

AGENDA
BOARD OF PARK COMMISSIONERS
Kenosha Municipal Building - Room 202
Monday, November 14, 2011 - 5:00 pm

Chairman: Michael J. Orth
Commissioner: Jesse L. Downing
Commissioner: Lawrence Green

Vice Chair: Rocco J. LaMacchia, Sr.
Commissioner: Anthony Kennedy

Call to Order
Roll Call

A. APPROVAL OF MINUTES

A-1. Approval of the minutes of the meeting held on Monday, November 7, 2011.

C. REFERRED TO COMMISSION

C-1. Acceptance of Project 11-1420 Park Field Office Building Tuckpointing (*3617 65th Street*) which has been satisfactorily completed by Custom Restoration, Inc., (*Pewaukee, Wisconsin*), in the amount of \$100,686.92. (*District 11*) (*Also Referred to Public Works*)

C-2 Approval of Agreement between KAA and the City for the use of Peorio Baseball Diamonds.

DIRECTOR AND/OR SUPERINTENDENT COMMENTS
CITIZEN COMMENTS/COMMISSIONER COMMENTS/OTHER BUSINESS AS AUTHORIZED BY LAW

IF YOU ARE DISABLED AND NEED ASSISTANCE, PLEASE CALL 653-4052 BEFORE THIS MEETING

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

BOARD OF PARK COMMISSIONERS
Minutes of Meeting held Monday, November 7, 2011

A meeting of the Board of Park Commissioners was held on Monday, November 7, 2011, in Room 202 of the Kenosha Municipal Building. The meeting was called to order at 6:45 pm by Chairman Orth.

At roll call, the following members were present: Commissioners LaMacchia, Downing, and Green. Commissioner Kennedy was excused.

It was moved by Commissioner Green, seconded by Commissioner LaMacchia, to approve the minutes from the meeting held on Monday, October 24, 2011. Motion passed unanimously.

- C-1. Award of Contract for Project 11-1416 Petzke Park – Phase I Mass Grading and Parking Lot (*1700 29th Street*) to BCF Construction Corp., (*Waukesha, Wisconsin*) in the amount of \$588,000. (*District 1*) (*Also referred to Storm Water Utility & Public Works*)
It was moved by Commissioner Green, seconded by Commissioner LaMacchia to approve. Motion carried unanimously.

There being no further business to come before the Board of Park Commissioners it was moved, seconded and unanimously carried to adjourn at 6:48 pm.



Engineering Division
Michael M. Lemens, P.E.
Director/City Engineer
Fleet Maintenance
Mauro Lenci
Superintendent

Street Division
John H. Prijic
Superintendent
Waste Division
Rocky Bednar
Superintendent
Parks Division
Jeff Warnock
Superintendent

C-1

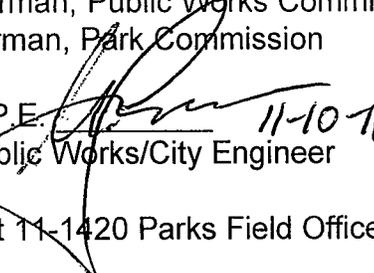
DEPARTMENT OF PUBLIC WORKS

Michael M. Lemens, Interim Director

Municipal Building · 625 52nd ST · RM 305 · Kenosha, WI 53140
Telephone (262) 653-4050 · Fax (262) 653-4056

November 10, 2011

To: G. John Ruffolo, Chairman, Public Works Committee
Michael J. Orth, Chairman, Park Commission

From: Michael M. Lemens, P.E.  11-10-11
Interim Director of Public Works/City Engineer

Subject: Acceptance of Project 11-1420 Parks Field Office Building Tuckpointing

Location: 3617 65th Street

Please be advised that the above referenced project has been satisfactorily completed by Custom Restoration, Pewaukee, Wisconsin. This project consisted of tuckpointing, replacement of concrete masonry unit (CMU) block, lintel repair or replacement, and miscellaneous building repairs which include replacing steel siding, installing aluminum fascia trim and caulking openings between window edges and the abutting masonry.

It is recommended that the project be accepted in the final amount of \$100,686.92. Original contract amount was \$105,883.87 plus \$10,116.13 for contingency for a total contract amount of \$116,000.00. Funding was from CIP Line Item PK-10-001.

MML/kjb

AGREEMENT

~~MARCH 8, 2011~~
~~MAY 9, 2011~~
AUG. 1, 2011

By And Between

THE CITY OF KENOSHA, WISCONSIN,
 A Municipal Corporation,
 THROUGH THE BOARD OF PARK COMMISSIONERS

And

KENOSHA AREA ATHLETICS, INC.
 A Wisconsin Non-Stock Corporation

THIS AGREEMENT made and entered into by and between the **BOARD OF PARK COMMISSIONERS OF THE CITY OF KENOSHA, WISCONSIN**, a Municipal Park Commission, duly organized and existing under the laws of the State of Wisconsin, having its principal office at 3617 65th Street, Kenosha, Wisconsin, 53142, hereinafter referred to as “**CITY**”, and **KENOSHA AREA ATHLETICS, INC.**, a Wisconsin Non-Stock Corporation organized and existing under the laws of the State of Wisconsin, having its principal office at 818 93rd Street, Pleasant Prairie, Wisconsin, 53158 hereinafter referred to as “**KAA** ”.

WITNESSETH:

WHEREAS, **CITY** is the owner of parkland located at 1401 - 16th Avenue, commonly known as Poerio Park;

WHEREAS, **KAA** desires to have preferential use of the four (4) baseball diamonds and the concession building (hereinafter “**PREMISES**”), located within Poerio Park ~~for weekend tournaments~~ between March 15, 2011 and ~~October~~ November 15, 2011; ~~of the calendar year~~; and,

WHEREAS, it is to the mutual advantage of the parties to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings, understandings and agreements hereinafter set forth, **CITY** and **KAA** agree as follows:

1. **USE.** **KAA** shall, have the right to utilize the **PREMISES** ~~for weekends~~ commencing March 15, 2011 and concluding ~~October 31~~ November 15, 2011. ~~for each calendar year in which this Agreement is in effect. For purposes of this Agreement the term “weekend” shall mean~~

~~Fridays through Sundays.~~ The usage granted **KAA** shall include the right to enter into agreements with third parties to utilize the **PREMISES** so long as said use is consistent with the terms of this Agreement and does not violate any laws and/or ordinances. Notwithstanding the usage given **KAA** under this Agreement, **KAA** shall take reasonable steps to make the diamond(s) available for usage by the **KENOSHA UNIFIED SCHOOL DISTRICT (“KUSD”)**. **KAA** shall not charge **KUSD** a usage fee in excess of the **CITY's** usage fee. Further, **CITY** shall be entitled to use the **PREMISES** for the annual City Softball Tournament. **CITY** shall, at its first opportunity, notify **KAA** of the scheduled dates, including make-up dates, for the City Softball Tournament.

2. **CONCESSIONS.** **KAA** shall, on the dates of its use of the **PREMISES**, be entitled to sell concessions from the building intended for such purpose located on the **PREMISES**. Any such operation shall be done in a manner consistent with all applicable laws and ordinances. Any profit income realized in the sale of such concessions shall be property of **KAA**. **KAA** agrees that it shall secure the building during the weekend following any use thereof by **KAA** and/or third parties with whom it has contracted.

3. **COMPENSATION.** ~~**KAA** shall pay annually a minimum sum. For the first year of this Agreement said sum shall be \$12,000.00. In each subsequent year of this Agreement said minimum sum shall increase by three percent. In addition to the minimum sum, **KAA** shall pay annually during the term of this Agreement the greater of \$10,000.00 or a sum equal to ten twenty percent (1020%) of the revenues ~~**KAA** has earned through the use of the **PREMISES**. “Revenues” as used in this Agreement means the total proceeds received from any source associated with the use of the **PREMISES** including, but not limited to, tournament entry fees, concession sales, and payments made by third parties to **KAA** for usage of the **PREMISES**. All sums~~ Payment shall be paid made by **KAA** no later than December 31, 2011.~~

~~**KAA** shall maintain a system by which revenues will be recorded and saved, and will~~

~~keep such records at its offices for a period of not less than seven (7) years. Further, KAA shall give CITY and CITY's agents the right, at any time during regular business hours, of inspecting and examining such the records.~~

4. **TERM.** ~~The initial term of tThis Agreement shall be two (2) years~~terminate on January 1, 2012. This Agreement will automatically renew for an additional two (2) year term, upon the same terms and conditions unless ~~KAA~~ is in breach of this Agreement at the time of such renewal or notifies ~~CITY~~ in writing of its intention not to renew this Agreement. ~~KAA~~ shall provide such notice of its intention not to renew this Agreement at least sixty (60) days prior to the expiration of the initial term.

5. **MAINTENANCE.** ~~KAA~~ shall, ~~for the dates it is utilizing the~~ **PREMISES**, be responsible for all maintenance and preparation of the ~~park and~~ baseball diamonds including, but not limited to, watering, dragging and lining of the infield surfaces, ~~as well as the~~and painting of the outfield foul lines. CITY shall be responsible for the cutting of the grass surfaces. All maintenance and preparation shall be performed in a good and workmanlike manner. ~~Further,~~ ~~KAA~~ shall be responsible for providing all equipment and supplies for ~~such~~its maintenance and preparation responsibilities. ~~CITY~~ shall have the right, in its sole discretion, to require ~~KAA~~ to maintain and prepare the **PREMISES** in accordance with its direction. In the event ~~KAA~~ fails to maintain the **PREMISES** as requested by ~~CITY~~ within ten (10) days or some other mutually agreeable time period, following receipt of written notice, or in the event ~~KAA~~, upon commencement thereof, fails to diligently continue to complete any such work, ~~CITY~~ may, at its option, terminate this Agreement or perform the maintenance and the cost and expense thereof shall be payable to ~~CITY~~ by ~~KAA~~, on demand. ~~CITY shall, however, be responsible for the maintenance and preparation of the park and baseball diamonds for the balance of the week including Friday morning. The parties hereto agree that CITY's obligations herein for Friday shall be limited to the initial preparation of the park and baseball diamonds. Any subsequent maintenance and preparation on Friday shall be done by KAA.~~

6. **GARBAGE PICK-UP.** ~~CITY~~ shall provide adequate and appropriate containers

for the temporary storage of trash, garbage, refuse, debris or litter on **PREMISES**. **KAA** shall be responsible for the emptying of the refuse containers ~~during the weekends~~ into CITY provided dumpsters. **CITY** shall ~~otherwise~~ be responsible for the emptying of the ~~refuse containers~~ dumpsters in accordance with **CITY's** regular schedule. **KAA** shall, ~~on the dates it is utilizing the PREMISES,~~ keep the **PREMISES** in a clean, neat and sanitary condition, free and clear of trash, garbage, refuse, debris or litter.

7. RESTROOM FACILITIES. ~~KAACITY~~ shall be responsible for security, cleaning, maintaining, and supplying the restroom facilities located on the **PREMISES** ~~during the Weekends.~~ KAA shall monitor usage of the restroom facilities and promptly advise CITY of any problems with or damage to the restroom facilities. KAA shall be responsible for securing the restroom facilities following the use of the PREMISES by KAA and/or any third parties with whom it has contracted.

8. INSURANCE. **KAA** shall procure and maintain, during this Agreement, insurance policies as hereinafter specified to insure against all risk and loss on the dates of its use of the **PREMISES**. The policies must be issued by an insurance company or companies authorized to do business in the State of Wisconsin and licensed by the State of Wisconsin. **KAA** shall annually furnish a Certificate of Insurance indicating compliance with the foregoing, including the naming of **CITY** as an “additional insured”, and proof of payment of premium to the City Clerk/Treasurer for approval. **KAA** shall also provide CITY with a copy of the endorsement naming CITY as an additional insured. The insurance policy or policies shall contain a clause that in the event that any policy issued is canceled for any reason, or any material changes are made therein, the City Clerk/Treasurer will be notified, in writing, by the insurer at least ~~(20) twenty~~ thirty (30) days before any cancellation or change takes effect. If for any reason, the insurance coverage required herein lapses and/or **KAA** fails to maintain insurance coverage, **CITY** may declare this Agreement null and void as of the date no valid insurance policy was in effect. Certificates of policy renewals shall be furnished to the City Clerk/Treasurer throughout the life of

this Agreement. CITY reserves the right to reasonably increase the minimum liability insurance requirement set forth herein upon furnishing sixty (60) days advance written notice to KAA, whenever minimum standards of the CITY for all insurance policies comparable to those covering KAA's operations hereunder are enacted which adopt or increase the minimum insurance requirements, and KAA shall comply with said request, upon being given such advance, written notice thereof, or be considered in material default of this Agreement. Should KAA fail to furnish, deliver and maintain such insurance coverage, CITY may obtain such insurance coverage and charge KAA the cost of such insurance coverage plus all appropriate administrative charges and incidental expenses associated with the transaction. The failure of KAA to take out and/or maintain the required insurance shall not relieve KAA from any liability under this Agreement. The insurance requirement shall not be construed to conflict with the obligations of KAA in Section 11 of this Agreement. KAA shall maintain during the course of this Agreement a General Liability Insurance with a minimum limit of ~~Two~~One Million Dollars (\$21,000,000.00) ~~per person each occurrence~~ and ~~Five~~Two Million Dollars (\$52,000,000.00) ~~per occurrence~~general aggregate. In addition, KAA shall maintain during the course of this Agreement an Umbrella Liability policy with a minimum limit of Three Million Dollars (\$3,000,000.00). The Umbrella Liability policy shall not contain exclusions or exceptions not present in the General Liability Insurance policy

9. **SIGNAGE.** KAA shall not place or erect any permanent (a sign standing for thirty (30) or more days) signs on or about PREMISES without the prior, written approval of the CITY ~~Director~~Superintendent of Parks and without being in compliance with the City Zoning Ordinance and Code of General Ordinances. Should any signs be placed or erected as advertisements for a third party and consideration paid by said third party for the placement or erection of said signs any income derived therefrom shall be the property of KAA.

10. **USE RESTRICTIONS.** The following restrictions are applicable to KAA's use of PREMISES.

a. Amplified sound shall not exceed the decibel limit specified in Chapter 23 of the Code of General Ordinances, entitled "Noise Control". Use of a sound system shall be limited to the necessary operations and announcements related to an event. No sound system shall be used during the hours of 10:00 P.M. To 9:00 A.M., daily.

b. The use will be in compliance with all applicable Federal, State, County and **CITY** laws, rules and regulations.

c. The use will not create an unreasonable risk of loss of life, personal injury or property loss or damage, or otherwise threaten the public health, safety or welfare.

d. The use will not unreasonably interfere with the use of Poerio Park by the general public.

e. The use is subject to applicable **CITY** licenses and permits, excluding Park Use Permits.

11. INDEMNITY AND HOLD HARMLESS. **KAA** does hereby agree that it will, at all times, during the course of this Agreement, indemnify and hold harmless **CITY**, and their officers and employees against any and all claims, liability, loss, charges, damages, costs, expenses or reasonable attorneys' fees, which any of them may hereafter sustain, incur or be required to pay as a result of incidents occurring, after the effective date of this Agreement, on **PREMISES**, or as a result of any operations, works, acts or omission performed on **PREMISES**, by **KAA**, its officers, employees, or representatives, or resulting from **KAA's** failure to perform or observe any of the terms, covenants and conditions of this Agreement or resulting from any conditions of **PREMISES** or Improvements thereon by reason of which any person suffers personal injury, death or property loss or damage; provided, however, that the provisions of this paragraph shall not apply to claims, liabilities, losses, charges, damages, costs, expenses, or attorneys' fees caused or resulting from the negligent or intentional acts or omissions of **CITY**, or any of their officers or employees in which case **CITY** will indemnify and hold harmless **KAA** and its officers, and employees. Upon the filing with **CITY** of a claim for damages

arising out of any incident(s) which **KAA** herein agrees to indemnify and hold **CITY** and others harmless, **CITY** shall notify **KAA** of such claim, and in the event that **KAA** does not settle or compromise such claim, then **KAA** shall undertake the legal defense of such claim both on behalf of **KAA** and **CITY**. It is specifically agreed, however, that **CITY**, at its own cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, which may be rendered against **CITY**, or their officers or employees for any cause for which **KAA** is liable hereunder, shall be conclusive against **KAA** as to liability and amount of damages. This provision shall survive expiration or termination of this Agreement to the extent necessary to effectuate its purpose.

12. TERMINATION. In the event either party should fail to fulfill in a timely manner any of its obligations under this Agreement, the non-breaching party shall have the immediate right to terminate this Agreement by giving ~~sixty (60)~~ thirty (30) days written notice to the breaching party.

13. COUNTERPARTS. This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original.

14. ENTIRE AGREEMENT. This Agreement shall constitute the full and complete Agreement of the parties and it shall supersede all prior written or oral agreements, statements or understandings. The parties acknowledge there are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

15. HEADINGS. The paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

16. LAW GOVERNING. The interpretation of this Agreement will be governed by and construed and enforced in accordance with the laws of the State of Wisconsin.

17. SEVERABILITY. If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and terms of this Agreement shall not be affected thereby and shall remain in full force and effect and shall be

valid and enforceable to the fullest extent permitted by law.

18. AMEND IN WRITING. This Agreement cannot be amended, changed, altered, or modified except in a writing signed by the parties.

19. CONSTRUCTION. This Agreement has been negotiated between the parties, and each party has participated in the drafting of this Agreement; consequently, the doctrine of construing an Agreement against a draftsman shall not apply to this Agreement and neither party has any rights under such doctrine.

20. WAIVER. No extension of time, forbearance, neglect or waiver by one party with respect to any one or more of the covenants, terms or conditions of this Agreement shall be construed as a waiver of any of the other covenants, terms or conditions of this Agreement, or as an estoppel against the waiving party, nor shall any extension of time, forbearance or waiver by one party in any one or more instance or particulars be construed to be a waiver or estoppel with respect to any other instance or particular covered by this Agreement.

21. NOTICE. Any notice required to be given to any party to this Agreement shall be in writing and delivered either by hand or certified mail, return receipt requested, to the addresses indicated below, or such address as the parties indicate in writing. Notice shall be effective as of the date of delivery, if by hand, or mailing, if by certified mail, return receipt requested.

If to **CITY:** City Clerk/Treasurer,
Municipal Building, Room 105,
625 - 52nd Street,
Kenosha, Wisconsin 53140;

with copies to: City Attorney
Municipal Building, Room 201,
625 - 52nd Street,
Kenosha, Wisconsin 53140.

and Superintendent of Parks
3617 65th Street
Kenosha, Wisconsin 53142

If to **KAA** :

Kenosha Area Athletics, Inc.
by Kerry Krehbiel
818 93rd Street
Pleasant Prairie, Wisconsin 53158

22. AUTHORIZATION. **CITY** enters into this Agreement by authorization of action taken by the Board of Park Commissioners on the _____ day of _____, 2011.

KAA enters into this Agreement by authority of its Board as evidenced by the resolution attached hereto as Exhibit A and represents to **CITY** that all acts which are a condition precedent to its entering into this Agreement have timely taken place, and that **KAA**, under State laws, is able to comply with the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement on the dates below given.

SIGNATURE PAGES FOLLOW

**THE BOARD OF PARK COMMISSIONERS
FOR THE CITY OF KENOSHA
A Wisconsin Municipal Corporation**

BY: _____
MICHAEL J. ORTH, CHAIRPERSON,

Date: _____

BY: _____
MICHAEL LEMENS, INTERIM DIRECTOR
OF PUBLIC WORKS

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2011, **MICHAEL J. ORTH, Chairperson** and **MICHAEL LEMENS, Interim Director of Public Works** of the **CITY OF KENOSHA, WISCONSIN**, a Wisconsin municipal corporation, to me known to be such Chairperson and Interim Director of Parks, and acknowledged to me that they executed the foregoing instrument as such officers as the Agreement of said City, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

AGREEMENT

By And Between

**THE CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation,
THROUGH THE BOARD OF PARK COMMISSIONERS**

And

**KENOSHA AREA ATHLETICS, INC.
A Wisconsin Non-Stock Corporation**

THIS AGREEMENT made and entered into by and between the **BOARD OF PARK COMMISSIONERS OF THE CITY OF KENOSHA, WISCONSIN**, a Municipal Park Commission, duly organized and existing under the laws of the State of Wisconsin, having its principal office at 3617 65th Street, Kenosha, Wisconsin, 53142, hereinafter referred to as “**CITY**”, and **KENOSHA AREA ATHLETICS, INC.**, a Wisconsin Non-Stock Corporation organized and existing under the laws of the State of Wisconsin, having its principal office at 818 93rd Street, Pleasant Prairie, Wisconsin, 53158 hereinafter referred to as “**KAA** ”.

WITNESSETH:

WHEREAS, CITY is the owner of parkland located at 1401 - 16th Avenue, commonly known as Poerio Park;

WHEREAS, KAA desires to have preferential use of the four (4) baseball diamonds and the concession building (hereinafter “**PREMISES**”), located within Poerio Park between March 15, and November 15, 2011; and,

WHEREAS, it is to the mutual advantage of the parties to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings, understandings and agreements hereinafter set forth, **CITY** and **KAA** agree as follows:

1. USE. **KAA** shall, have the right to utilize the **PREMISES** commencing March 15, 2011 and concluding November 15, 2011. The usage granted **KAA** shall include the right to enter into agreements with third parties to utilize the **PREMISES** so long as said use is consistent with the terms of

this Agreement and does not violate any laws and/or ordinances. Notwithstanding the usage given **KAA** under this Agreement, **KAA** shall take reasonable steps to make the diamond(s) available for usage by the **KENOSHA UNIFIED SCHOOL DISTRICT (“KUSD”)**. **KAA** shall not charge **KUSD** a usage fee in excess of the **CITY's** usage fee. Further, **CITY** shall be entitled to use the **PREMISES** for the annual City Softball Tournament. **CITY** shall, at its first opportunity, notify **KAA** of the scheduled dates, including make-up dates, for the City Softball Tournament.

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3. COMPENSATION. **KAA** shall pay during the term of this Agreement \$10,000.00. Payment shall be made by **KAA** no later than December 31, 2011.

4. TERM. This Agreement shall terminate on January 1, 2012. .

5. MAINTENANCE. **KAA** shall be responsible for all maintenance and preparation of the baseball diamonds including, but not limited to, watering, dragging and lining of the infield surfaces, and painting of the outfield foul lines. **CITY** shall be responsible for the cutting of the grass surfaces. All maintenance and preparation shall be performed in a good and workmanlike manner. **KAA** shall be responsible for providing all equipment and supplies for its maintenance and preparation responsibilities. **CITY** shall have the right, in its sole discretion, to require **KAA** to maintain and prepare the **PREMISES** in accordance with its direction. In the event **KAA** fails to maintain the **PREMISES** as requested by **CITY** within ten (10) days or some other mutually agreeable time period, following receipt of written notice, or in the event **KAA**, upon commencement thereof, fails to diligently continue to complete any such work, **CITY** may, at its option, terminate this Agreement or perform the maintenance

and the cost and expense thereof shall be payable to **CITY** by **KAA**, on demand.

6. GARBAGE PICK-UP. **CITY** shall provide adequate and appropriate containers for the temporary storage of trash, garbage, refuse, debris or litter on **PREMISES**. **KAA** shall be responsible for the emptying of the refuse containers into **CITY** provided dumpsters. **CITY** shall be responsible for the emptying of the dumpsters in accordance with **CITY's** regular schedule. **KAA** shall, keep the **PREMISES** in a clean, neat and sanitary condition, free and clear of trash, garbage, refuse, debris or litter.

7. RESTROOM FACILITIES. **CITY** shall be responsible for security, cleaning, maintaining, and supplying the restroom facilities located on the **PREMISES**. **KAA** shall monitor usage of the restroom facilities and promptly advise **CITY** of any problems with or damage to the restroom facilities. **KAA** shall be responsible for securing the restroom facilities following the use of the **PREMISES** by **KAA** and/or any third parties with whom it has contracted.

8. INSURANCE. **KAA** shall procure and maintain, during this Agreement, insurance policies as hereinafter specified to insure against all risk and loss on the dates of its use of the **PREMISES**. The policies must be issued by an insurance company or companies authorized to do business in the State of Wisconsin and licensed by the State of Wisconsin. **KAA** shall annually furnish a Certificate of Insurance indicating compliance with the foregoing, including the naming of **CITY** as an “additional insured”, and proof of payment of premium to the City Clerk/Treasurer for approval. **KAA** shall also provide **CITY** with a copy of the endorsement naming **CITY** as an additional insured. The insurance policy or policies shall contain a clause that in the event that any policy issued is canceled for any reason, or any material changes are made therein, the City Clerk/Treasurer will be notified, in writing, by the insurer at least thirty (30) days before any cancellation or change takes effect. If for any reason, the insurance coverage required herein lapses and/or **KAA** fails to maintain insurance coverage, **CITY** may declare this Agreement null and void as of the date no valid insurance policy was in effect. Certificates of policy renewals shall be furnished to the City Clerk/Treasurer throughout the life of this

Agreement. **CITY** reserves the right to reasonably increase the minimum liability insurance requirement set forth herein upon furnishing sixty (60) days advance written notice to **KAA**, whenever minimum standards of the **CITY** for all insurance policies comparable to those covering **KAA's** operations hereunder are enacted which adopt or increase the minimum insurance requirements, and **KAA** shall comply with said request, upon being given such advance, written notice thereof, or be considered in material default of this Agreement. Should **KAA** fail to furnish, deliver and maintain such insurance coverage, **CITY** may obtain such insurance coverage and charge **KAA** the cost of such insurance coverage plus all appropriate administrative charges and incidental expenses associated with the transaction. The failure of **KAA** to take out and/or maintain the required insurance shall not relieve **KAA** from any liability under this Agreement. The insurance requirement shall not be construed to conflict with the obligations of **KAA** in Section 11 of this Agreement. **KAA** shall maintain during the course of this Agreement a General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) each occurrence and Two Million Dollars (\$2,000,000.00) general aggregate. In addition, **KAA** shall maintain during the course of this Agreement an Umbrella Liability policy with a minimum limit of Three Million Dollars (\$3,000,000.00). The Umbrella Liability policy shall not contain exclusions or exceptions not present in the General Liability Insurance policy

9. SIGNAGE. **KAA** shall not place or erect any permanent (a sign standing for thirty (30) or more days) signs on or about **PREMISES** without the prior, written approval of the **CITY** Superintendent of Parks and without being in compliance with the City Zoning Ordinance and Code of General Ordinances. Should any signs be placed or erected as advertisements for a third party and consideration paid by said third party for the placement or erection of said signs any income derived therefrom shall be the property of **KAA**.

10. USE RESTRICTIONS. The following restrictions are applicable to **KAA's** use of **PREMISES**.

a. Amplified sound shall not exceed the decibel limit specified in Chapter 23 of the Code

of General Ordinances, entitled “Noise Control”. Use of a sound system shall be limited to the necessary operations and announcements related to an event. No sound system shall be used during the hours of 10:00 P.M. To 9:00 A.M., daily.

b. The use will be in compliance with all applicable Federal, State, County and **CITY** laws, rules and regulations.

c. The use will not create an unreasonable risk of loss of life, personal injury or property loss or damage, or otherwise threaten the public health, safety or welfare.

d. The use will not unreasonably interfere with the use of Poerio Park by the general public.

e. The use is subject to applicable **CITY** licenses and permits, excluding Park Use Permits.

11. INDEMNITY AND HOLD HARMLESS. **KAA** does hereby agree that it will, at all times, during the course of this Agreement, indemnify and hold harmless **CITY**, and their officers and employees against any and all claims, liability, loss, charges, damages, costs, expenses or reasonable attorneys' fees, which any of them may hereafter sustain, incur or be required to pay as a result of incidents occurring, after the effective date of this Agreement, on **PREMISES**, or as a result of any operations, works, acts or omission performed on **PREMISES**, by **KAA**, its officers, employees, or representatives, or resulting from **KAA's** failure to perform or observe any of the terms, covenants and conditions of this Agreement or resulting from any conditions of **PREMISES** or Improvements thereon by reason of which any person suffers personal injury, death or property loss or damage; provided, however, that the provisions of this paragraph shall not apply to claims, liabilities, losses, charges, damages, costs, expenses, or attorneys' fees caused or resulting from the negligent or intentional acts or omissions of **CITY**, or any of their officers or employees in which case **CITY** will indemnify and hold harmless **KAA** and its officers, and employees. Upon the filing with **CITY** of a claim for damages arising out of any incident(s) which **KAA** herein agrees to indemnify and hold **CITY** and others harmless,

CITY shall notify **KAA** of such claim, and in the event that **KAA** does not settle or compromise such claim, then **KAA** shall undertake the legal defense of such claim both on behalf of **KAA** and **CITY**. It is specifically agreed, however, that **CITY**, at its own cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, which may be rendered against **CITY**, or their officers or employees for any cause for which **KAA** is liable hereunder, shall be conclusive against **KAA** as to liability and amount of damages. This provision shall survive expiration or termination of this Agreement to the extent necessary to effectuate its purpose.

12. TERMINATION. In the event either party should fail to fulfill in a timely manner any of its obligations under this Agreement, the non-breaching party shall have the immediate right to terminate this Agreement by giving thirty (30) days written notice to the breaching party.

13. COUNTERPARTS. This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original.

14. ENTIRE AGREEMENT. This Agreement shall constitute the full and complete Agreement of the parties and it shall supersede all prior written or oral agreements, statements or understandings. The parties acknowledge there are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

15. HEADINGS. The paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

16. LAW GOVERNING. The interpretation of this Agreement will be governed by and construed and enforced in accordance with the laws of the State of Wisconsin.

17. SEVERABILITY. If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and terms of this Agreement shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

18. AMEND IN WRITING. This Agreement cannot be amended, changed, altered, or

modified except in a writing signed by the parties.

19. CONSTRUCTION. This Agreement has been negotiated between the parties, and each party has participated in the drafting of this Agreement; consequently, the doctrine of construing an Agreement against a draftsman shall not apply to this Agreement and neither party has any rights under such doctrine.

20. WAIVER. No extension of time, forbearance, neglect or waiver by one party with respect to any one or more of the covenants, terms or conditions of this Agreement shall be construed as a waiver of any of the other covenants, terms or conditions of this Agreement, or as an estoppel against the waiving party, nor shall any extension of time, forbearance or waiver by one party in any one or more instance or particulars be construed to be a waiver or estoppel with respect to any other instance or particular covered by this Agreement.

21. NOTICE. Any notice required to be given to any party to this Agreement shall be in writing and delivered either by hand or certified mail, return receipt requested, to the addresses indicated below, or such address as the parties indicate in writing. Notice shall be effective as of the date of delivery, if by hand, or mailing, if by certified mail, return receipt requested.

If to **CITY:**

City Clerk/Treasurer,
Municipal Building, Room 105,
625 - 52nd Street,
Kenosha, Wisconsin 53140;

with copies to:

City Attorney
Municipal Building, Room 201,
625 - 52nd Street,
Kenosha, Wisconsin 53140.

and

Superintendent of Parks
3617 65th Street
Kenosha, Wisconsin 53142

If to **KAA** :

Kenosha Area Athletics, Inc.
by Kerry Krehbiel
818 93rd Street
Pleasant Prairie, Wisconsin 53158

22. AUTHORIZATION. **CITY** enters into this Agreement by authorization of action taken by the Board of Park Commissioners on the _____ day of _____, 2011.

KAA enters into this Agreement by authority of its Board as evidenced by the resolution attached hereto as Exhibit A and represents to **CITY** that all acts which are a condition precedent to its entering into this Agreement have timely taken place, and that **KAA**, under State laws, is able to comply with the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement on the dates below given.

SIGNATURE PAGES FOLLOW

**THE BOARD OF PARK COMMISSIONERS
FOR THE CITY OF KENOSHA
A Wisconsin Municipal Corporation**

BY: _____
MICHAEL J. ORTH, CHAIRPERSON,

Date: _____

BY: _____
MICHAEL LEMENS,
INTERIM DIRECTOR OF PUBLIC WORKS

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2011, **MICHAEL J. ORTH, Chairperson and MICHAEL LEMENS, Interim Director of Public Works** of the **CITY OF KENOSHA, WISCONSIN**, a Wisconsin municipal corporation, to me known to be such Chairperson and Interim Director of Parks, and acknowledged to me that they executed the foregoing instrument as such officers as the Agreement of said City, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

KENOSHA AREA ATHLETICS, INC.
A Wisconsin Non-Stock Corporation

BY: _____
KERRY KREHBIEL, Agent

Date: _____

STATE OF WISCONSIN)
: SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2011, **KERRY KREHBIEL, Agent**, of the **KENOSHA AREA ATHLETICS, INC.** to me known to be such Agent and acknowledged that he executed the foregoing instrument as such officer as the Agreement of said corporation by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

Drafted By:
WILLIAM K. RICHARDSON
Assistant City Attorney