

City of South Daytona Parks and Recreation

504 Big Tree Road • South Daytona, FL 32119 • 386/322-3070



MEMORANDUM

To: James L. Gillis, Jr., City Manager

From: Amy Zengotita, CPRP
Parks and Recreation Director

Re: Consideration of approving an Agreement with Warner Christian Academy for the use of Blaine O'Neal Park for their 2022 Softball Season.

Date: January 3, 2022

The Warner Christian Academy's Athletic Department contacted the City's Parks and Recreation Department requesting a partnership in their upcoming 2022 Softball Season. Warner currently does not have a softball field on campus and while there are no softball fields in South Daytona, it would be a shame to turn down this request and force a high school within our community to seek field usage outside of our municipal limits. Since the baseball field at Blaine O'Neal Park is currently underutilized, it can be modified temporarily to accommodate the request.

The only modifications needed for the field to accommodate softball is to shorten the infield base distances and demark a flat pitching mound area in the infield grass. These slight modifications will give Warner a useable softball field on a one-season trial basis since interest in the sport and the level participation are unknown at this time.

City Attorney Vose created an agreement for the terms and conditions of use for Council consideration. The above referenced agreement has been attached for your review. In the agreement, Warner Christian will use the field free of charge, but they must maintain a Comprehensive General Liability Insurance Policy of at least \$1,000,000, with the City being named as an additional insured, and hold the City harmless from all potential liabilities and claims. The agreement, if approved, will begin once executed and run until March 31, 2022, with either party having the right to terminate the agreement with or without cause.

The Warner Christian Softball Season will begin in late January and end in early March. The City is in negotiations with Atlantic High School to allow their baseball team to use the field as well. Staff will ensure that there will be no conflicts with the two schools using the same facility.

Staff recommends the Council approve the Use Agreement with Warner Christian for use of Blaine O'Neal Park for their 2022 Softball Season.

**USE AGREEMENT BY AND BETWEEN
THE CITY OF SOUTH DAYTONA, FLORIDA
AND WARNER CHRISTIAN ACADEMY**

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this 11th day of January 2022, by and between the City of South Daytona, Florida, a Florida municipality, (hereinafter referred to as the "City"), whose mailing address is 1672 S. Ridgewood Avenue, South Daytona, Florida 32119, and Warner Chris (hereinafter referred to as "User") whose address is 1730 S. Ridgewood Avenue, South Daytona Florida, 32119. The City and User may be collectively referenced herein as the "Parties."

WITNESSETH:

WHEREAS, the City owns Blaine O'Neal Park, located at 980 Big Tree Road, South Daytona, Florida which includes the Blaine O'Neal Field, Concession Stand, Restroom Facilities, and Announcers Booth.

WHEREAS, the City is agreeable to allowing User use of facilities on park property owned by the City of South Daytona from January 24, 2022 until April 27, 2022 for their school softball athletic program; and

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

WHEREAS, both parties hereto are in agreement that the services and instruction rendered by User and the land provided by the City are for the good and betterment of the community and in the best interest of the public, subject to certain terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises made herein, the City and User agree as follows:

1. **Consideration.** The City does hereby agree to the use of certain City recreation facilities by User as described herein, to wit: Blaine O'Neal Field as well as Concession Stand, and Announcers Booth located at 980 Big Tree Road, South Daytona, Florida (hereinafter referred to as the "Facility").
2. **License.** The City hereby grants User the use of the Facility (as described above), subject to the terms and conditions of this Agreement, for the purpose of running their school athletic softball program to include practices and games from January through April 2022.
3. **Condition of City Property.** During the entire term of this Agreement, the City shall maintain the field, restroom facility and surrounding areas and User shall maintain the concession stand, and announcer's booth in substantially the same condition as it was in

on the Effective Date, with the exception of normal wear and tear. No improvements or alterations are permitted without the prior written approval by the City.

4. **Premises.** User will have use of the Facility during the term of the Agreement. The City shall inspect the facility regularly and the City's determination as to the condition of the Facility will be final. User also agrees to enforce the City rules posted at the facility.
5. **Interior.** User shall maintain the interior of the concession stand, and announcer's booth including but not limited to all appliances and equipment necessary for the storage, preparation, or serving of food and drinks, in clean and sanitary condition at all times.
6. **The City agrees to:**
 - A. Mow the grass of the outfields of the field and park in general in accordance with the standards deemed appropriate by the City, and maintain the infield and prep field for games. Any other requests or instructions must be submitted in writing by User and approved by the City. While the City shall consider additional written requests submitted in accordance with this Agreement, the City is not required to approve such requests.

A schedule of use shall be submitted by User prior to the start of each Season. Modifications to the schedule must be submitted in writing within 3 days of the change.
 - B. The City is responsible for raking and grading the field and lining the field prior to each scheduled game.
 - C. Hang, User provided, city approved, sponsorship banners. The city must approve banners and may need to limit the number of banners.
 - D. Also provide:
 1. Maintenance of water fountains.
 2. Preventative maintenance of bleachers, sunshade and fencing.
 3. Payment of all utilities. The City reserves the right to issue guidelines to User and others concerning the usage of lighted areas.
 4. Provide trash receptacles and trash removal.
 5. Provide paper towels and toilet paper.
 6. Clean restrooms facilities.

7. **User agrees to:**

- a. Coordinate User activities and provide all staff or volunteers essential for operating such a program. User shall be responsible to do proper background checks for all staff and volunteers, including coaches and referees. The background check will include any criminal violations. No person shall be allowed to provide any services to User if that person has a criminal conviction for a

felony, has a pending felony charge or has been designated a sex offender or sexual predator in any state.

- b. Coordinate activities with the City if the City needs use of the Facility.
- c. Maintain the grounds outside and inside of the playing area free of paper and debris accruing from the operation of any concession stand and User activities. This includes the field, playground, bleacher areas and parking areas.
- d. Maintain concession facilities in accordance with specifications established by the State Sanitary Code.
- e. Provide all equipment associated for said activity, i.e., balls, scorebooks, player equipment, etc.
 - i. Donation of capital improvements or fixed equipment must be approved by the City. Capital improvements and fixed equipment or equipment replacing City owned property will belong to the City.
 - ii. User may request certain donated equipment to be property of User. These requests will be brought to the City for review and approval.
- f. The User representative shall assume responsibility for making the decision of field playability. If damage to the field results from the use of the fields as determined by the Parks and Recreation Director or his/her designee, User shall be financially responsible for the repair of the field.
- g. Shall not add any materials to the playing field without the written consent of the City. Clay may be added for minor repairs.
- h. Obtain the written prior approval of the City before physical improvements or additions are made to any facilities in the parks. Unapproved contested work done to the facilities will require restoration back to original condition of the parks by User at their expense. All physical or capital improvements will belong to the City.
- i. Not make any irrigation control adjustments except in the case where irrigation is directly interfering with a User activity in progress. At such time, the controller will be turned off and the Parks and Recreation Director notified no later than the next business day.
- j. Report damage, vandalism, problems, and safety hazards to the City immediately by contacting the Parks and Recreation Director at (386) 322-3070.
- k. Provide the name and contact information for one designated individual to act as the User representative and liaison between User and the City. If User decides to change the designated representative at any time, it shall notify the City of same in writing within seven (7) days of such change in designation.
- l. Maintain control of coaches, officials, participants and spectators, and ask rule violators to leave the parks and contact appropriate law enforcement agency as

necessary. User agrees to have a representative on park grounds during all games to enforce User and park rules.

- m. The city will not tolerate abuse of the water, electrical or lighting system. (i.e. Provide adequate notice to the City so that actual play schedule coincides with automatic lighting schedule.)
- n. Report all accidents or injuries to coaches, players, spectators, visitors and participants within 48 hours, by telephone and with a follow up written report. Reports shall be reported to the Parks and Recreation Director by calling (386) 322-3070. Written reports can be hand delivered to Piggotte Community Center, 504 Big Tree, South Daytona, 32119.
- o. Include the following statement in the registration application:
"The softball program that you are participating in is being operated by _____, a legal entity, separate and independent of the City. This softball league is not supervised nor sponsored by the City. All questions and concerns about the softball league should be directed to _____."
- p. The City will issue any necessary codes/combinations and/or keys to be used by the User Athletic Director. These items are not to be duplicated or shared outside of User needs.
- q. Schedule is attached as Exhibit A to this agreement.
Modifications to the schedule must be submitted in writing within 3 days of the change and approval will be subject to field availability.
- r. Maintain electrical scoreboards and field lighting.
- s. Any new regulations or requirements for playing at the field will be the responsibility of User (i.e.: relocation of dugouts, fencing height or standards, layout of fields, restroom requirements, concession requirement, etc.)
- t. User is responsible for the security of the facility. The City is not responsible for the loss or theft from the facility of any property belonging to the User.

8. **Insurance Requirements.** User at its own cost and expense shall keep in force during the term of this Agreement insurance from an insurance company licensed in the State of Florida and rated "A", Class "X" or better by A.M. Best. The required insurance shall be evidenced by a certificate of insurance, which must be submitted to and approved by the City prior to the effective date of this Agreement.

The City shall be named as an additional named insured under the policy, and the City shall be provided with a thirty-day (30) notice in the event of cancellation, nonrenewal or adverse change to the policy.

User shall provide, on forms no more restrictive than the latest edition of those filed by the Insurance Services Office, Comprehensive General Liability Insurance with a minimum limit of \$1,000,000.00 per occurrence combined single limit to include:

- A. Premises - Operations
- B. Independent Contractors
- C. Products - Completed Operations
- D. Broad Form Contractual
- E. Personal Injury
- F. Sexual Abuse/Molestation

Failure to comply with this requirement shall render this Agreement void.

In the event that User operates a concession facility or in any way distributes or sells food, beverages, candy or food of any description, User agrees to fully indemnify the City (in accordance with paragraph 9 herein) from any claim or cost arising from the provision of such beverage or food.

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

9. **Hold Harmless.** User agrees to and will at all times indemnify, save and hold harmless the City of South Daytona from all liability, claims, demands, damages and costs of every kind and nature, including attorney's fees at trial or appellate levels and all court costs arising out of injury to or death of User's employees, agents, invitees, guests, members, and youth players, and damage to any and all property, including loss of use thereof, resulting from or in connection with activities or use of the above facilities by User, its agents, servants, employees, volunteers, members, guests, invitees or youth players, or resulting from the negligence, intentional torts, and criminal actions of User, its agents, servants, employees, volunteers, members, guests, invitees and youth players. User and the City acknowledge and agree that User is solely responsible for the reasonable supervision, control, protection and safety of User's agents, servants, employees, volunteers, members, guests, invitees and youth players. User shall upon request from the City, defend and satisfy any and all suits arising from User's use of the premises. This paragraph and all indemnification and hold harmless provisions of this agreement shall survive the termination and expiration of this Agreement.
10. **Term and Termination.** This Agreement will begin on January 1, 2022 and will continue until April 27, 2022. Either party can terminate this Agreement with or without cause. User shall have the right to renew this agreement subject to the following:
 - a. That a request for renewal shall be made in writing by User by October 1st of each year for the following year. Letter shall be sent to the City of South Daytona, c/o Parks and Recreation Director, PO Box 214960, South Daytona, Florida, 32119.
 - b. User must be in compliance with all terms and conditions of this agreement to have a renewal right. City shall notify User in writing of any breaches in the agreement which must be corrected to the satisfaction of the City prior to the renewal date.

11. **Severability.** If any term or provision of this Agreement is determined by a court to be invalid or unenforceable, such finding will not affect the remaining terms and provisions of this Agreement, which shall remain in full force and effect.
12. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees and assigns of the parties. Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it. The signatories hereof represent that they have the requisite and legal authority to execute this Agreement and bind the respective parties herein.
13. **Entire Agreement/Modification.** This Agreement, together with the exhibit(s), constitutes the entire integrated Agreement between the City and User and supersedes all prior written or oral understandings in connection therewith. This Agreement, and all the terms and provisions contained herein, including without limitation the exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral. This Agreement may only be amended, supplemented or modified by a formal written amendment.
14. **Governing law, Venue and Interpretation.** This Agreement is to be governed by the laws of the State of Florida. Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida. This Agreement is the result of bona fide arm's length negotiations between the City and User, and all parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against either party as the drafter.
15. **Waiver.** The failure of the City to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to the City of South Daytona hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.
16. **Modification.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
17. **Assignment.** The User shall not make any assignment or transfer of any of its rights, obligations, or duties to a third party without the express written permission of the City.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City of South Daytona and WCA
have executed this instrument for the purpose herein expressed.

City of South Daytona:

Warner Christian Academy:

James L. Gillis, Jr., City Manager

Tom Seitz

Tom SEITZ, Attn. Dir.
Printed Name and Title

Approved as to form and legality for use and reliance by the City of South Daytona, Florida

By: _____
Wade C. Vose
City Attorney