

MEMORANDUM

TO: Honorable Mayor and City Council Members

FROM: James Moltz, Parks & Recreation Superintendent *JLM*

DATE: February 12, 2008

SUBJECT: Valentine Park Usage Contract with the Orange City YMCA

PURPOSE

To obtain City Council approval of the proposed usage contract between the Orange City/DeBary Family YMCA and the City of Orange City.

BACKGROUND

With council's direction to increase the amount of outdoor programming offered at city parks, staff has approached the Orange City/DeBary Family YMCA about bringing different sports to Valentine Park.

City staff met with representatives of the YMCA for the purpose of determining the YMCA's needs for scheduling practice and games.

Due to the not-for-profit status of the YMCA and the organization's desire to provide up to 20 scholarships for children who otherwise could not participate, staff is recommending that the City Council waive the standard field usage fees.

RECOMMENDATION

That the City Council approves the contract between the City and the YMCA, and authorizes the City Manager to execute it.

RESOLUTION NO. 466-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE ORANGE CITY/DEBARY FAMILY YMCA FOR THE USE OF CERTAIN FACILITIES LOCATED WITHIN VALENTINE PARK; REPEALING ALL RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Orange City/DeBary Family YMCA, a not-for-profit Corporation, desires to use facilities owned by the City of Orange City; and

WHEREAS, the City of Orange wishes to expand recreational opportunities for city residents; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA:

SECTION 1. That the City Manager is hereby authorized to execute an agreement with the Orange City/DeBary Family YMCA, Inc. for the use of certain facilities located within Valentine Park which is owned by the City of Orange City, said agreement attached hereto as Exhibit "A".

SECTION 2. That all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 3. That this resolution shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

ROLL CALL VOTE AS FOLLOWS:

Jim Mahoney	_____	Donald C. Sherrill	_____
Tom Laputka	_____	Tom Abraham	_____
Donald Sandford	_____	Jeff H. Allebach, Vice Mayor	_____
Harley Strickland, Mayor	_____		

ADOPTED THIS _____ DAY OF _____, 2008.

ATTEST:

AUTHENTICATED:

Deborah J. Renner, City Clerk

Harley Strickland, Mayor

This Resolution approved
as to form and legal sufficiency:

William Reischmann, City Attorney

AN AGREEMENT FOR THE USE OF CERTAIN FACILITIES LOCATED WITHIN VALENTINE PARK OWNED BY THE CITY OF ORANGE CITY

Whereas, the Orange City / Debary Family YMCA, Inc. a not for profit Florida corporation, desires to use facilities owned by the City of Orange City, and

Whereas, the City of Orange City is agreeable to allowing said corporation to use Orange City facilities as described hereinafter, and

Whereas, it is desirable that the duties and responsibilities of the parties be set forth in a written agreement, and

Whereas, both parties hereto agree that the services and instruction rendered by Orange City / Debary Family YMCA, Inc. on the land and facilities provided by the City as described hereinafter are for the good and betterment of the community and in the best interest of the public;

Now therefore, the City of Orange City, Volusia County, Florida, hereinafter referred to as the "City" and the Orange City / Debary YMCA, hereinafter referred to as the "YMCA" agree as follows:

1. For and in consideration of the covenants herein contained, the City does hereby agree to allow the use of certain City recreation facilities by the YMCA, to wit: the use of Valentine Park ball fields, known as the soccer field, multi purpose field (as shown on Exhibit "A"); pursuant to the terms and provisions hereinafter.
2. These Valentine Park ball fields shall be available to the YMCA for all its regular season games and practices as approved by the City per schedules submitted by the YMCA to the City in advance. Any added games due to rain, etc. will also need City approval. The YMCA will have first option for use of the specified fields during top team and all star play. The City acknowledges that there may be occasion that a minimum of one hour notification is all that is possible during top team and all star play, however this shall be the exception – not the norm.
3. The properties described in Paragraph 1 herein shall be available to the YMCA as follows:
 - a. YMCA will submit a schedule of registration times, fees and registration requirements to the City no later than thirty (30) days prior to the first scheduled

open range of registration date. Which when approved by the City will not be modified without thirty (30) days notice to both parties or as mutually agreed upon.

b. During the primary soccer season ("primary soccer season" being described as commencing each February 20th and ceasing each March 19th) the YMCA shall have the use of the facilities described in Paragraph 1. Also during the primary flag football season ("primary flag football season" being described as commencing each April 23rd and ceasing each June 14th) the YMCA shall have the use of the facilities described in Paragraph 1. Said usage to be determined by the City after the YMCA submits a schedule of games and practices. The YMCA will provide the City with a schedule of all uses at least two (2) weeks prior to implementation with the understanding that due to happenings beyond the League's control there may be additional games other than those scheduled during top team or all stars. The City acknowledges that there may be occasion that a minimum of one hour notification is all that is possible during top team and all star play, however this shall be the exception – not the norm. The city will review and verify/modify the proposed schedule requests as necessary and will respond to the League a maximum of seven (7) days after receipt. At all times, scheduling for the use of the fields will be in the sole discretion of Leisure Services. No other entity shall use the YMCA equipment or fixtures supplied by the YMCA without its permission.

c. During the secondary soccer season ("secondary soccer season" described as commencing each August 25 and ending each October 25) the YMCA will have the same rights and responsibilities as provided heretofore in section 3 (a & b).

4. The YMCA will also submit a request schedule for usage of the board room to schedule necessary meetings, activities, etc. Requests shall be submitted a minimum of two (2) weeks prior to implementation. The city will review and verify/modify the proposed schedule requests as necessary and will respond to the YMCA a maximum of seven (7) days after receipt.

5. This agreement shall extend from February 20, 2008 to October 25, 2008. This use agreement may be renewed by the YMCA for one (1) additional one (1) year term provided its compliance with the conditions described hereinafter. Either party may cancel the agreement at will and in its sole discretion upon thirty (30) days written notice to the other party. Renewal of this agreement shall be conditional upon the following terms:

a. That a request for renewal by the YMCA shall be made in writing to the City at least 90 days prior to the expiration of this agreement.

b. The YMCA shall furnish to the City the following information at least 90 days prior to the expiration of this agreement:

1. A financial report or a copy of the YMCA annual report covering the prior period of the agreement, including all expenditures of the YMCA on the facilities covered by this agreement.

2. An accurate accounting of all YMCA participants' residential base for the prior agreement period (i.e. Orange City, unincorporated Volusia County, and/or other municipalities, et al.).

3. A statement of the achievement(s) of the YMCA in relation to its goals set forth for the past term of the agreement.

4. A statement describing the goals set for the renewal term and how they are proposed to be accomplished.

c. The City shall have access to all buildings and facilities subject to this agreement.

d. The City reserves the right to inspect the facilities at random and the City's determination as to the condition of the facilities will be final.

e. Compliance with all terms of this agreement.

6. INDEMNIFICATION

To the fullest extent permitted by law, the YMCA agrees to indemnify, defend and hold harmless the City, its officers, agents, volunteers, and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under this Agreement; providing that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, including the loss of use or diminution in value resulting therefrom; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of the YMCA, YMCA subcontractor(s), or anyone directly or indirectly employed or hired by the YMCA or anyone for whose acts the YMCA may be liable, REGARDLESS OF WHETHER OR NOT IT IS CAUSED IN WHOLE OR IN PART BY THE ACTUAL OR ALLEGED NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, OR EMPLOYEES, OR A PARTY INDEMNIFIED HEREUNDER. The City reserves the right, but not the obligation, to participate in defense without relieving the YMCA of any obligation hereunder.

7. The City agrees to:

a. Maintain the playing fields in accordance with the standards deemed appropriate by the City, this may include but not be limited to mowing, fertilizing, pesticide and irrigation.

b. Provide a written response to any written requests from the League regarding ball field or facilities maintenance within one week from receipt of document. Exclusive of emergency situations which shall be immediately reported to the City and rectified on a case-by-case basis as mutually agreed upon.

- c.
 - 1. Maintain restrooms & water fountains
 - 2. Maintain roads in and out of Valentine Park
 - 3. Repair or replace storm damaged or vandalized items
 - 4. Maintain all buildings subject to this agreement
 - 5. Supply bathroom paper products

d. Assume payment of all utilities, the City reserves the right to issue guidelines concerning the usage of lighted areas.

e. Provide general trash receptacle and (1) one dumpster.

f. Advise YMCA contact person of any damages or maintenance issues that will affect YMCA activities within 24 hours of occurrence.

8. The YMCA agrees that it will:

a. Coordinate YMCA activities and provide all staff or volunteers essential and necessary for operating its activities.

b. Maintain all properties subject to this use agreement in a sanitary and clean condition, free of paper and debris accruing from the League activities.

c. Keep restrooms and grounds clean during games. Perform a final clean up, empty all trash containers into dumpster provided by the City and secure restrooms prior to leaving at days end. Provide bags for receptacles.

d. Maintain playing areas of fields (rake, line or chalk, etc.) as per YMCA and City requirements. Nothing in this agreement limits the YMCA from mowing the playing surfaces as deemed necessary; such mowing does not require prior consent from the City.

e. Provide all equipment associated for the YMCA's activities, i.e., balls, score books, goals, etc.

f. Assume responsibility for making the decision of ball field playability. If any damage to the properties result from the YMCA's use, the YMCA shall be solely responsible for the repair, per applicable code, of the properties described in this agreement. Repairs shall be completed within thirty (30) days of written notice.

g. Obtain written prior approval of the City, including securing the necessary permits, before physical improvements or additions are made to any facilities in the park. Unapproved work done to the facilities will require restoration back to original condition of the park by the YMCA at its expense.

h. Orange City Public Works Director must be contacted prior to making all irrigation control adjustments. The YMCA must abide by the Water Authority of Volusia (WAV) regulations. Failure to comply may result in violations and fines. The YMCA shall be solely responsible for all such fines.

i. Report damage, vandalism, problems, all accidents or injuries to coaches, players, spectators, visitors, participants, etc. to the City immediately by telephone to the primary contacts office number with a follow up in writing within forty-eight (48) hours of board member knowledge of injury. Any significant incident i.e. life threatening injury or accident, damage or vandalism to exceed \$1,000, or item of interest to the local press shall be reported immediately to the primary and/or secondary contacts. Contact attempts shall continue until a contact is reached in person (messages, answering machines or pages shall not constitute a successful contact).

j. Provide one individual and one alternate to act as the YMCA representative (the YMCA president or his/her designees) and liaison between the YMCA and the City. (see paragraph 10)

k. Maintain control of coaches, officials, participants and spectators and ask rule violators to leave the park. The YMCA agrees to have a YMCA supervisor on the park grounds during all games to enforce league rules and the terms of this agreement. Wearing the issued identification badge while acting as grounds supervisor shall identify YMCA officials at all times.

l. Provide the City with the most recent edition of the YMCA's operating manual, regulations, charter, guidelines, By-Laws and organizational chart.

m. Develop and enforce reasonable rules and regulations regarding the use of the facility.

n. Agrees to contact Volusia County Sheriff's Office (VCSO) at (386) 775-9999, (386) 736-5999 or emergencies 911, if assistance is necessary or desired.

9. The Orange City / Debarry Family YMCA is now and shall remain in good standing with their national affiliate throughout the term of this agreement. That the YMCA has secured the proper insurance including General Liability insurance in the amount deemed sufficient to insure against bodily injury, property damage and

personal injury arising out of any and all YMCA operations, and that a certificate of Liability Insurance has been issued, designating the City of Orange City as additional insured on the certificate.

Failure to comply with this requirement shall subject this Agreement to immediate cancellation by the City.

10. In the event the YMCA operates a concession facility or in any way distributes or sells food, beverages, candy or foodstuffs of any description, the YMCA agrees to fully indemnify the City (in accordance with paragraph 6 herein) from any claim or cost arising from the provisions of such foodstuffs.

11. Both parties must provide to the other party, in writing, at the time of signing this agreement and each subsequent extension thereof, a name, phone number, e-mail address, and mailing address of a primary and alternate contact person. The contact person(s) shall serve as primary and secondary contacts for the duration of the terms of this agreement. If for any reason of dispute either party may call a meeting of the contacts to resolve issues. Upon receipt of a written request for such meeting a mutually agreed upon appointment shall be established within 72 hours for a future place and time for the meeting to be conducted.

City Contact:

Primary John McCue, City Manager
 205 East Graves Avenue
 Orange City, Florida 32763
 Office (386) 775-5408
 Email: jmccue@ci.orange-city.fl.us

Secondary Maintenance:
 James Moltz
 Same address
 Office (386) 775-5454
 Email: jmoltz@ci.orange-city.fl.us

Emergency: On call maintenance pager (386) 228-1518
 or Volusia County Dispatch (386) 736-5999
 or cell (386) 804-2923

YMCA contact:

Primary

Home (386)

Email:

Secondary

Home (386)

Email:

12. This Agreement may not be assigned or transferred in any manner by the League and any assignment or transfer is expressly prohibited.

13. This Agreement shall be binding upon the parties hereto; their successors and assigns.

14. Any previously existing oral or written agreements shall be terminated as of the effective date of this Agreement and shall be deemed to be hereafter null and void and of no further force and effect whatsoever.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _____

Day of _____ 2008.

WITNESS:

, President
Orange City/ Debary Family YMCA, Inc.

WITNESS:

John J. McCue, City Manager
CITY OF ORANGE CITY

Attest: _____
Deborah J. Renner, CMC, City Clerk