Exhibit "C" and incorporated herein by this reference, any other comparable guidelines that may be promulgated by the State of Nebraska regarding sports or other recreational activities, and any amendments, replacements, or supplements thereto, any applicable directed health measure, and all resolutions and ordinances of Licensor (collectively the "Rules"). Licensee represents and covenants to Licensor that Licensee is familiar with the Rules and that Licensee shall operate and manage the Premises in accordance with the Rules. Licensee shall ensure that all coaches or appropriate personnel utilizing the Premises shall conduct themselves and their teams in accordance with the Rules. Licensee agrees to provide training and education as appropriate to all coaches or team managers to ensure that the Rules are followed.

3. Term. The License shall be for a term of ____ months commencing effective as of _____, 2020. Either party shall have the right to terminate this License by providing the other party with no less than ____ days' prior written notice. Such notice shall specify the date that the License shall terminate. Notwithstanding the foregoing or any other provision herein, the parties acknowledge and agree that Licensor retains the right, at any time, to terminate this License by written notice to Licensee if such termination is required under the applicable Rules or any amendment, replacement, or supplement thereto, or in the event Licensor determines, in Licensor's discretion, that Licensee has failed to manage and operate the Premises in accordance with the Rules. Any such termination shall not relieve the Licensee of the obligations of Licensee hereunder that have occurred or accrued hereunder prior to the termination.

4. License Fee. Not Applicable

5. Acceptance of Premises. By taking possession of the Premises, Licensee accepts the Premises in its current condition. Licensee further agrees that Licensor has not provided Licensee with any warranty or representation as to

the condition of the Premises and that Licensee has investigated the Premises and has determined to Licensee's satisfaction that the Premises is satisfactory for Licensee's proposed use. Licensee also acknowledges and agrees that Licensee is only utilizing a portion of the Real Property that is described herein as the Premises and that Licensor and other parties also shall have the right to use the Real Property during the License Term, subject to the reasonable licensing discretion of Licensor. Licensee shall secure Licensor's permission prior to making any improvements or alterations of any nature to the Premises. Licensor reserves the right to withhold its consent in Licensor's sole discretion.

6. Quiet Enjoyment. Upon Licensee's paying the license fee and other expenses provided in this License and observing and performing all of the terms, covenants and conditions to be observed and performed by Licensee hereunder, Licensee shall have possession of the Premises for the entire term hereof, subject to all of the provisions of this License.

7. Real Estate Taxes. If applicable during the License Term, Licensor shall pay all real property taxes and assessments, improvement bonds, and other governmental levies ("Taxes") imposed on or with respect to the Premises, if any exist. Licensee shall pay all personal property taxes imposed on or with respect to Licensee's equipment and personal property located on the Premises, if any exist.

8. Utilities. Licensee acknowledges that the utilities necessary for the operation of the Premises are provided by Licensor and Licensee shall use such utilities in the manner required for the proper operation of the Premises and shall not unreasonably use the same or cause any damage thereto.

9. Maintenance. Licensee shall, during the term of this License, and at its sole expense, keep the Premises in good order and repair, reasonable wear and tear excepted. Licensee shall be responsible to maintain the Premises in accordance with the Rules so that the Premises may be utilized for the purposes set forth in this License. Such obligation shall include, but not be limited to, cleaning and disinfecting restroom facilities regularly while players and fans are present, and placing markings on the ground to ensure individuals waiting to use the restroom are spaced six (6) feet apart, if any such restroom facilities are included and open for use on the Premises. Licensee shall also ensure that the concession stand, if any, is only allowed to open if all requirements set forth in the Rules are followed. Licensee shall ensure that the stands, bleachers, or other facilities are only utilized in accordance with the applicable Rules and that any spectators are those permitted to be in attendance at the Premises in accordance with the Rules. Licensor shall be responsible for any mowing, irrigation, or application of fertilizer or weed control on the Premises in accordance with past practices of Licensor. Provided, however, Licensee shall be responsible for any of the same if they are caused by Licensee's misuse or damage to the Premises. Licensee agrees to promptly notify Licensor of any maintenance or repair that is the responsibility of Licensor hereunder.

10. Insurance. During the License Term, Licensee shall, at its own cost and expense, procure and continue in force such insurance policies as are required by Licensor. Such insurance shall, at a minimum include commercial general liability insurance with a combined policy limit of at least \$1,000,000 or such other amount as is reasonably agreed to by the parties. Licensor shall be named as an additional named insured on all such policies of insurance. A renewal policy shall be procured not less than ten (10) days prior to the expiration of any policy. Each original policy or a certified copy thereof, or a satisfactory certificate of the insurer evidencing insurance carried with proof of payment of the premium, shall be deposited with Licensor prior to the commencement date of the term hereof and within ten (10) days of the each anniversary date thereafter. If possible and financially feasible, Licensee shall endeavor to have the foregoing insurance policy provide coverage for issues related to COVID-19, novel coronavirus, or similar issues. Licensee shall provide workers' compensation and employer liability coverage as may be required by the State of Nebraska.

11. Licensee's Indemnification. Licensee agrees to indemnify and hold Licensor harmless from and against any and all claims, damages, or causes of action and all liability, cost or expense specifically including court costs and all reasonable attorney fees to the extent the same arise out of or in any way connected with Licensee's or Licensee's agents' use of the Premises during the term hereof. Whether the same are raised during the term hereof or after. Without limiting the foregoing, the parties acknowledge and agree that the foregoing indemnification specifically includes any claims, damages, or causes of action and all liability, cost or expense specifically including court costs and all reasonable attorney fees for any COVID-19, novel coronavirus, or related issues.

12. Assignment. Licensee shall not assign, sub-license, or otherwise transfer, by operation of law or otherwise, this License or any interest herein without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion.

13. No Re-license. Licensor's consent to any assignment, encumbrance, sub-license, occupation, or other transfer shall not release Licensee from any of Licensee's obligations hereunder or be deemed to be a consent to any subsequent assignment, sub-license, or occupation unless Licensor agrees in writing. The collection or acceptance of the license fee or other payment by Licensor from any person other than Licensee shall not be deemed the acceptance of any assignee or sub-licensee as the Licensee hereunder or a release of Licensee from any obligation under this License.

14. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default: (i) the failure by Licensee to make any payment of the license fee or any other payments required to be made by Licensee under this License when due; and (ii) the failure by Licensee to observe or perform

any of the provisions of this License to be observed or performed by the Licensee if such failure continues for a period of ten (10) days, or such other period if this License specifically provides a different period for a particular failure, after written notice by Licensor to Licensee of such failure; provided, however, that with respect to any failure which cannot reasonably be cured within ten (10) days, an Event of Default shall not be considered to have occurred if Licensee commences to cure such failure within such ten (10) day period and continues to proceed diligently with the cure of such failure.

15. Remedies. On the occurrence of an Event of Default, Licensor may at any time thereafter, with or without notice or demand and without limiting Licensor in the exercise of a right or remedy which Licensor may have by reason of such default or breach, exercise any rights or remedies Licensor may have at law or in equity, including, but not limited to, one or more of the following:

- A. declare the License at an end and terminated;
- B. sue for the license fee due and to become due under the License;
- C. sue for any damages sustained by Licensor;
- D. cure any breaches of Licensee's obligations to pay utilities, provide insurance, or properly maintain the Premises.

16. Non-Exclusive Remedies. The remedies of Licensor set forth in Section 15 shall not be exclusive, but shall be cumulative and in addition to all rights and remedies now or hereafter provided or allowed by law or equity, including, but not limited to, the right of Licensor to seek and obtain an injunction and the right of Licensor to damages in addition to those specified herein.

17. Default by Licensor. Licensor shall not be liable to Licensee if Licensor is unable to fulfill any of its obligations under this License, if Licensor is prevented, delayed, or curtailed from so doing by reason of any cause beyond Licensor's reasonable control. Licensor shall not be in default unless Licensor fails to perform obligations required of Licensor within a reasonable time, but in no event later than thirty (30) days after written notice by Licensee to Licensor, specifying Licensor's failure to perform such obligation; provided, however, that if the nature of Licensor's obligation is such that more than thirty (30) days are required for performance, then Licensor shall not be in default if Licensor commences performance within such thirty (30) day period and thereafter diligently prosecutes its efforts to satisfy such obligation.

18. Entry by Licensor. Licensor and its agents and employees shall have the right to enter the Premises at all reasonable times and during normal business

hours, to examine the same, to make such maintenance and repairs of the Premises and such maintenance, repairs, alterations, decorations, additions, and improvements to other portions of the Premises as Licensor requires.

19. Notices. Any notices required or permitted to be given under this License shall be in writing and may be delivered personally or by certified mail to the other party at the address set forth below. Any notice given by mail shall be deemed received two (2) business days following the date such notice is mailed as provided in this Section. Any notice given by electronic mail or personally delivered shall be effective upon receipt. Either party may change its address for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

a. Licensor's Address: Village of Waterloo
509 South Front Street
Waterloo, Nebraska 68069

b. Licensee's Address: _____

20. Applicable Laws. This License shall be governed by and construed in accordance with the laws of the State of Nebraska.

21. Modification. This License contains all of the terms and conditions agreed upon by the Licensor and Licensee with respect to the Premises. All prior negotiations, correspondence, and agreements are superseded by this License and any other contemporaneous documents. This License may not be modified or changed except by written instrument signed by Licensor and Licensee.

22. Relationship of Parties. Neither the method of computation of the license fee nor any other provisions contained in this License nor any acts of the parties shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Licensor and Licensee, other than the relationship of Licensor and Licensee.

23. Waiver. The acceptance of the license fee or other payments by Licensor, or the endorsement or statement on any check or any letter accompanying any check for the license fee or other payment shall not be deemed an accord or satisfaction or a waiver of any obligation of Licensee regardless of whether Licensor had knowledge of any breach of such obligation. Failure to insist on compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder, at any one time or more times, be

deemed a waiver or relinquishment of such rights and powers at any other time or times or under any other circumstance(s).

24. Partial Invalidity. If any term or provision of this License or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this License or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this License shall be valid and enforced to the fullest extent permitted by law.

25. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this License, but shall be interpreted according to the application of rules of interpretation of contracts generally.

26. Memorandum of License. Licensee shall not be permitted to file a memorandum of the License or other documents in the real estate records of the County including the Premises.

27. Binding Effect. This License shall be binding upon and shall inure to the benefit of Licensor, Licensee, and their respective successors and assignees.

28. Counterparts. This License may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Execution Page Follows]

IN WITNESS WHEREOF, the parties hereto hereby execute this License as of the day and year first above written.

“LICENSEE”

By: _____

Its: _____

“LICENSOR”

Village of Waterloo, Nebraska

By: _____

Its: _____

Exhibit "A"

Legal Description

[Insert Legal Description]

Exhibit "B"

[Insert Diagram or Description of the Licensed Premises]

[Include List of Improvements/Structures]

Exhibit "C"

[Attach a copy of the current Rules]

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COVID-19: Participants Agreement for Sports or Other Recreational Activities

(Please print clearly or type and fill in all blanks and sign below.)

Participant Name (Player, Coach, Official, or Other Participant): _____

Address: _____

Municipality: Village of Waterloo, Nebraska 68069

Telephone #: _____

Age of Participant _____

If Participant is 18 years of age or older, only Participant must sign. If Participant is 17 years Old or Younger, Parent or Legal Guardian must sign.

ACKNOWLEDGMENT AND ASSUMPTION OF RISK

The COVID-19 coronavirus has been declared a worldwide pandemic by the World Health Organization, is extremely contagious and is believed to spread mainly from person-to-person contact. By signing this, you ACKNOWLEDGE AND ASSUME THE RISK AND DANGERS OF ILLNESS, DISEASE, MEDICAL COMPLICATIONS, INJURY OR DEATH, caused by or related to COVID-19, by voluntarily entering the property and/or public facilities of any Municipality and participating in or viewing adult and/or youth games, practices, or other recreational activities, or by authorizing the participation of a minor in or the presence of a minor at such games, practices, or other recreational activities. No one guarantees that you or your child(ren) will not become infected with COVID-19. The person signing below voluntarily assumes this risk because s/he chooses or elects to do so.

COVID-19 RELEASE AND INDEMNITY AGREEMENT AND COVENANT NOT TO SUE

In consideration of the above-listed player, coach, or official ("Participant") being allowed to participate in adult and/or youth team sports or other recreational activities on municipal property and/or public facilities, the Participant or the parent(s) or legal guardian (if Participant is a Minor), on his or her own behalf and on behalf of any Minor Participant, agree as follows:

1. RELEASE, WAIVE, DISCHARGE AND COVENANT NOT TO SUE every city or village (hereinafter, **Municipality**) on whose property and/or public facilities Participant participates in any adult and/or youth games, practices, or other recreational activities, together with each such **Municipality's** mayor and council, village board of trustees, manager/administrator, clerk, agents and employees, and all others who participate with Participant in such activities (all of whom are collectively referred to herein as "Releasees") from any and all liability to the Participant (or Participant's personal representatives, assigns, heirs, parents, legal guardians, siblings, children or dependents) on account of injury, illness, disease, quarantine or death from the COVID-19 coronavirus and any complication

or related disease or condition, occurring as a result of entering the property of any such **Municipality**, participating in or viewing any such game, practice, or other recreational activity, or other use of public facilities on the property of any such **Municipality**, whether such injury, sickness, disease, condition, or death is caused by the negligence or other wrongful conduct of one or more of the Releasees or any other participants, spectators or other individuals present at the game, practice, or other recreational activity, or whether liability for such injury, sickness, disease, condition, or death is assigned to one or more of the Releasees as a matter of strict liability or any other legal doctrine.

2. AGREE TO INDEMNIFY AND SAVE AND HOLD HARMLESS THE RELEASEES and each of them from any liability, damage or loss (including, but not limited to, attorneys' fees and other defense costs) one or more of them may suffer or incur arising out of or related to the Participant's or any of the undersigned's entry onto the property and/or public facilities of any such **Municipality** in connection with any game, practice, or other recreational activity, whether such claim is based on one or more of the Releasees' negligence, breach of contract or warranty, strict liability or other legal theory. The undersigned COVENANTS not to sue any Releasee related to injury, disease, loss, quarantine, or illness related to COVID-19.

3. THE PERSON SIGNING BELOW AGREE(S) to comply with all federal, state and local laws and regulations, all directed health measures and guidelines, and all security policies or procedures established by any such **Municipality** relating to COVID-19 or other safety or hygiene precautions, understanding that the **Municipality** may elect to deny entrance to the property (including any facilities present thereon) and the Participant may not be allowed to participate or continue to participate in the game, practice, or other recreational activity at the election of the **Municipality** at any time. The undersigned agree(s) that in the event any portion of this document is held to be invalid, the balance shall, notwithstanding, continue in full legal force and effect to the greatest extent possible under applicable law. The parents or guardian of the Participant agree that by signing below they are in addition to binding themselves *and* binding any minor Participant on whose behalf they have signed, to the maximum extent permitted by applicable law to this Agreement in full.

I AM THE AGE OF MAJORITY, AM COMPETENT AND HAVE FULL AUTHORITY TO SIGN THIS, HAVE READ THE ABOVE AND UNDERSTAND ITS TERMS. I SIGN KNOWING ITS EFFECTS.

Signature of Participant
(If 18 Years Old or Older)

Print Clearly or Type Name of Participant

Signature of Parent
(If Participant is 17 Years Old or Younger)

Print Clearly or Type Name of Parent

Signature of Legal Guardian (If Applicable)
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Print Clearly or Type Name of Legal Guardian