

**AGREEMENT**  
Midland University  
Christensen Field Soccer Complex

THIS AGREEMENT is hereby made and entered into this \_\_\_\_\_ day of August, 2020, by and between the City of Fremont, a municipal corporation and existing under the laws of Nebraska, (hereinafter referred to as " City") and Midland University, (hereinafter referred to as "Midland").

IT IS AGREED by and between the parties as follows:

**SECTION 1 GENERAL**

1. **Purpose:** This Agreement specifies the responsibilities and duties of City and Midland, with respect to the use, scheduling, maintenance and management of Soccer Facilities.
2. **Term:** This agreement shall be for a term of three years commencing on August \_\_\_\_\_, 2020 and terminating on August \_\_\_\_\_, 2023. This Agreement may be extended, on the same terms and conditions for an additional two-year term, upon mutual agreement of the parties. Notification of Midland's request for such extension must be furnished to the City in writing at least ~~90~~ sixty (60) days prior to the end of the initial term. The City reserves the right to annually review and to increase any of the fees specified in the agreement, herein below up to 3.5% per year, as long as with notice is provided to Midland within one hundred-twenty (120) days of the increase given by ~~July 31 of the previous year.~~
3. **Facilities:** Christensen Field Soccer Complex (hereinafter referred to as "Facilities").
4. **Property/Facility Control:** The facilities are ~~located on park property~~ owned and managed by the City and shall remain throughout the term of this Agreement under the control of the City through its Department of Parks and Recreation, except as otherwise provided herein. However, ~~the~~ Midland shall be allowed ~~priority~~ use, as specifically provided for in this agreement, of the Facilities, during the times specified herein. The City has the right to reserve the Facilities for events/programs with sufficient notice given to the Midland.
5. **Violation and Termination for Cause:** Midland shall be notified by the City, in writing, of any violation of the terms of this Agreement. Midland shall have forty-five (45) days from the date of notification to cure the violation due to the nature of the repair or work to be performed, a reasonable extension may be authorized upon presentation of proof of delays in the repair or work remaining to be performed. However, the City may instead terminate this Agreement. Provided, that City reserves the right to suspend Midland' s use of the Facilities during the cure period for any violation which the City deems to be a danger to Facilities' users.

6. **Authorization to Create Rules/Regulations and Enforcement:** Midland shall enforce at the Facilities all City rules and regulations governing park property. Midland may propose reasonable additional operational rules and regulations governing the use of the Facilities. Such proposed additional rules and regulations must be submitted annually to the Parks and Recreation Director for review and written approval. If approved, Midland shall enforce additional rules and regulations.

7. **Advertising:** Advertising shall ~~not~~ be ~~allowed~~~~displayed~~ by the Midland or anyone affiliated with the Midland ~~and Fremont Soccer Club~~ within or upon the Facilities ~~by or any portion of the public park in which the Facilities are located, subject to City approval. Provided that one (1) temporary team banner per team may be displayed at the field during the time the team is actively using the field for play and (2) The~~ City shall have advertising rights as permitted by City Ordinances.

8. **Improvements:** (a) No ~~permanent~~ alterations, improvements or additions to the Facilities (hereinafter referred to as "Improvements") shall be permitted without the express prior written approval of the City, ~~through its Parks and Recreation Director.~~ Financing for such Improvements may be provided by the Midland or others, ~~and~~ shall be constructed, installed, ~~and/or~~ erected in accordance with City procedures, standards and regulations. (b) Midland acknowledges that City is the owner of existing site improvements, unless agreed to in writing by both parties, and shall be the owner of any additional ~~permanent~~ improvements constructed, installed or erected immediately upon such construction, installation, ~~and/or~~ erection, except ~~temporary alternations, improvements or additions such as~~ that job boxes, security equipment and public address systems shall remain the property of the provider and if the provider is not the City, must be removed within thirty (30) days of the expiration of the initial term of this Agreement or of any subsequent ~~two-year annual-extension~~ term.

9. **Insurance:** Midland must procure and maintain in effect during the term of this Agreement, with companies licensed to do business in the State of Nebraska, public liability insurance with ~~at~~ minimum, policy limits of \$1,000,000/\$5,000,000 for bodily injury or death and property damage. Said policy shall expressly include City as an additional named insured. A certified copy of the policy or a certificate evidencing the existence thereof shall be delivered to the City Parks and Recreation Director ~~prior to any use of the Facilities.~~

10. **Adding Facilities:** Upon mutual agreement of the parties, and amendment of this Agreement, other City facilities may be added to the Facilities covered by this Agreement.

## **SECTION 2 DUTIES, OBLIGATIONS AND RESPONSIBILITIES**

1. **Priority Scheduling Rights:** Midland shall be provided ~~with~~~~priority~~ scheduling rights for the Facilities detailed on this Agreement. ~~Priority Use~~ allows the Midland the

opportunity to submit an official request of user dates and times. Submittal of use will be at the discretion of the ~~Recreation Superintendent~~Director of Parks and Recreation. It is acknowledged and agreed by the parties that once the game, practice, tournament and maintenance needs of the Fremont Soccer Club and Midland are met, the Facilities detailed in this Agreement shall be available to serve other user groups or teams (hereinafter "Other Users") and Midland shall not schedule use of the Facilities in order to foreclose use by Other Users.

The Parties further agree that reasonable controls on the usage of the Facilities are required to protect the turf and related playing condition of these Facilities.

Assigning the Facilities to Other User's leagues, teams or associations or for external use shall be the responsibility of Fremont Soccer Club for scheduling of unreserved times. The facilities are subject to use by City for city-wide events, provided that City shall provide the Fremont Soccer Club and Midland a minimum of three (36) month notice, per field for such uses. ~~Midland is allowed to recover the actual expenditures of extra services required for these events from such Other Users.~~

**2. Cooperation:** Midland shall cooperate with the Fremont Soccer Club and the Parks and Recreation Department with the City of Fremont as extensively as possible. The City of Fremont reserves the right to make all final decisions on any disagreements on use or operations between the Fremont Soccer Club and Midland University.

**3. Compliance:** Midland shall; a) operate and maintain exemplary and model program and comply with all City rules and regulations, b) conform to all existing and applicable City ordinances, resolutions, state laws, federal laws, rules and regulations. Nebraska law will govern the terms and the performance under this agreement.

**4. Reports:** ~~Midland shall submit to the Parks and Recreation Director a list of all members of Midland's Board of Directors, including addresses and phone numbers, and email addresses upon execution of this Agreement and on or before August 1st of any subsequent extension year.~~ Prior to each season, a schedule of all practice and league activities will be submitted to City by Midland. At least sixty (60) days prior to the end of this Agreement, or any subsequent two-year extension annual term, the Midland shall submit to the Recreation Superintendent by email, in an excel attachment, a report of the year's activities showing the number of games played, number of teams and number of youths s participating.

**5. Cooperative Ventures:** The Parties recognize the need for a cooperative relationship and work coordination to insure the public recreational activities conducted at these Facilities are efficiently and effectively provided. Midland agrees to add the Fremont Soccer Club and City Parks and Recreation logos s to all Midland's printed materials (ex. Schedules, press releases, etc.) that pertain to the Facilities as well as share a link to the Fremont Soccer Club and City Parks and Recreation websites s on Midland's website if applicable. Links and printed materials must be approved by the ~~Recreation Superintendent~~Director of Parks and Recreation.

6. **Access to Restrooms and Fields in Facilities:** Restrooms and fields must be accessible to Fremont Soccer Club and City of Fremont staff at all times and keyed by City of Fremont locks, when available. The City of Fremont will determine the opening/closing of all facilities based on weather/field conditions.

The City of Fremont will provide notice of field closure by 3pm on ~~W~~weekdays and 7:00am on ~~W~~weekends.

If Midland requests use of restrooms before the second week in April or the Owner deems that the facilities remain closed due to weather, the Midland will be responsible to provide portable restrooms at the Midland expense or Midland will be responsible for all cleaning and maintenance of restroom facilities until the Owner is able to providing cleaning based on subcontractor start date. Owner will provide all toiletries and supplies.

7. **Responsibility for Maintenance and Repairs**

**City Maintenance Responsibilities at the Facilities, subject to available funding:**

1. Provide dumpster service.
2. Provide regular mowing of the grass fields, walkways and surrounding areas on an average of once a week or as deemed necessary by Parks Superintendent.
3. Grass trimming around both sides of all field fences and all other trimming with the confines of the field and concessions area.
4. Apply grass seed and fertilizer to fields with irrigation.
5. Provide broadleaf weed control to all fields as time allows one time per year unless Midland is otherwise notified such application will not be provided.
6. Charge and drain the water lines serving the field. Water turn on and shut off will be dependent on weather conditions. Water normally turned on around April 15th and shut off on or around October 15th of each year.
7. Winterize and re-charge the restroom and concession area water lines and fixtures when applicable.
8. Provide all toilet paper and paper towels necessary for Facilities' restrooms.
9. Maintenance/Repairs of the main utility lines serving the field to include the electrical, water and sewer services.
10. Maintenance/Repairs of the access road and parking lot, trail and walkway serving the field.
11. Major maintenance/repairs to the fencing, players' area, and bleachers serving the field.
12. Maintenance/Repairs to the plumbing/electrical services utilized in the restrooms.
13. Provide maintenance for the field irrigation system including head replacement, repair of breaks and valve replacement/repair.
14. Annually charge and drain the irrigation system.
15. Provide major maintenance/repairs to the concession building (roof repairs, HVAC, etc.)

16. Provide keys as determined appropriate by City to Midland.
17. Open and clean restrooms when used for a City ~~w~~Wide Event or by Other Users.
18. Open any locked fields when utilized by Other Users or City ~~w~~Wide Events.

**Midland Maintenance Responsibilities at the Facilities (soccer):**

1. Setup fields/goals/equipment for use of facility at beginning of season.
2. Take down and store goals/equipment at the end of the season and place in proper storage area.
3. Replenish field marking materials and equipment. It will be the sole responsibility of the Midland to purchase and deliver like-kind material in order to maintain appropriate field conditions in accordance with City standards and expectations.
4. Provide portable restrooms when permanent restrooms are not functioning.
5. Minor maintenance/repairs to the fencing/equipment and players' area serving the field.
- ~~6. Maintenance and repair all concession equipment including, but not limited to, ice machine, shelving, refrigerator, etc.~~
- ~~7. Provide minor maintenance repairs to the concession building.~~
- ~~8.6.~~ Provide regular pickup of trash and materials around the field, players seating areas, parking lots, its bleachers, around the concession stand and deposit it into the City provided dumpster.
- ~~9.7.~~ Provide all scoreboard and/or public address systems, as needed.
- ~~10.8.~~ Open and clean the Facilities when utilized by Midland.
- ~~11.9.~~ Open any unlocked fields when utilized by Midland.

**~~Other Responsibilities of the Midland:~~**

- ~~1. The Midland will be responsible to organize and administer all registrations and league activity needed to run the league/organization.~~
- ~~2. The Midland will select and schedule all coaches, team practices, game times, and scrimmages for league/organization to occur on Owner facilities.~~
- ~~3. The Midland will provide a master schedule of usage of the facility, including; practice schedules, game schedule, scrimmages and other related activities to the City Recreation Superintendent a minimum of one month prior to first use of Owner facilities.~~

**SECTION 3 PAYMENTS AND FEES**

Midland agrees to pay City for use of Facilities, including Midland's tournaments and special events, \$1,500, per calendar year, due July 31st of each year. All reservations will be paid to the city in full for reservations provided April through July and August through October.

City agrees not to charge Midland for time when fields cannot be reserved due to field preparation and maintenance activities or to allow turf regeneration. All such, preparation, maintenance and regeneration times will be determined by the City with

input from Midland.

The Midland will be allowed to provide maintenance and game prep services to other entities that are scheduled to use the facility and request this service. The Midland will be allowed to charge per game, per day and/or per week fees and will be able to collect and retain all fees to cover their expenses in providing all materials and labor for this service.

#### **SECTION 4 ANNUAL FIELD MAINTENANCE PAYMENTS**

Midland shall not be required to pay an Annual Field Maintenance Payment to the City for fields and Facilities included in this Agreement.

#### **SECTION 5 MISCELLANEOUS PROVISIONS**

**Non-discrimination:** Midland shall not, in the performance of the Agreement with City, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin.

**Applicable Law:** Parties to this Agreement shall conform to all existing and applicable City ordinances, resolution, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.

**Merger:** This contract shall not be merged into any other oral or written contract, lease or deed of any type. This is the complete and full agreement of the parties.

**Modification:** This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer or the respective parties.

**Assignment:** Neither Midland nor city may assign its rights under this Agreement without the express prior written consent of the other.

**Indemnification:** Midland covenants and agrees to indemnify and hold harmless the City of Fremont, its officers, agents and employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions or causes of action of any kind and nature asserted by Midland or by anyone else, for personal injury or death, or property damage in any way arising out of or resulting from any activity or operation of Midland at, in or on the Facilities, in connection with its use of the Facilities or in fulfilling its duties, responsibilities and obligations pursuant to this Agreement and Midland further agrees to pay all expenses in defending against any claims made against City; provided however, that Midland

shall not be liable for any injury, damage or loss occasioned by the sole negligence or willful misconduct of the City, its agents or employees. Midland and the city shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.

**Independent Contractor:** Any and all acts that Midland or its personnel, employees, agents, contractors, or servants, perform in providing Soccer shall be undertaken as independent contractors and not as employees of the City. The City and Midland shall each act in their individual capacities and not as agents, employees, partners, joint ventures or associates of the other. An employee or agent of one shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Neither Midland nor its personnel, employees, agents, contractors, or servants shall be entitled to any City benefits. The City shall not provide any insurance coverage to Midland or its employees including, but not limited to, workers' compensation insurance. Midland shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. Midland shall have no authority to bind the City by or with any contract or agreement, nor to impose any liability upon the city. All acts and contracts of Midland shall be in its own name and not in the name of the City, unless otherwise provided herein.

**Interest of Midland:** The Midland will covenant that it presently has no interest and shall not acquire any interest, direct or indirect which would conflict with the performance of services required to be performed under this Agreement; it further covenants that, in the performance of this Agreement, no person having such interest shall be employed.

**Termination:** In addition to all other legal remedies available to the City, the City may cancel this agreement should any one or more of the following events occur:

1. If Midland shall file a petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of Midland and its assets pursuant to proceedings brought under the provision of any federal reorganization act; or if a receiver for Midland's assets is appointed; or if Midland shall be divested of its rights, powers and privileges to provide the sport identified herein by other operation of law.
2. If Midland shall fail to perform, keep and observe any of the terms, provisions, covenants and conditions contained herein to be performed, kept and observed by it.
3. If Midland shall abandon and discontinue the provision of this Agreement.
4. If Midland shall fail to abide by all applicable laws, ordinances, rules and regulations of the United States, State of Nebraska, Dodge County, or the City of Fremont.
5. If Midland shall fail to obtain any insurance, performance bond or indemnity required herein or permit any such insurance, performance bond or indemnity to lapse or become void.

**Force Majeure:** Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable herein) to the extent said failures or delays are proximately caused an event of Force Majeure. "Force Majeure" is an event beyond the reasonable control of either party which makes the performance impossible or so impractical as reasonable to be considered impossible and includes, but not limited to, Act of god, war, terrorist attack, riot, civil disorder, earthquake, nuclear accident, fire, explosion, flooding, water levels, or other adverse weather conditions, strikes, or confiscation or any other action by any government which defeats the ability to perform this agreement.

**Acknowledged:**

Dated this \_\_\_\_\_ day of August, 2020

**MIDLAND UNIVERSITY  
USER**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated this \_\_\_\_\_ day of August, 2020

**CITY OF FREMONT  
OWNER**

By: \_\_\_\_\_  
Scott Getzschman, Mayor