

SEP 14 2012

Intergovernmental Agreement Providing for Shared Recreational Services

This is an Intergovernmental Cooperation Agreement pursuant to Wis. Stat. 66.0301 between the City of Delavan ("City"), the Village of Darien ("Village") and the Town of Darien ("Town").

1. Engagement. The Village and Town engage the City to provide, manage and administer recreational programs and activities for the Village and Town pursuant to this Agreement.
2. Scope of engagement.
 - a. The City shall be responsible for providing recreation programs and activities for the Village and Town residents under the same terms and conditions as such programs and activities are provided for City residents. (Delbrook Golf Course is a separate enterprise operation and is not covered under this agreement)
 - b. The programs and activities are generally described. Program offerings are subject to change at the City's sole discretion.
 - c. The City shall establish, with input from the advisory team:
 - i. Programs and activity offerings
 - ii. Eligibility criteria
 - iii. Costs and fees
 - iv. Personnel and staffing
 - v. Use of facilities and equipment
 - d. The City shall annually prepare three (3) seasonal (Summer, Fall, Winter/Spring) Program Guides which will be distributed to all residents in the City, Village and Town.

Each partnering community shall be provided space (not less than a ½ of a page) in each of the three Program Guides for general information specific to their respective community. Thirty-day (30) minimum notice of the deadline for submittal of the information will be given.

The Program Guides also include a Calendar of Community Events. Any Village and Town events meeting the definition of "Community Event" shall be included on the Calendar, provided the information is provided to the City ten (10) business days prior to the deadline for submission of the information for printing.
 - e. The Village and Town shall submit a street listing of addresses in their community within 60 days of execution of the agreement and shall notify the City within 60 days of any changes in the listing.
 - f. A minimum of 10 program sessions or activities shall be offered each year during the term of this Agreement at locations in either the Town or the Village.
 - g. The City will monitor and prepare an annual written report of the number of Town and Village residents participating in the program sessions and activities offered. The report shall be prepared on a calendar year basis and sent to the Town and Village not later than January 31st of each succeeding year
3. Residency. Recreation programs offered by the City shall be open to residents of the City, Village and Town on identical terms and conditions. Residents of the Village and Town are granted City of Delavan residency status for the purposes of this Agreement and the programs and activities offered pursuant of this Agreement.
4. Facilities and Charges.
 - a. In addition to other locations, recreation programs may be conducted at facilities and/or parks owned by the City, Village and/or Town. Although there shall be no fee for the use

of these facilities/parks in conjunction with Recreation programs, the City shall reserve the facility/park using the respective reservation process of the Village or Town.

- b. The Village and Town grant to the City the use, management and control of its respective facilities at such times as when the City conducts its programs and activities as set forth in this agreement.
- c. Each unit of government (i.e. City, Village and Town) shall be responsible for scheduling their own facilities for purpose of rental and reservation by the public, including the collection of fees and the management of their individual policies.
- d. The City of Delavan Park and Recreation Director shall be responsible for the management of all programs and activities.
- e. All residents of the City, Village and Town shall be considered residents for all recreational programming and park shelter rentals fees at all partnering communities of this agreement. All rental information will be listed in the tri-annual Program Guides.

5. Duration of agreement and termination.

- a. The term of this agreement shall begin on January 1, 2013 and expire on December 31, 2015 subject to the renewal provision in Section 5 b.
- b. This agreement shall automatically renew for a one year period per the same terms and at the established 2015 cost unless one of the Parties to the agreement notify the others in writing on or before March 31st of the preceding year of their desire to either renegotiate one or more of the terms of (including the contribution rate for the Village and Town) or terminate the agreement. If the City fails to provide the required reports by January 31st the deadline for notice to terminate or renegotiate shall be extended an additional day for each day that the required report is not delivered. The City further agrees that it will not increase the cost of Town or Village participation in excess of 5% per annum following expiration of the original three year term.
- c. For the initial three-year term of the agreement, the Village or Town may opt out after two years subject to the advanced notification provision identified in 5.b and payment of an early withdrawal fee adjustment of \$7,500. This fee is in addition to the regularly scheduled payments for the first two years of the agreement. This fee shall be reduced to \$2,500 if the combined number of Village and Town participants in program sessions and activities offered in 2013 is less than 80.
- d.

6. Payments, expenses and revenues

- a. The Village and Town shall each contribute annually the following amounts (Annual Payment) to the City to facilitate the programs and activities in accordance with the terms and conditions of this agreement:
 - i. 2013 - \$4,500.00 (payable in four equal installments of \$1,125 on the first of January, April, July and October)
 - ii. 2014 - \$7,000.00 (payable in four equal installments of \$1,750 on the first of January, April, July and October)
 - iii. 2015 - \$9,500.00 (payable in four equal installments of \$2,375 on the first of January, April, July and October)
- b. Except as provided in sections 7 (Operations and Maintenance) and 9 (Insurance), the City shall bear and pay all costs related to this Agreement, including wages, supplies, and equipment, without further contribution by the Village or Town.
- c. The City shall collect and retain all program revenues and fees.

- d. The City, Village and Town will schedule, collect and retain the revenue and fees associated with the rental of their respective facilities and parks, as applicable.
7. Operation and Maintenance of Facilities.
 - a. The City, Village and Town shall each be responsible for the cost of providing electric, gas, sewer and water service, as well as ordinary repairs and maintenance and renovations at their respective parks and facilities.
 - b. If a park or facility owned by the Village or Town is being used as a site for a recreation program, and an unsafe condition is identified by the City and notification of said unsafe condition is provided to the Village or Town, the respective owner of the property must undertake the required repair and maintenance activities which shall be completed within a reasonable period of time. All efforts should be made by the party undertaking said repair or maintenance activities to perform said activities in such a way that causes the least interference with the programs provided under this Agreement. It is further understood that the City has the right to relocate, modify the program schedule or cancel the program as a result of the unsafe condition.
8. Hold harmless and indemnification. Each party agrees to and shall defend and indemnify, and hold harmless the other party, its officials, officers, agents and employees, from and against any and all claims, losses, damages, judgments or liabilities of whatever nature arising from or related to the indemnifying parties' acts, submissions or performance under this Agreement. It is the intent of the parties that each party be responsible for its own actions occurring under this Agreement. This section shall survive the termination of this Agreement.
9. Insurance. The City, Village and Town shall each arrange for, obtain, and maintain their own public liability insurance in the amount of \$1,000,000 which covers the programs and activities provided under this Agreement at their respective facilities, and the real and personal property used at those facilities in connection with this Agreement. The City shall be responsible for providing all other insurance coverage including workers compensation and liability for the acts of its employees, agents, and program volunteers.
10. Employees. Except as provided in sections 7 (Operation and Maintenance of Facilities) and 11 (Volunteers), all persons who provide Parks and Recreation services pursuant to this Agreement shall be employees of the City for payroll, benefit and negotiation purposes.
11. Volunteers. The Village and Town understand and agree that the City makes significant use of volunteers in connection with recreation programs and activities. The City shall be responsible for screening all volunteers, their supervision and their actions while acting as a volunteer for the City in connection with this program.
12. Dispute resolution
 - a. Any dispute arising by reason of this Agreement or the use of and/or payment for any facility for the purpose of this Agreement, shall be resolved jointly by the City Administrator and Village Administrator and/or Chairman of the Town Recreation Commission. Such decisions shall be reached as expeditiously as possible.
 - b. Before any action may be commenced in any court involving any dispute arising with respect to this Agreement, its making or validity, its interpretation, or its breach, the parties must first attempt to resolve the matter by mediation and if necessary binding arbitration. The mediator's fee shall be equally shared by the disputing parties and the mediation shall be by a single mediator mutually agreed to by the disputing parties. In the mediation, each party shall be solely responsible for its own attorneys' fees and expenses. If the mediation is unsuccessful any dispute arising with respect to this Agreement, its interpretation, or its breach shall be settled by arbitration by a single arbitrator mutually agreed to by the disputing parties pursuant to the rules of the

Wisconsin Arbitration Act, Chapter 788 of the Wisconsin Statutes, as said statute may be amended from time to time. Such arbitration shall be the sole and exclusive remedy for such disputes. The arbitrator shall have the authority to award the prevailing party any relief deemed appropriate by the arbitrator, including compensatory damages and injunctive relief. Any award rendered shall be final and conclusive upon the parties. Any action to enforce or challenge an arbitrator's decision shall be maintained in the Circuit Court for Walworth County, Wisconsin. The arbitrator's fee shall be equally shared by the parties, and each party shall be solely responsible for its own attorneys' fees and expenses.

13. Parks and Recreation Commission. The City of Delavan Parks and Recreation Commission provides input and general direction on the City Parks and Recreation programs and activities. An advisory team consisting of the Director, and two representatives of the City, one representative of the Village, and one representative of the Town shall meet at least four (4) times each year in advance of the Director's annual budget submittal to the City Administrator, and in advance of each publication of program offerings. The purpose of said meetings are to provide suggestions and input to the Director. A summary report from the advisory team on the results of these meetings shall be provided to the Commission.

14. General provisions.

- a. This agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.
- b. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of it. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of that right or power at any other time.
- c. This Agreement shall not be extended (except as provided herein), changed or modified, except in writing duly executed by the parties hereto.
- d. There are no third party beneficiaries to this Agreement and this Agreement shall not be interpreted to create such rights.
- e. Because of the unique nature of the relationship between the parties and the terms of this Agreement, neither party hereto shall have the right to assign this Agreement or any of its rights or responsibilities hereunder to any third party without the express written consent of the other party to this Agreement.
- f. This agreement constitutes the entire agreement between the parties with respect to the matters contained herein, and supersedes all prior agreements or arrangements between them with respect to such matters.
- g. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- h. This Agreement has been negotiated by the parties with the advice of counsel and, in the event of an ambiguity herein, such ambiguity shall not be construed against any party as the author hereof.
- i. The City of Delavan, the Village of Darien and the Town of Darien are duly incorporated municipal corporations of the State of Wisconsin. Nothing contained herein shall be construed as a waiver or relinquishment by any of the parties to claim such exemptions, privileges or immunities as may be provided to that party by law.
- j. It is intended that each section of this Agreement shall be viewed as separate and divisible, and in the event that any section, or party thereof, shall be held to be invalid, the remaining sections and parts shall continue to be in full force and effect.
- k. There is no separate organization or administrative entity created or necessitated by this Agreement.

- I. The payment obligations of the parties as set forth herein shall be subject to the appropriation of funding by the parties' legislative bodies. Failure to appropriate agreed upon funding adequate to meet a parties' obligations shall be deemed a default under this Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their respective authorized officers or agents on the date written below.

Signed this 11 day of September, 2012.

The Village:

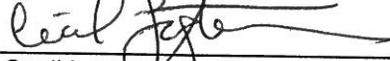
The Village of Darien, Walworth County, WI

By: 
Evelyn Etten, Village President

By: 
Diana Dykstra
Village Administrator/Clerk-Treasurer

The Town:

The Town of Darien, Walworth County, WI

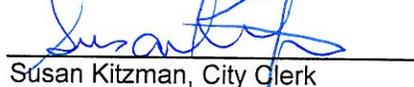
By: 
Cecil Logterman, Town Chairperson

By: 
Marilyn Larson, Town Clerk

The City:

The City of Delavan, Walworth County, WI

By: 
Mel Nieuwenhuis, Mayor

By: 
Susan Kitzman, City Clerk