



MARATHON COUNTY PARK COMMISSION AGENDA

Date and Time of Meeting: Tuesday, January 7, 2020 at 2:00pm

Meeting Location: Conference Room #3, 212 River Drive, Wausau WI 54403

Park Commission Members - Gary Gisselman (President)

Commissioners: Connie Conrad, John Durham, Allen Opal, Pat Peckham, Rick Seefeldt, Dennis Smith

Marathon County Mission Statement: *Marathon County Government serves people by leading, coordinating, and providing county, regional, and statewide initiatives. It directly or in cooperation with other public and private partners provides services and creates opportunities that make Marathon County and the surrounding area a preferred place to live, work, visit, and do business. (Last updated: 12-20-05)*

Parks, Recreation and Forestry Department Mission Statement: *Adaptively manage our park and forest lands for natural resource sustainability while providing healthy recreational opportunities and unique experiences making Marathon County the preferred place to live, work, and play.*

Agenda Items

1. **Call to Order – Park Commission**
2. **Public Comment Period – Not to Exceed 15 Minutes**
3. **Approval of the Minutes of the December 3, 2019 Park Commission Meeting**
4. **Operational Functions Required by Statute, Ordinance or Resolution:**
 - A. Discussion and Possible Action by Committee
 1. Implementing Comprehensive Outdoor Recreation Plan Recommendation to Create Multimodal Transportation Sub-Committee
 2. Recommending Allocation of Outstanding Usage Payment to Improvements at Sunny Vale Softball Complex
 3. Discussion and Possible Action Approving the Draft 2020 Seasonal Park Use and Concession Lease Agreement for Wausau Area Softball Association's Use of Sunny Vale Softball Complex
 - B. Discussion and Possible Action by Committee to Forward to the Environmental Resource Committee for its Consideration
 1. None
5. **Policy Issues for Discussion and Committee Determination for Consideration by Environmental Resources Committee**
 - A. None
6. **Educational Presentations/Outcome Monitoring Reports**
 - A. Update on Department Restructuring Plan
 - B. Project Update – Nine Mile Trails, Marathon Park Rinks, Big Eau Pleine Park Items, Routine Maintenance
7. **Announcements**
 - A. Next Meeting Date & Time, Location – February 4, 2020, 2:00pm at 212 River Dr., Wausau WI 54403
 - B. Future Agenda Items -
8. **Adjourn**

Signed /s/ Jamie Polley
Presiding Officer or Her Designee

Any person planning to attend this meeting who needs some type of special accommodation in order to participate should call the County Clerk's Office at 715-261-1500 or e-mail infomarathon@mail.co.marathon.wi.us one business day before the meeting.

FAXED TO DAILY HERALD

(Email/Fax City Pages, Marshfield News, Midwest Radio Group)

Date January 3, 2020 Time 3:45 pm

By Jodi Luebbe

THIS NOTICE POSTED AT THE COURTHOUSE

Date _____ Time _____

By _____

DRAFT
MARATHON COUNTY PARK COMMISSION

Date and Time of Meeting: December 3, 2019 at 2:00 pm

Meeting Location: Conference Room 3, 212 River Drive, Wausau WI 54403

Park Commissioners present: Connie Conrad, Gary Gisselman, Allen Opall, Pat Peckham, John Durham, Rick Seefeldt, Dennis Smith

Staff present: Jamie Polley, Greg Freix, Dan Fiorenza

Others present: Brian Kowalski – City Pages

Call to Order – President Gary Gisselman called the Park Commission meeting to order. Official notice and the agenda for the meeting was posted publicly in accordance with the State statutes.

Public Comment Period – none

Approval of Minutes of the Nov. 5, 2019 Park Commission Meeting – **Motion** by Durham, second by Conrad to approve the minutes of the Nov. 5, 2019 Park Commission meeting. Motion **carried** by voice vote, vote reflected as 7-0.

Operational Functions Required by Statute, Ordinance or Resolution:

B. Discussion and Possible Action by Committee to Forward to the Environmental Resource Committee for its Consideration

1. 2020-2024 Comprehensive Outdoor Recreation Plan – Discussion and Possible Action Approving a Resolution to Adopt the 2020-2024 County Comprehensive Outdoor Recreation Plan Update – Polley explained that a staffing requirement section was added in Chapter Six. If the Department continues to add facilities and demands on staff to be involved in events and programs keep increasing then it will have to look at more staffing. Staff doesn't just maintain parks and as the nature of the work evolves so do the staffing needs.

Peckham requested that the development of a plan for access to Lake Dubay at Ashley Park be moved up from a low to a medium priority. After discussion, Commission members agreed. Durham asked about the Trappe River property access and after discussion it was decided to keep that as a medium priority. Polley noted that a chart of neighboring counties will be included in the final plan that is going to County Board. Durham felt eventually there will be an economic downturn and hopes the park system won't be harshly affected when it is most needed by the public. Polley said that the Department has to do a better job of educating the community and the elected officials about what it is they are involved with, what they maintain, and how they play a role in all the events that organizations put on multiple times a year so that when tough conversations start the Department is not left behind. Conrad thought that having the new position focus more on customer service was good strategic positioning for them as competition for events gets tighter. Polley discussed Chapter One where items were added that point out how the Department is aligning with other state and local initiatives in the area to promote outdoor recreation. She said the Governor of Wisconsin has established an Office of Outdoor Recreation because tourism is a key driver of the economy. She noted that the greater Wausau Chamber of Commerce Strategic Plan talks about outdoor recreation and the assets that Marathon County has to bring economic development into the County. She said the Department will be involved in the Rib Mountain State Park initiative that the DNR is currently doing. She also discussed the language added under goals that involve marketing and promoting outdoor recreation. **Motion** by Peckham, second by Conrad to approve the 2020-2024 Comprehensive Outdoor Recreation Plan and send it to the Environmental Resource Committee for their consideration. Motion **carried** by voice vote, vote reflected as 7-0.

Policy Issues for Discussion and Committee Determination for Consideration by Environmental Resources Committee

A. Discussion and Possible Action Approving a Department Restructuring Plan – Polley discussed the current organization. She noted that there have been a couple of retirements and one more with Fiorenza retiring in January. Currently the Deputy position is being run with the Sheriff's Department and seems to be working well. With the City Forester's retirement, one of the managers has taken that position so now his position is being filled. She said staff had discussed Fiorenza's management position and also the Assistant Director position. It became apparent through those discussions that the Department needed that manager position in operations. That position would manage the four facility managers as well as a number of complexes including the ice arena, Sylvan Hill tubing, building rentals and special events. They would concentrate on the customer service side in the operations portion of it.

In looking at the Assistant Director position, Polley noted that seventy percent of the organization as a whole is under Freix. She has re-worked the structuring and is proposing to change Freix's position into an Assistant Director of Operations. He will gain an employee, the small project side that the previous Assistant Director did, and the capital project planning which he was already doing. The other position would be an Assistant Director of Community Services. That position would include marketing, grant writing, sponsorships, the registration process, procedures and policies, oversee the ATV/Snowmobile Coordinator and the Recreation Superintendent, be the liaison between the Deputies and the Sheriff's Department, be the staff liaison to different user groups and take the lead on special events before handing them off to operations. Polley said all of this restructuring is within the budget allocated for 2020. **Motion** by Peckham, second by Conrad to approve the Department restructuring plan and move it on to the Environmental Resource Committee for their consideration. Motion **carried** by voice vote, vote reflected as 7-0.

B. Discussion and Possible Action Regarding Wausau Area Softball Association's Use of Sunny Vale Softball Complex
Polley explained that last month the Commission was informed that the Wausau Area Softball Association's outstanding balance was going to be turned over to Corporation Counsel. Corporation Counsel will then decide a date that the Association has to provide payment by otherwise their use of the Sunny Vale Complex for 2020 will be restricted. Polley explained that prior to the last meeting the Association had been sent a letter giving them a notice that this item was going to be placed on the November Park Commission agenda if it wasn't resolved. The Association came in and paid their 2019 bill except for \$2,500 that was for the use of the concession stand and told Polley they would put a proposal together regarding payment and have made not contact with her since. Polley said that further communication to them will come directly from Corporation Counsel on behalf of the County regarding the outstanding balance deadline as well as information regarding a contract signing deadline. Discussion followed. **Motion** by Opall, second by Peckham to fully support sending the issue to Corporation Counsel and putting the Wausau Area Softball Association on notice. Motion **carried** by voice vote, vote reflected as 7-0.

C. Discussion and Possible Action Updating the 2019-2020 Fee Schedule for Ice Fees for School District Games –
Fiorenza said that a scenario was caught that wasn't fair to the schools so the rate was broken down to an hourly rate versus a game rate. It's still the same amount of money but when there is a JV game that is not two and a half hours it charges them more fairly. **Motion** by Conrad, second by Peckham to approve updating the fee schedule for ice fees for School District games. Motion **carried** by voice vote, vote reflected as 7-0.

Educational Presentations/Outcome Monitoring Reports

A. Project Update - Eastbay Sports Complex: Staff is just completing work on the open shelter adjacent to the championship field. Eau Claire Dells Campground: New electric service work continues; underground wiring is complete and most pedestals are wired. Site remediation will continue as weather allows. Nine Mile Cross Country Trails: Trail work (grading, soil work and brushing) was completed last week. Grooming operations will begin next week as new snow compresses and cooler temperatures arrive. Holiday Trees: Staff has obtained, delivered, set up and decorated trees at the 400 Block, Marathon County Courthouse, Wausau City Hall and the corner of Stewart and First Avenues. Routine Operations/Programs: Snow Removal Operations; Urban forestry program-tree trimming, removals, stump grinding; Building and structure maintenance; Shelter reservations and Special Events; Equipment maintenance and repair; Sports Facilities (Marathon Park Indoor Ice Arenas)

Freix noted that they groomed Nine Mile at the conclusion of the nine day gun season. Polley said officially the trails and chalet are not open until all gun deer seasons are over so this year the earliest it would officially open is Dec. 16th. Currently the trails are groomed and lights are on at night.

B. Program Update – Staff is working on contracts and details for numerous events for 2020, including: Badger State Games Nordic Skiing, Winter Triathlon, Special Olympics Polar Plunge, Pond Hockey at Sunny Vale Lake, Special Olympics Nordic/Snowshoe, IronBull events, mountain bike races, and the Ragnar Trail Relay. It was noted that a new three year contract is nearing completion with Ragnar.

Announcements

- A. Next Meeting Date & Time, Location – Tues., Jan., 7, 2020 at 2:00 pm, Rm 3, 212 River Drive, Wausau WI 54403
- B. Future Agenda Items – none brought forward

Adjourn–**Motion** by Conrad, second by Opall to adjourn at 3:05 pm. Motion **carried** by voice vote, vote reflected as 7-0.

AGENDA SUMMARY

4A1. Discussion and Possible Action Implementing a Recommendation of the Comprehensive Outdoor Recreation Plan to Create a Multimodal Transportation Sub-Committee

A goal of the Comprehensive Outdoor Recreation Plan (CORP) Update was to identify a Countywide trail and bicycle route plan that would identify on and off-street trails/routes connecting the parks to communities. During the update process MSA compiled existing trail and bicycle route plans and concluded that the plans needed to be updated and narrowed in scope to fulfill the County's goal of connecting parks to communities within the County.

The plan recommends the creation of a Countywide Multimodal Transportation Subcommittee to coordinate with the Wausau MPO, North Central Wisconsin Regional Plan Commission, local units of government, and advocate groups to develop, plan and further priorities for on and off-street Countywide bicycle routes and trails. The plan also states that a dedicated Countywide Bike Plan should be authored and reviewed under the oversight of the Countywide Multimodal Transportation Subcommittee to ensure thorough engagement and continuity. The vision for the subcommittee is to include staff from both the Parks and Highway Department and report to both the Park Commission and the Infrastructure Committee. A Countywide Bike Routes and Trail Plan will assist in the planning of future trails and highway improvement plans. It will also assist the County's towns, villages and Cities plan for the routes and trails that will utilize their land and roads.

The Park Commission is asked to discuss the formation of the sub-committee including who should be represented on the subcommittee and goals and objectives for the Countywide Bike Routes and Trail Plan. This feedback will also be presented to the Infrastructure Committee at their February Meeting.

4A2. Discussion and Possible Action Recommending Allocation of Outstanding Usage Payment to Improvements at Sunny Vale Softball Complex

Following the Committee action in December, the unpaid balance of the Wausau Area Softball Association (WASA) for use of Sunny Vale Softball Complex was forwarded to the County's Corporation Council. On December 13, 2019 the County received a letter from WASA proposing the payment to the County of \$87,401 for the majority of the 2013-2015 season balances. Per the State Statute of Limitations the County can go back no more than six years to collect unpaid balances. WASA also requested that the payment go directly towards improvements at Sunny Vale Softball Complex.

Corporation Council advised a resolution to the dispute however only the County Board can approve the funding allocation to improve Sunny Vale Softball Complex. The revenue from these outstanding balances was recognized within each respective year they should have been paid however the revenue was not anticipated in the 2019 or 2020 budget. The updated CORP includes recommendations for improvements to the ball diamonds of Sunny Vale Softball Complex. The payment of \$87,401 would assist with the implementation of the plan recommendations without the need to borrow additional funding for these improvements through the Capital Improvement Plan process.

Staff is recommending the Park Commission's approval and recommendation to the Human Resources and Finance Committee that the monies from the payment be used for the improvement of Sunny Vale Softball Complex, as it relates to softball activities and softball fields.

4A3. Discussion and Possible Action Approving the Draft 2020 Seasonal Park Use and Concession Lease Agreement for Wausau Area Softball Association's Use of Sunny Vale Softball Complex

The Commission is asked to review the changes proposed to the 2020 seasonal park use and concession lease agreement between the Commission and Wausau Area Softball Association (WASA). Most of the changes are date changes however specific direction is required on payment timing, concession payment and deadline for agreement execution.

At this time the agreement asks for payment in two installments, the first installment to be paid by August 15th for play from May 1-July 15 and the second installment to be paid by October 31st for play from July 15- end of season. There have been times when the Commission has changed a percentage of fees (i.e. 10% of anticipated cost) prior to the use of the facility. This requirement could be included in the agreement and the 10% would be based on the total 2019 fees. The Commission is asked to determine if a percentage of the fees should be paid at the time the agreement is executed.

Prior to 2016, WASA paid a fee for exclusive use of the concession stand and payments varied from year to year. In 2016 when the contract was renegotiated and fees were lowered the concession stand payment was no longer required. The Commission charges all other concession stand users a fee for use of a concession stand. The 2020 adopted fee schedule states that concession stand fees are to be 10% of gross receipts. This is the amount charged to youth hockey, soccer and special events. Another option is a flat lease fee. The Commission is asked to determine if 10% of gross sales or a flat fee should be charged for the exclusive use of the concession stand. Also, if a flat fee is required it is recommended that that fee be paid prior to the start of the season.

Additionally, the Commission is asked to support an agreement execution date of March 15, 2020. This is to ensure that an agreement is signed before the use of the softball complex is allowed, avoiding the issues of past years where no agreement was executed.

6A. Update on Department Restructuring Plan

At their December meeting the County Board approved the restructuring plan of the Parks, Recreation & Forestry Department. Since that meeting the top candidates for the two Assistant Parks and Recreation Manager positions have accepted the positions. One manager started on December 30th and the other Manager will begin on January 13th. On December 30th Greg Freix's title changed to Assistant Director of Operations. The Assistant Director of Community Services position is currently posted and open for applications until January 24, 2020.

6B. Project Update

Nine Mile Cross Country Trails:

Trails opened on December 16, 2020. Grooming operations continue daily as temperatures allow. With the warm temperatures and rain the days leading up to New Year's, grooming operations had to cease until colder temperatures set in. The soft snow and saturated ground did not allow for machinery to be utilized to groom trails effectively without doing more damage to the current trails.

Marathon Park Ice Arenas and Ice Rink

Open skate continues to be well attended on the indoor rinks. Hockey season is in full swing. The Zamboni is in need of repair however parts are on order and a temporary replacement is arranged. Due to warm, wet weather the outdoor rink has not yet been open. Pond hockey will utilize Sunny Vale Lake and not Marathon Park for 2020.

Big Eau Pleine Park:

Fire wood processing to begin next week (weather permitting) at BEP Park.
Staff is removing hazard and downed trees adjacent to and on trails within the BEP Trail system.

Routine Operations/Programs:

Snow Removal Operations

Urban forestry program; tree trimming, removals, stump grinding

Building and structure maintenance.

Shelter reservations and Special Events

Equipment maintenance and repair

Sports Facilities (Marathon Park Indoor Ice Arenas)

On-Road Trail Connections

On-road bicycle connections should be planned where feasible to connect growing population centers with County recreational assets. This includes direct routes (out and back), as well as recreational loops offering long distance riding opportunities without repeating route sections. These routes should be planned using signage where appropriate (“share the road”, bicycle route, etc.), and highway shoulder widths increased when necessary due to traffic counts. Routes should meet standards of the WI Bicycle Planning Guide (see Appendix B). Within these guidelines, paved shoulders are recommended only for roads with traffic counts greater than 1,000 vehicles per day.

A dedicated Countywide Bike Plan should be authored and reviewed under the oversight of a County Multimodal Transportation Subcommittee to ensure thorough engagement and continuity.

This committee should use the NCWRPC proposed routes as a guide, considering phasing and prioritization of routes. More specifically, the committee should be tasked with identifying safe routes utilizing potential alternative roadways when County Roads are not feasible due to traffic.



The complete map of proposed routes prepared by the North Central Wisconsin Regional Plan Commission can be found in Appendix C (Fig. 5.2 and 5.3). The MSA Phased Route Recommendations Map (Fig. 5.4) is proposed utilizing the NCWRPC Bicycle Plan and County staff input as a guide, and provides a starting point in discussing connections and alternatives that could serve as likely initial connections for on- and off-road bicycle route development in the greater County.



RECOMMENDATION	PRIORITY (LOW-MED-HIGH)
Work with economic development, tourism, and other regional boards to incorporate the County's recreation system in their materials, and actively work with these groups to refine Parks, Recreation, and Forestry marketing and promotion of outdoor recreation as a contributor to economic prosperity.	High
Explore cost-sharing agreements with local municipalities to lessen acquisition and/or development cost in providing services to residents.	Medium
Create a Countywide Multimodal Transportation Subcommittee to coordinate with Wausau MPO, NCWRPC, local units of government, and advocate groups to develop, plan, and further priorities for on- and off-street Countywide bicycle routes and trails.	Medium
Coordinate with NGOs, local units of government, and the DNR to promote Countywide conservation, recreational, and planning initiatives (Rib Mountain State Park Plan).	High
Promote marketing materials to classrooms in the County, and work to provide assistance in programming for outdoor classrooms, field trips, and other educational curricula that take advantage of the County's unique natural areas.	Low
PARK DEVELOPMENT	
Develop/revise Park Master Plans for individual parks to reflect and meet current and future recreation needs, and annually rank the list of parks in need of master plans/updates based on annual visits and level of development.	High
Update park master plans at a minimum of one per year based on priority.	High
Utilize ADA Audits for existing facilities as a tool to ensure parks and facilities remain accessible for all residents and visitors to the County.	High
Annually review and revise facility use policies and fees for County parks to maximize utilization and appropriate program income.	High
Actively monitor potential sites for acquisition as they become available, with focus on further expanding existing County land and providing connections to key amenities between communities.	Medium
Actively pursue additional land acquisitions for active use parks such as Eastbay and Sunny Vale Softball Complex that will meet the growing needs of athletic users.	High

**AGREEMENT REGARDING FEES RELATING TO WAUSAU AREA SOFTBALL ASSOCIATION'S USE OF
SUNNYVALE SOFTBALL COMPLEX FOR YEARS PRIOR TO 2019**

Whereas, Wausau Area Softball Association (WASA) is delinquent with respect to payments due and owing to Marathon County/City of Wausau Parks Department (the Department) for use of the Sunnyvale Softball Complex for the years 2007-2015; and

Whereas, the Department asserts the amount due and owing is \$196,017.98; and

Whereas, WASA disputes the Department's claim; and

Whereas, both the Department and WASA wish to resolve their dispute.

Now therefore, the parties agree as follows:

1. WASA agrees to pay the Department the amount of \$87,401.26 (the payment) as and for monies owed to the Department by WASA for use of Sunnyvale Softball Complex prior to 2019.
2. The Department agrees to accept the payment, as a full and final compromise of the disputed claim, in lieu of filing a civil action for damages.
3. The Department agrees to recommend to the City/County Parks Commission (the Commission) that monies from the payment be used for the improvement of Sunnyvale Softball complex, as it relates to softball activities and softball fields.
4. The parties understand and agree that the Department cannot, by this agreement, bind the Commission to acceptance of a donation and a specific usage of the payment made.

Wausau Area Softball Association Board of Directors

By:




Dated December 20th, 2019.

Paul Dykstra, President

Marathon County/City of Wausau Parks Department

BY:



Dated December 23rd, 2019.

Jamie Polley, Director

MARATHON COUNTY PARK COMMISSION

212 River Drive, Ste., 2, Wausau, WI 54403-5476

SEASONAL PARK USE AND CONCESSION LEASE AGREEMENT

This AGREEMENT, entered into this _____ day of _____, 20~~2019~~, by and between the Marathon County Park Commission, hereinafter called, “**COMMISSION**”, and the Wausau Area Softball Association, Inc., hereinafter referred to as “**WASA**”.

WITNESSETH:

WHEREAS, **WASA** wishes to utilize Sunny Vale Softball Complex, a five-diamond complex and two volleyball courts, which facility is under the jurisdiction of the **COMMISSION**; and

WHEREAS, the **COMMISSION** wishes to allow **WASA** to utilize this facility, such use to be on certain terms and conditions as hereinafter enumerated.

NOW, THEREFORE, the parties hereto agree as follows:

I. SEASONAL PARK USE

1. **WASA** will have the use of the softball diamonds and volleyball courts at Sunny Vale Softball Complex between the dates of May 1 and August 31, 20~~2019~~, for softball and volleyball games and all other activities scheduled by **WASA** with the authorized agents of the **COMMISSION**.

2. **COMMISSION** will provide **WASA** with available dates for league play by March 15 annually.

3. **WASA** shall provide the **COMMISSION** with the date of the first game of the season by April 15 of each year, and the game schedule for the first two weeks of the season no less than 14 days prior to the first game of the year. **WASA** shall also provide the **COMMISSION** with a printed copy of their annual schedule by May 1 of each year.

As long as **WASA**'s use of the softball diamonds constitutes more than 50% of the days the diamonds are used the **COMMISSION** shall give priority to **WASA**'s league schedule as it exists on May 1 and rain make up schedules. **COMMISSION** reserves the right to reschedule the dates and times of **WASA** scheduled use of said diamonds and courts upon 30 days advance written notice mailed to **WASA** at P.O. Box 285, Wausau, WI., 54402-0285.

4. **WASA** shall contract separately with the **COMMISSION** for the use of the Sunny Vale Softball Complex for non-league tournaments. Contracts must be completed no less than ~~30~~ days prior to the first day of the tournament. For tournaments not sponsored by **WASA** in which **WASA** lends its name only to secure such an outside event, the major sponsor, and not an agent of **WASA**, shall be liable for all expenses of facility use as set forth in a separate user agreement issued by the **COMMISSION** containing the signature of such major sponsor who will

provide payment to the **COMMISSION**. **WASA** will not be held liable for invoices for any tournaments that are not league related, unless agreed to in writing by the sitting President of **WASA**.

5. **WASA** agrees to pay the following fees for league games:

A. ANNUAL USER FEE

~~WASA's share of actual 2019 Sunny Vale Softball Complex (SVSC) routine operating expenses will be determined using the game fees below based on the following:~~

~~a. All games actually played at SVSC during 2019 including tournaments.~~

~~b.a. Anticipated 201 routine maintenance cost.~~

~~e.b.~~ An expectation of the **COMMISSION** to recover 55% of routine annual operations cost.

~~e.c.~~ That the **COMMISSION** recognizes **WASA** provides a benefit to Marathon County, and as such, Marathon County has an interest in providing affordable user fees to **WASA**.

202019 GAME FEES

High School/Adult/Commercial	\$32.00/Game
Organized Youth	\$26.00/Game
Labor and Equipment Use	\$24.00/person/hour

B. FIELD LIGHT FEE \$ 6.60 per hour per field for the electricity and system maintenance to operate the field lights for **WASA** activities during the period of this agreement. **WASA** shall record the times and dates that field lights are turned on and off for each diamond. Field light use will be billed rounded to the nearest one-fourth hour.

C. PAYMENT Payment of the annual user and field light fees will be made in two installments. All games played and field light use through July 15 shall be paid by August 15, 202019, based upon the per game played fee (\$32.00) and actual field light use as invoiced. The second installment shall be due by ~~October~~ January 31, 2020 and will consist of **WASA's** game fees and field light use from July 16th through the end of the season. Fees must be paid, or within 30 days of receipt to avoid a late fee, whichever is sooner, and will consist of WASA's game fees and field light use from July 16th through the end of the season. Payments shall include all applicable taxes. If payments not made by January 31st for the prior season the **COMMISSION** reserves the right to restrict or deny **WASA's** use of the Complex for the upcoming season until all payments are made in full.

D. Fees for **WASA** activities not addressed above shall be agreed upon in writing prior to the occurrence of the activities.

- E. If this AGREEMENT is terminated at any time, for any reason, by the **COMMISSION**, **WASA** shall only be obligated to pay field use and field light fees for games already played and field light usage.
- 6. **COMMISSION** shall provide all maintenance of the Sunny Vale Softball Complex except for those areas identified in Section II of this agreement.
- 7. **COMMISSION** shall install, move, remove, and secure the moveable outfield fences as needed for **WASA** activities at no additional charge to **WASA**.

II. CONCESSION

- 1. **WASA** will have the following rights through December 31, 202019.
 - A. The exclusive right and option to operate a food and beverage concession at Sunny Vale Softball Complex for all scheduled activities.
 - B. Exclusive occupancy of the concession area of the concession/restroom building.
 - C. The first right of refusal to provide concession services to all non-**WASA** activities from the concession building. **WASA** may negotiate their own financial agreements with other users. However such subcontractors or sub-users shall be bound by the terms and conditions of this Agreement, including payment to the Commission of 10% of gross sales; and it shall be the obligation of **WASA** to so inform them. Activities other than Wausau Area Girls Softball Association (WAGSA) or high school games have the right to bring additional concessions to the softball complex. Financial concession agreements for non-**WASA** activities will be determined on a per event basis separate from this agreement. **COMMISSION** shall provide reasonable notice to **WASA** of activities that may involve concessions upon receiving requests for such activities.
- 2. **WASA** agrees to the following:
 - A. The concession will consist of, and be limited to, the sale of food and beverages, including fermented malt beverages. All sales are to be entirely confined to the concession stand and vending machines except by prior approval by the **COMMISSION**. All beverages shall be sold and served in disposable paper or plastic containers as required by the Wausau Municipal Code. **WASA** shall obtain all necessary permits and licenses and comply with all applicable state and local regulations regarding sale of food and beverages, including fermented malt beverages, including payment of applicable taxes.

- B. To pay the **COMMISSION** (10% of gross sales or a total annual rental of \$2500.00). Payment to be made by October 31 of each year^[A1].
- C. To pay for all services, natural gas and electricity used or consumed in the operation of this concession. All refuse generated within the softball complex during **WASA** softball activities shall be disposed of by **WASA**. If **WASA** is the only food and beverage vendor at a non-**WASA** event, **WASA** shall provide all refuse and recycling services. If **WASA** is not the only food and beverage vendor at a non-**WASA** event, others will provide all additional refuse service.
- D. The **COMMISSION** agrees to maintain and keep in good repair the structural and utility service components of the concession/restroom building, the restrooms and the exterior surfaces of the building. **WASA** agrees to maintain and keep in good repair, that portion of the area, equipment, and furnishings which are used for this concession. **WASA** agrees to keep the leased premises and surrounding grounds in a clean, neat, and sanitary condition, in compliance with applicable regulations during and immediately after concession operation periods. The surrounding grounds are defined to be: The paving stone area north of the concession stand; the area east of the concession stand to the end of the porch; south of the concession stand to the parking lot line; and west of the concession stand to the edge of the road.
- E. To conduct the entire concession in a decent, clean, orderly, and businesslike manner, and not to knowingly permit any unlawful behavior on any part of the premises, included in this AGREEMENT.
- F. That all personal property necessary to operate this concession will be furnished by **WASA**, and may be removed or otherwise disposed of by **WASA**, as occasion warrants. Such removal or disposal may be done at any time during the period of this AGREEMENT or within a reasonable time, upon the termination of the AGREEMENT, provided that such removal or disposal will not damage the property or interest of the **COMMISSION**. Any fixtures installed by **WASA** in or on the leased premises during the term of this AGREEMENT that cannot be removed without damage to the premises shall become the property of the **COMMISSION** unless the facility is returned to its pre-installment condition at the sole expense of **WASA**.

III. GENERAL TERMS AND CONDITIONS

1. **WASA** agrees to make no additions, alterations, or changes to the buildings or grounds in or on the premises without the prior written approval of the **COMMISSION**. Except as provided in paragraph II F above, all additions, alterations, changes or improvements on the premises shall be the sole property of the **COMMISSION**. Except as provided in this AGREEMENT, the **COMMISSION** shall have sole possession and control over the use of said premises and any structures, facilities, or other fixtures appertaining thereto.

2. The **COMMISSION** reserves the right to enter upon the premises at all reasonable times for the purpose of inspection and making such repairs and improvements as it shall deem necessary.

3. By virtue of its AGREEMENT with the **COMMISSION**, a public entity, **WASA** agrees to comply with all federal, state, and local laws, statutes, codes and ordinances, including, but not limited to because of enumeration, the Civil Rights Act of 1964, the Wisconsin Equal Rights law, and the Americans with Disabilities Act. In connection with the performance of work under this contract, **WASA** agrees that no qualified individual with a disability, as defined by the Americans with Disabilities Act, shall, by reason of such disability, be excluded from participation and the benefits of services, programs, or activities, including employment, or be subjected to discrimination. **WASA** is specifically notified that it is subject to all employment requirements listed under Title I of the Americans with Disabilities Act by virtue of its contract with Marathon County, a public entity. **WASA** is specifically notified that it is subject to federal requirements to assure participation and access to public facilities, programs, and activities under Title II of the Americans with Disabilities Act by virtue of its contract with Marathon County, a public entity. These requirements mandate separate or special programs or reasonable modification of existing programs, services, and activities without surcharge to disabled individuals as long as safety is not compromised. **WASA** shall provide a similar notice to all its subcontractors.

4. **INDEPENDENT CONTRACTOR STATUS:** The parties hereto agree that **WASA**, its officers, agents and employees, in the performance of this Agreement, shall act in the capacity of an independent contractor and not as an officer, employee or agent of **COMMISSION**. **WASA** shall not be entitled to any of the rights, benefits, salaries, wages or fringe benefits which employees of Marathon County are eligible to receive. No federal, state, or local taxes or social security deductions or contributions shall be made by **COMMISSION** on behalf of the **WASA**. Neither the **COMMISSION** nor **WASA** will represent itself as the agent or legal representative of the other or as partner or joint venturers for any purpose whatsoever, and neither shall have any right to create or assume any obligation of any kind, express or implied, for or on behalf of the other in any way whatsoever. Furthermore, **WASA** agrees to take such steps as are necessary to ensure that each of its subcontractors, if any, will not be considered to be an agent, servant, joint venturer with, or partner of, the **COMMISSION** or Marathon County.

5. **WASA** shall not commence use of premises under this AGREEMENT until all insurance required under this paragraph is obtained, and such insurance has been approved by the

COMMISSION, nor shall **WASA** allow any sub-user to commence use of premises until all similar insurance requirements have been obtained and approved:

- A. **Worker's Compensation Insurance.** **WASA** shall obtain and maintain throughout the duration of this contract statutory Worker's Compensation insurance for all of its employees employed at Sunny Vale Softball Complex. In case premises are sublet, **WASA** shall require the sub-user similarly to provide statutory Worker's Compensation insurance for all of the latter's employees, unless such employees are covered by the protection afforded by **WASA**.

- B. **General Liability and Property Damage Insurance.** **WASA** shall secure and maintain in force throughout the duration of this AGREEMENT such General Liability and Property Damage Insurance as shall protect **WASA** and any sub-user covered by this contract from claims for damages for personal injuries including accidental death, as well as from claims for property damage, which may arise from use under this AGREEMENT, whether such use be by **WASA** or by any sub-user or by anyone directly or indirectly employed by either of them; and the amount of such insurance shall be as follows:
 - Comprehensive General Liability:
\$2,000,000 per occurrence and in aggregate for Bodily Injury and Property Damage.
\$1,000,000 for Liquor Liability.
\$100,000 in Fire Legal Liability (in effect year-round).
\$1,000,000 in Hired and Non-Owned Auto.
\$1,000,000 Excess Liability Coverage over the General Liability and Automobile Liability Coverage

6. **WASA** shall furnish the **COMMISSION** with a Certificate of Insurance countersigned by a Wisconsin Resident Agent or Authorized Representative indicating that **WASA** meets the insurance requirements identified above. To name the **COMMISSION**, MARATHON COUNTY and THE CITY OF WAUSAU, as "Additional Insured" in respect to this AGREEMENT. Such insurance shall include a provision prohibiting cancellation of said policies except upon thirty (30) days prior written notice to the **COMMISSION**. **WASA** will provide **COMMISSION** a copy of the Certificate of Insurance by May 1 of each year.

7. In the event of any damage or destruction outside the scope of ordinary use of the Complex to said premises caused by **WASA**, its members, its employees, its patrons, or those using the facility during the times when the facility is being used pursuant to this AGREEMENT, **WASA** agrees to reimburse the **COMMISSION** for any and all reasonable expenses incurred in repairing and/or restoring and/or reconstructing the premises.

8. MUTUAL HOLD HARMLESS/INDEMNIFICATION

WASA hereby agrees to release, indemnify, defend, and hold harmless Marathon County, the City of Wausau and the **COMMISSION**, its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of **WASA's** officers, officials, employees, agents or assigns.

Marathon County, the City of Wausau and the **COMMISSION** hereby agrees to release, indemnify, defend, and hold harmless **WASA**, its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of the officers, officials, employees, agents or assigns of Marathon County, the City of Wausau or the **COMMISSION**.

Marathon County, the City of Wausau and the **COMMISSION** do not waive, and specifically reserve, their rights to assert any and all affirmative defenses and limitations of liability as specifically set forth in Wisconsin Statutes, Chapter 893 and related statutes

9. This AGREEMENT shall not be assignable or otherwise transferable. No part of the premises may be sublet by **WASA**, unless written permission is given by the **COMMISSION** or its authorized agent.

10. DISPUTE RESOLUTION: This Agreement and the performance of the parties' obligations hereunder will be governed by and construed and enforced in accordance with the laws of the State of Wisconsin, including conflict of laws provisions. **WASA** consents to personal jurisdiction in the State of Wisconsin. The venue of any action hereunder shall be in Marathon County, Wisconsin.

If a dispute related to this agreement arises, all parties shall attempt to resolve the dispute through direct discussions and negotiations. If the dispute cannot be resolved by the parties, and if all parties agree, it may be submitted to either mediation or arbitration. If the matter is arbitrated, the procedures of Chapter 788 of the Wisconsin Statutes or any successor statute shall be followed. If the parties cannot agree to either mediation or arbitration, any party may commence an action in court as set forth above. If a lawsuit is commenced, the parties agree that the dispute shall be submitted to alternate dispute resolution pursuant to §802.12, Wis. Stats., or any successor statute.

11. That in the event **WASA** shall fail, neglect, or refuse to carry out any material terms of this AGREEMENT, the **COMMISSION** shall provide, in writing, notice of such failure, neglect or refusal and allow **WASA** a period of ten business days to cure the failure, neglect or

refusal. In the even **WASA** is unwilling or unable to cure, then the rights of said **WASA** shall be forfeited, and the **COMMISSION** may immediately take possession of and operate the park facilities and concession.

12. This AGREEMENT terminates on December 31, ~~2020~~2019.

13. FORCE MAJEURE: Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

14. It shall be unethical for any person to offer, give, or agree to give any elected official, employee or former employee, or for any elected official, employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer for employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the contents of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceedings or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract, or order.

15. Notwithstanding anything contained in this AGREEMENT to the contrary, no Event or Default shall be deemed to have occurred under this AGREEMENT if adequate funds are not appropriated during a subsequent fiscal period during the term of the AGREEMENT so as to enable the **COMMISSION** to meet its obligations hereunder, and at least 180 days written notice of the non-appropriation is given to **WASA**.

16. WAIVER/SEVERABILITY: No waiver of any default hereunder shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Agreement. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and said provision shall continue to apply to the extent allowed by said court or, if not so allowed, be deemed severed from this contract entirely

17. This AGREEMENT represents the entire AGREEMENT by and between the undersigned parties, and no other conditions or past park facility usage may be implied or inferred. This AGREEMENT may be amended only by written amendment duly signed by all parties. The AGREEMENT replaces, supersedes, and invalidates all prior AGREEMENTS by and between the

parties herein concerning use of the park facilities described in this AGREEMENT. This AGREEMENT must be executed by March 15, 2020. If failure to execute this agreement by the specified date COMMISSION reserves the right to restrict or deny WASA's use of the Complex for the upcoming season.

The undersigned parties, by their signatures, attest that they are duly authorized by their respective organizations to enter into this AGREEMENT.

**MARATHON COUNTY
PARK COMMISSION**

212 River Drive, Ste. 2, Wausau, WI 54403-5476

Jamie Polley

Director

Signature

Date

Organization

Mailing Address

Name (please print)

Title (please print)

Signature

Date

WASASunnyVale2020doc