

BILL NO. 1327

ORDINANCE NO. 1210

AN ORDINANCE APPROVING THE MAINTENANCE AGREEMENT ENTERED INTO BY AND BETWEEN THE CITY OF CHESTERFIELD AND CHESTERFIELD COMMUNITY ASSOCIATION, INC. (CCA) FOR THE MAINTENANCE OF THE CITY OF CHESTERFIELD SPORTS ATHLETIC COMPLEX FOR A PERIOD OF FIVE (5) YEARS.

WHEREAS, the City of Chesterfield has acquired certain lands and certain properties located in the Chesterfield Valley, namely property owned by Dorothy M. Moore; property formerly owned by Successful Investors, Inc., and properties owned by H. King Carter and Virginia E. Carter; and,

WHEREAS, the City of Chesterfield, through its parks plan, has determined that it wishes to establish a sports complex on the properties owned by the City of Chesterfield; and,

WHEREAS, the City of Chesterfield, having considered all of the costs entailed by the City in developing, manning, maintaining, operating, and/or organizing and maintaining the sports complex, the City has determined that it is in the best interest and welfare of the City to enter into an agreement with the Chesterfield Community Association, Inc. to maintain and manage said properties.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The City of Chesterfield hereby approves the maintenance agreement, a copy of which is attached hereto as Exhibit A and made a part hereof as if fully set out herein between the City of Chesterfield and the Chesterfield Community Association, Inc. (CCA) for maintenance of the Chesterfield Sports Complex for a period of five (5) years, all in accordance with the terms and conditions set out in said contract.

Section 2. This Agreement shall become effective upon the acquisition by the City of Chesterfield of the land located in the Chesterfield Valley containing approximately 19.44 acres and currently owned by Successful Investors, Inc., a limited partnership.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 18<sup>TH</sup> day of NOVEMBER, 1996.

Jack Leonard  
MAYOR

ATTEST:

Martin A. DeMay  
CITY CLERK

**COOPERATIVE AND MAINTENANCE AGREEMENT  
BETWEEN THE CITY OF CHESTERFIELD AND  
THE CHESTERFIELD COMMUNITY ASSOCIATION**

**OCTOBER 1996**

THIS COOPERATIVE AND MAINTENANCE AGREEMENT, ("The Agreement"), is consummated on \_\_\_\_ day of October 1996, by and between the CITY OF CHESTERFIELD, its successors or assigns ("City") AND THE CHESTERFIELD COMMUNITY ASSOCIATION, a Missouri Non-Profit Corporation, its successors or assigns ("CCA").

**RECITALS:**

A. City has obtained approximately 60 acres of land to be utilized as City Park ("Chesterfield Sports Complex").

B. CCA has obtained approximately 25 acres of land adjacent to Chesterfield Sports Complex ("CCA site").

C. CCA intends to move its current sports operations to CCA Site by Fall 1998, and will, at that time, continue the pursuit of its goal to provide programs and activities, inclusive of tournaments, for adult and youth softball, baseball, soccer, football and volleyball ("Programs") to its participating members and their guests, and established guest-registrants ("CCA Participants") on the CCA Site.

D. City chooses CCA to assist the City in utilizing Chesterfield Sports Complex by CCA, on the CCA Site and Chesterfield Sports Complex, exclusively providing and arranging for Programs for CCA Participants as well as arranging for Programs for the citizens and entities residing in City as herein provided.

E. In Consideration for such a cooperative arrangement wherein City and CCA agree to promote the utilization of the Chesterfield Sports Complex by providing Programs on the Chesterfield Sports Complex, as well as the CCA Site, City and CCA agree as follows:

**1. LOCATION.**

A. The Chesterfield Sports Complex is located at the Spirit of St. Louis Boulevard and north Outer Forty Road, Chesterfield on sites with Locator Numbers as follows: 16V12-0065, 7376-944, 7584-1358, 7601-2336, 16V12-0054, 7601-2336, 16021-0045, 7265-2306, 16V21-0056, 7244-1382.

B. The CCA Site is located at the Spirit of St. Louis Boulevard and north Outer Forty Road, Chesterfield on a site with the Locator Number of: 17V:630059 and 16V:31:0035.

**2. FACILITIES.**

A. The Chesterfield Sports Complex will have the following facilities: a parking lot of approximately 614 spaces; a quadplex (four fields); seven soccer fields; sand volleyball courts; an irrigation system; maintenance/storage building; central office; fully-serviceable concession building and surrounding area; rest rooms for men and women; walking trails; and a pavilion for congregating larger groups under cover. Any space or building which is reserved for exclusive utilization by City is outlined on Exhibit A of this Agreement and is not a part of this Agreement.

The parties agree that City shall in its initial development phase grade and prepare all fields; provide irrigation of its entire site and shall construct the 614 space parking lot as identified as H on attachment #1 and maintenance building identified as J on attachment #1.

B. The CCA Site will have the following facilities: two quadplexes; practice fields; central building, pavilions, playground facilities and all utilities and necessary fencing.

C. City has no contractual right to utilize the CCA Site; however, such Site may be utilized by City in CCA's sole discretion in pursuit of CCA's management duties contained herein and described specifically below in Paragraphs 6.

City shall have the option to utilize the complex for mutually agreed upon events such as tournaments or community celebrations, i.e. 4th of July program. These are scheduling items which shall be worked out with a master schedule prior to each season.

The Superintendent of parks and recreation for the City of Chesterfield, or his designated representative, shall have input into the master scheduling of the complex to insure maximum usage and equal opportunity. Master scheduling shall be done well in advance of the

respective season (i.e. baseball, softball, soccer) to make sure that a block of time has been allocated for league play, practice and tournaments.

D. CCA has no contractual right to alter or modify any of the Chesterfield Sports Complex Facilities, except as to temporarily amend the field configuration, without prior written approval from the City, which approval shall not be unreasonably withheld. The cost of such approved alteration or modification shall first be borne by City vis-a-vis the Capital Improvement Fund, as discussed below in Paragraph 9.C. Thereafter, City and CCA shall discuss the appropriations of funds for such approved alteration or modification, and CCA's suggestions for such appropriations must be considered in the analysis of the decision.

3. TERM.

A. The Term of this Agreement ("Primary Contract Period") is to begin upon completion of Phase I improvements on the City site as identified above in paragraph 2. Such completion shall be no later than October 1, 1998. If City is unable to surrender Chesterfield Sports Complex's Parking Lot Facilities and maintenance/storage building, by such date certain, then City will stand in breach of this Agreement, which breach shall be curable with monetary compensation commensurate with providing both the maintenance building for the Equipment, as defined below in Paragraph \_\_\_ and the parking for CCA and Chesterfield Sports Complex Programs.

B. The Term of this Agreement is to conclude at the end of the 5th calendar year after the Agreement begins.

C. Such Agreement shall be renewed ("Secondary Contract Period") by both parties after the termination of the Primary Contract Period if, upon the good faith attempt at negotiation of the outstanding issues, the parties so agree to renew such Agreement or a modified version thereof. [If parties cannot so agree, then the City agrees that any RFP by the City shall contain the terms and conditions as agreed upon in the parties' negotiations as noted herein.] Such Secondary Contract Period shall continue for an additional 5 calendar years from the date of its consummation and be subject to renewal based upon these renewal terms.

D. In any event, CCA will be entitled to manage the Programs for CCA Participants and any citizen or entity residing in City, which Programs were scheduled by CCA prior to the expiration

of the Primary Contract Period and/or Secondary Contract Period ("Contract Period") and which Programs are to take place after the expiration of the Contract Period and before the conclusion of an additional calendar year after the Contract Period. CCA shall receive fair market compensation for such management, which compensation shall be determined by either agreement between the parties or by arbitration, with both parties paying their own costs.

**4. TERMINATION OF AGREEMENT.**

A. This Agreement may be terminated by either party prior to the expiration of the Contract Period for good cause shown ("Termination for Cause") by forwarding written notice of such Termination, which will become effective 90 days thereafter, unless otherwise revoked in writing or otherwise agreed to by the parties. Good cause shall be limited to either (1) a failure by either the City or CCA to observe or perform any of the material covenants of this Agreement; (2) a demonstration by CCA of a financial inability to continue in its capacity without defaulting or breaching the Agreement; or (3) fails to operate the complex during the operating seasons (i.e., baseball, football, soccer), excluding any periods during which CCA fails to operate for reasons beyond its control.

B. This Agreement shall be terminated at the end of the Contract Period ("Termination") unless otherwise renewed.

C. In the event of the Termination for Cause of the Agreement under Paragraph 4A. or Termination under Paragraph 4B. above, CCA agrees to surrender all rights and duties in management and maintenance of the premises to City immediately upon the either terminations becoming effective. Should CCA fail to do so, then CCA shall be responsible for all costs, inclusive of reasonable attorneys' fees, which City incurs to evict or otherwise remove CCA for its management and maintenance position. If Termination for Cause is due to a breach of a material covenant of this Agreement by City, then CCA shall have the option to either Terminate for Cause this Agreement and pursue damages and costs, inclusive of reasonable attorneys' fees or to continue with the operation, maintenance and management of the Chesterfield Sports Complex until the Termination of the Agreement at which time thereafter CCA may pursue damages and costs, inclusive of reasonable attorneys' fees against the City.

D. However, nothing contained within this Paragraph 4 shall be construed to modify CCA's rights to continue, after Termination, with the management of Programs as discussed in Paragraph 3.D, above. However, CCA may assign such right to City or CCA's successors or assigns upon approval of the City.

E. Upon Termination, CCA agrees to return Chesterfield Sports Complex in the same condition received, except for reasonable and/or customary wear and tear. CCA also agrees that any Equipment, as defined in Paragraph \_\_\_, below, which was purchased with Capital Improvement Funds, as defined in Paragraph \_\_\_, below, shall remain the property of City and shall not be removed from the Facilities.

**5. USAGE.**

A. For the Contract Period of this Agreement, CCA, along with City, have the exclusive right to utilize the Chesterfield Sports Complex.

B. Such utilization by CCA is limited to:

- i. providing and managing Programs first to existing Programs, CCA Participants and, upon availability, to other citizens, civic organizations, non-profit entities, and, after all others, for-profit entities ("Citizen Groups"), all of which Citizen Groups shall be residents of City. Such management by CCA is further addressed in Paragraph 6 below.
- ii. maintaining the Chesterfield Sports Complex as provided in Paragraph 7 below.
- iii. the exclusive use and control of the Chesterfield Sports Complex's concession building and area and the wholesale purchases and the retail business generated therefrom, provided that CCA agrees to operate said concession building at CCA's cost for events run by City under the terms of 5(c).
- iv. the exclusive use of the maintenance/storage building for the Contract Period, after which Contract Period, CCA will be entitled to the exclusive and uninterrupted use of one-half of the maintenance/storage building upon payment of the sum of \$1

per year forever or until CCA relinquishes such right in writing ("Building Agreement"). This Building Agreement shall be recorded at the time this Agreement is consummated. The City shall have access to the maintenance/storage building and may store materials in said maintenance/storage building upon there being space available during the term of this agreement.

v. the non-exclusive use of the parking lot contained within the Chesterfield Sports Complex. Such agreement for such use ("Parking Lot Agreement") shall extend throughout the Contract Period and forever thereafter as consideration for this Agreement. Such right of use shall run with the CCA Site and the Chesterfield Sports Complex and be recorded at the time this Agreement is consummated. Contained within the Parking Agreement shall be the restriction that: at no time shall the parties, in pursuing their rights to utilize the parking lot, permit any parking prompted by uses other than those intended to take place in the Chesterfield Sports Complex which uses are herein enumerated. Specifically, no parking associated with gaming of any kind, none of which activity is even contemplated at this time, shall be permitted by either party to this Agreement.

C. When the Chesterfield Sports Complex is not in use by the CCA for previously or routinely scheduled programs, citizens of the City of Chesterfield will have the use of the Chesterfield Sports Complex for uses which are normally the customary uses of a city park. Accordingly, individual citizens, groups of citizens or entities which have their place of business within the city, shall have access and use of the Chesterfield Sports Complex under this guideline.

D. In the event Citizen Groups gain access to the Chesterfield Sports Complex either through CCA's exclusive usage parameters or through City's exclusive usage parameters, CCA reserves the right to limit access to the CCA Site for such Citizen Groups. Further, CCA shall be entitled to an additional management fee as consideration for CCA's efforts in scheduling competing entities' Programs. Such additional management fee shall be determined by agreement between the parties or by arbitration, with parties being responsible for their own costs associated therewith.



**6. MANAGEMENT.**

In the management of Chesterfield Sports Complex, CCA shall engage in the customary management activities, including, but not limited to the following:

- A. Manage all policies of insurance which are herein described in Paragraph 11;
- B. All employees will be the employees of CCA and it will have the right to employ and terminate all employees working on the Chesterfield Sports Complex under the terms and conditions of this agreement.
- C. Remit payments for all salaries, inclusive of payroll taxes and benefits;
- D. Incur costs for all equipment, materials and supplies ("Equipment") for the maintenance of Chesterfield Sports Complex and CCA Site, which Equipment shall be utilized without concern as to the percentage of the use made for the CCA Site or the Chesterfield Sports Complex. However, the Equipment shall be considered as property of CCA, unless such Equipment is purchased from the Capital Contributions Fund, as discussed in Paragraph 10, below.
- E. Manage the accounting and tax returns for the Chesterfield Sports Complex.
- F. Operate the Chesterfield Sports Complex in accordance with the rules and regulations established by the St. Louis County Health Department and all other applicable governmental requirements.
- G. In any event, CCA shall not be responsible for the management required by the City's exclusive usage of the Facilities per Paragraph 5.C., above.
- H. City shall not expend monies required for these normal operations of Chesterfield Sports Complex unless such monies are necessitated by City's own exclusive usage of the Facilities per Paragraph 5.C., above.
- I. CCA shall be responsible for all costs of utilities, including electric, gas and water, on the Chesterfield Sports Complex during the Contract Period.

**7. MAINTENANCE.**

In the maintenance of Chesterfield Sports Complex, CCA shall engage in the customary maintenance activities, specifically including:

- A. Maintaining the cleanliness of the premises by the proper collection of waste, garbage and all other debris of which CCA has notice ("Waste Collection");
- B. Such Waste Collection is not limited to the grassy areas; rather, such Waste Collection would be applicable to the Concession Building and area; the Rest rooms; The Pavilion; the Parking Lot and Drives to and from the Parking Lot; Playgrounds; Storage Sites and Dumpster areas.
- C. All lawns shall be mowed, trimmed and watered vis-a-vis the irrigation system on a regular basis;
- D. Landscape materials, trees and plants shall also be cared for on a regular basis;
- E. As a part of this maintenance agreement, CCA agrees to utilize outdoor storage of Equipment only in designated areas. Such designation shall be reasonably made by City.
- F.      In any event, CCA shall not be responsible for the maintenance required by the City's exclusive usage per Paragraph 5.C., above.
- G. CCA shall not be responsible for the asphalt surface on the parking lot(s).

**8. INSPECTIONS.**

A. Prior to the opening and the closing of each season, and as often as City deems advisable, City shall inspect the Chesterfield Sports Complex. Such inspection shall be reduced to a written report, and a copy of the inspection report shall be provided to CCA immediately upon completion. City shall remain the entity responsible for such inspections even though CCA may also inspect the property from time to time.

B. Upon receipt of the inspection report, CCA shall be responsible to correct cited problems, if within CCA's scope of maintenance and management and budget, within a reasonable period of time. Or, if beyond such scope, CCA shall immediately, upon such determination, inform City and request assistance from City in this regard. City shall stand with full responsibility for such cited problems to be corrected within a reasonable period of time.

9. **COMPENSATION TO CITY.**

A. In exchange for the opportunity to increase its Programs by being permitted the utilization of Chesterfield Sports Complex, and in exchange for the land swap agreement wherein CCA acquired the CCA Site, CCA is willing to incur all aforementioned costs of management and maintenance for the Primary Contract Period, without return compensation except as herein provided.

B. CCA will compensate the City for its nonexclusive use of the Chesterfield Sports Complex by payment of an annual fee. The total annual fee will be based upon a "per team" fee structure (See Exhibit B). The parties agree that during the first year of operation said fee structure will be fifty percent (50%) of the fees set out on Exhibit B and two-thirds (2/3) of the fee structure during the second year of operation. Said fee structure to be reviewed by CCA and City yearly starting in year 3.

C. In each year wherein an Annual Fee is due to City, the first \$50,000.00 of such Annual Fee shall be committed to a City Capital Improvement Fund, which Fund shall be specifically reserved for Chesterfield Sports Complex. ("Fund").

D. All fees which are due and payable by CCA to City under this Agreement, if not paid when due, shall accrue a late fee from the date due until the date paid at the rate of one percent (1%) per month or the maximum lawful rate for which parties may contract under the laws of the State of Missouri, if such rate is less.

10. **REPAIRS/IMPROVEMENTS TO FACILITIES/PURCHASES OF EQUIPMENT.**

A. It is the intention of the parties that the Fund shall be the primary source for major repairs (over \$5000.00 in cost), improvements to Facilities and purchases of major Equipment (over ---- in cost), except as herein provided. Further, it is the intention of the parties that such repairs, improvements and purchases be made in a timely manner.

B. To the extent that the Fund is so utilized, CCA shall be entitled to provide suggestions as to the Equipment to be purchased, improvements or repairs to be made. CCA's suggestions shall be followed unless found by the City to be beyond budget or in other ways unreasonable. Further, CCA shall be immediately informed as to any relevant time issues of which CCA should be aware in

order to conduct the proper management and maintenance of the Facilities, and CCA shall be permitted to opine regarding the time issues which City shall consider prior to consummating any agreements relating to such Equipment, repairs or improvements.

C. It is also the intention of the parties that CCA be responsible for minor repairs (under \$5000.00 in cost) of the Facilities; however, CCA shall not be responsible for any such repairs, or series of repairs, after CCA expends \$5000.00 per each year of the Contract Period. Further, CCA is not responsible to either expend any monies for major repairs as aforementioned or to expend any monies at all to improve the roadways or parking lots of Chesterfield Sports Complex. To be specific, repairs are deemed "major" upon City or CCA's receipt of a bid or invoice totaling more than \$5000.00 for the repair work to be performed.

D. All work performed by CCA shall be done in a satisfactory, workmanlike manner and at the end or expiration of the term of this agreement shall be delivered upon aforesaid premises in good order and condition, subject to normal wear and tear. CCA will indemnify, defend and hold City harmless from any and all claims, actions, liens, demands and expenses, and judgments for loss, including reasonable attorneys' fees, for any repairs made by CCA in accordance with this agreement and shall not allow any liens to be placed upon the property of City for said work.

E. Both parties acknowledge and agree that the complex development will be phased over a period of at least five (5) years based upon the attached Five Year Capital Improvement Budget due to a lack of funds on the part of the City. CCA also anticipates an ongoing Capital Improvement Plan, a copy of its plan being attached as Exhibit B. Accordingly, City agrees that as part of its initial first phase City shall prepare its site to include grading, preparation for play of the sporting activities, irrigation, 600 car parking lot, maintenance building, and to bring utilities to the site. City agrees that as part of its second phase City will include the concession stand identified as Item K on the attached Parks System Master Plan dated January 19, 1996 identified as Exhibit C.

## 11. INSURANCE.

A. During the Contract Period and until CCA ceases to function as the management and maintenance source for Chesterfield Sports Complex, CCA shall maintain, at its own expense, insurance as follows:

1. Worker's Compensation;
2. Automobile, (including hired and non-owned);
3. Comprehensive General Liability (including Premises/Operations; Products and Completed Operations;)
4. Personal Injury;
5. Incidental Malpractice and Contractual Coverage;

all with a minimum limit of One Million Dollars (\$1,000,000.00) combined single limit for bodily injury and property damage.

B. All such Insurance as listed above must be underwritten by an insurer having an A.M. Best and Company rating of at least A.

C. Comprehensive General Liability Insurance must cover Facilities and all activities, inclusive of Programs, pertaining to such Facilities.

D. Each Insurance Policy, other than Worker's Compensation Insurance Policy, will name the City as an additional insured and will provide that the insurer will, at least 30 days prior to expiration, amendment or cancellation of such policy, provide to City written notice of same.

E. Certificates of Insurance shall be filed with City prior to commencement of the Agreement, and CCA will continue to file with City proof of all renewal or new policies immediately upon receipt of such proof.

## 12. INDEMNIFICATION.

A. CCA will, at its sole cost and expense, indemnify, hold harmless and protect City, including its officers and employees, from and against any and all claims, damages, liens, costs or expenses (including court costs) arising out of CCA's management and maintenance duties per this Agreement ("Indemnification Agreement"). Unless caused by its own negligence, City shall not be liable for any injury or damage to person or property arising out of the operations of the CCA's management and maintenance duties per this agreement. If the City is negligent, then the City's liability shall be in relationship to the percentage of liability to which their negligence contributes to the claim herein.

B. Such Indemnification Agreement does not extend beyond CCA's own aforementioned Insurance Policies.

**13. DAMAGES FROM THEFT.**

CCA shall not be responsible for any damage done by theft, vandalism, fire, flood, windstorm, rain or any Acts of God to any of the Facilities or other improvements which CCA is, from time to time, permitted to use per this Agreement except if such damage resulted from the negligence of CCA's personnel.

**14. PERSONNEL.**

CCA will endeavor, through proper orientation and training of employees or volunteers, to prevent losses and damages to Facilities during the Contract Period of this Agreement.

**15. SUBLETTING.**

CCA agrees that it will not sublet the Complex for any purposes other than sport events as outlined herein without prior written approval of the City.

**16. VENDING MACHINES.**

Neither party to this Agreement will not permit the operation of any vending machines without the express written consent of other party, which consent shall not be unreasonably withheld.

**17. GAMBLING DEVICES.**

Neither party to this Agreement, under any circumstances, shall have or permit gambling devices in or about the Chesterfield Sports Complex.

**18. INTOXICATING LIQUOR.**

Neither party to this Agreement, under any circumstances, shall permit the sale or intoxicating liquor of any kind or character, in or about the Facilities without the express consent of the other party, which consent shall not be unreasonably withheld.

19. **CIGARETTE SALES.**

Neither party to this Agreement, under any circumstances, shall permit the sale of cigarettes or cigars in or about the Facilities without the express consent of the other party, which consent shall not be unreasonably withheld.

20. **ADVERTISING.**

Parties to this Agreement agree to regularly promote Chesterfield Sports Complex, and agree to comply with City ordinances in pursuit of such promotions.

21. **DISCRIMINATION.**

CCA specifically agrees to not discriminate against any person or persons because of race, religion, color, sex, age, disability or national origin in the performance of its duties per this Agreement.

22. **AMERICANS WITH DISABILITIES ACT.**

Both parties to this Agreement shall comply with all provisions of the Americans with Disabilities Act in the performance of all duties contained and surrounding this Agreement.

23. **DISORDERLY CONDUCT.**

Both parties to this Agreement shall prevent all disorderly or boisterous conduct or immoral practices of any kind within Chesterfield Sports Complex. Further, parties to this Agreement agree to uphold City rules and regulations to the best of the parties' ability.

24. **BOARD OF DIRECTORS.**

The Superintendent of Parks, Recreation and Arts or his appointed representative will serve as an ex-officio member of the CCA Board of Directors. CCA will be allowed to appoint one ex-officio member of the City's Parks and Recreation Citizen's Board. Such appointments are intended to assist with communication between the parties.

**25. BINDING EFFECT.**

Nothing contained in this agreement gives CCA the authority to bind the City of Chesterfield to any third party, under any terms or conditions, without the City of Chesterfield's written authorization and without the City of Chesterfield complying with regard to all terms and conditions as authorized and permitted by the Statutes of the State of Missouri for a third class statutory city. There shall specifically be no liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained to the end that City, as a party hereto, shall be responsible unless the City undertakes in writing the responsibility therefor.

**26. SUCCESSORS AND ASSIGNS.**

Neither party shall be authorized to assign its interest herein nor to pass the obligations to a successor without the written consent and approval of the other party herein.

**27. CONTINGENCIES.**

This Agreement is contingent on the City and CCA acquiring the land needed for CCA Site and Chesterfield Sports Complex, which acquisitions are themselves contingent on additional terms.

SO AGREED: THIS DATE OF \_\_\_\_\_

\_\_\_\_\_  
CITY OF CHESTERFIELD

\_\_\_\_\_  
CHESTERFIELD COMMUNITY  
ASSOCIATION