

AGREEMENT BETWEEN THE CITY OF DES MOINES, WASHINGTON AND

THIS AGREEMENT made and entered into this ____ day of _____, 20__, by and between the **CITY OF DES MOINES**, Washington, hereinafter called the "City", and _____, hereinafter called the "Advertiser".

WHEREAS, the City owns, maintains and operates certain public park and recreational facilities within Des Moines and the Advertiser wishes to contract with the City for the right to post advertising at Des Moines Field #1 at Des Moines Field House Park in Des Moines, Washington;

NOW THEREFORE, in consideration of the promises, terms and conditions set forth below, the parties hereby agree as follows:

1. ***Non-Exclusive Right to Post Advertising.***

(a) The City hereby grants Advertiser the non-exclusive right to post and display one (1) four foot by eight foot (4' x 8') advertising sign at Des Moines Field #1 at Des Moines Field House Park.

(b) The sign shall be posted on the interior of the backstop fence facing the field.

(c) The sign shall not be illuminated or neon.

(d) The Advertiser shall pay all expenses for sign production.

(e) The sign construction, materials, layout, content, and colors shall be approved by the City prior to posting.

2. ***Maintenance, Repairs, and Replacement.***

(a) The City shall, at its sole expense, maintain the posted sign and be responsible for all repairs or replacement required by vandalism, and theft.

(b) In the event the Advertiser wishes to change the layout, content and/or colors of the posted sign, it may do so at its sole expense and in accordance with Section 1.

3. ***Term of Agreement.***

(a) The term of this Agreement shall be one (1) year, commencing on _____, 20__, and expiring on _____, 20__.

(b) Upon expiration of this Agreement, the sign shall be removed by the City and returned to the Advertiser, unless the right to post advertising is extended by a new written Agreement.

4. **Advertising Fee.** The Advertiser shall pay an annual advertising fee of Three Hundred Dollars (\$300.00) to the City upon the commencement of this Agreement.

5. **Advertising Conditions.** All advertising content shall be approved by the City. Advertising of alcoholic beverages and tobacco products is expressly prohibited.

6. **Assignment.** This Agreement may not be assigned or otherwise transferred by either party hereto.

7. **Modification.** No change, alteration, modification, or addition to this Agreement will be effective unless it is in writing and properly signed by both parties.

8. **Representative.** The City and the Advertiser shall each designate a person who has the authority and responsibility for administering this Agreement. All notices regarding the performance or interpretation of this Agreement shall be served on such person at the following addresses:

City's Representative:

Its _____
Address: _____

Phone No.: _____
() _____

Advertiser's Representative:

Its _____
Address: _____

Phone No.: _____
() _____

9. **Indemnification.** The Advertiser will indemnify, defend, and hold harmless the City, its agents, employees and volunteers, from and against any and all liability arising from injury or death to persons or damage to property resulting in whole or in part from acts, errors, omissions, or negligent acts of the Advertiser, its agents, servants, officers, or employees, irrespective of whether in connection with such act or omission it is alleged or claimed that an act of the City, or its agencies or employees caused or contributed to the alleged injury or damage. In the event that the City elects to defend itself against any claim or suit arising from any injury, death, or damage, the Advertiser, in addition to providing indemnification and holding the City harmless as set forth above, shall indemnify the City for all expenses incurred by the City in defending such claim or suit, including attorney fees; provided, however, that if (and only if) the provisions of RCW 4.24.115 apply to the work and services under this

Agreement and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the City, its employees, agents, or representatives, the indemnification applies only to the extent of the negligence of the Advertiser, its employees, agents, or representatives.

10. **Governing Law.** The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

11. **Mediation/Arbitration Clause.** If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Commercial or Construction Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Commercial or Construction Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

12. **Venue, Applicable Law and Personal Jurisdiction.** All questions related to this Agreement shall be resolved under the laws of the State of Washington. In the event that either party deems it necessary to institute legal action arising from this Agreement, such action shall be instituted in the King County Superior Court. The parties each consent to the personal jurisdiction of such court. Except as otherwise provided by law, it is expressly understood that neither party can institute any legal action against the other based on this Agreement until the parties have exhausted the mediation and arbitration procedures required by the previous paragraph.

13. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competitive jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

14. **Waiver.** The waiver by either party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

15. **Captions.** The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

16. **Time of Essence.** Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

17. **Concurrent Originals.** This Agreement may be signed in counterpart originals.

18. **Ratification and Confirmation.** Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

IN WITNESS THEREOF, three (3) identical counterparts of this Agreement, each of which shall be deemed an original thereof, have been duly executed by the parties herein named, on the day and year first above written.

CITY OF DES MOINES

ADVERTISER

By _____
Its _____
21630 11th Avenue So.
Des Moines, WA 98198
Dated _____

By _____
Its _____
Address: _____

Dated _____

APPROVED AS TO FORM:

R. S. Brown, Assistant City Attorney