

Agenda Item: 9.

Memorandum

To: Programs, Projects and Operations Subcommittee
From: John Winkler, General Manager
Date: May 1, 2018
Re: Chalco Hills Recreation Area Soccer Complex Lease

The District entered into a “Management Agreement” with the Millard Soccer Club in April of 2001 to lease the soccer/playing fields by the auxiliary spillway at Chalco Hills Recreation Area for a lease fee of \$5,000 per year. This lease was renewed several times over the years by the previous NRD Park Superintendent.

After numerous requests over the last six months from several youth soccer organizations to have an opportunity to bid on the lease of the field; District Management solicited Requests for Proposals in the Omaha World Herald, on the District website and mailed solicitations to any interested organizations.

District personnel opened bids on Monday April 23, 2018 at 10:00 a.m. at the NRD Offices. The District received one bid from the Omaha Sports Complex, please see attached bid submittal and Management Agreement.

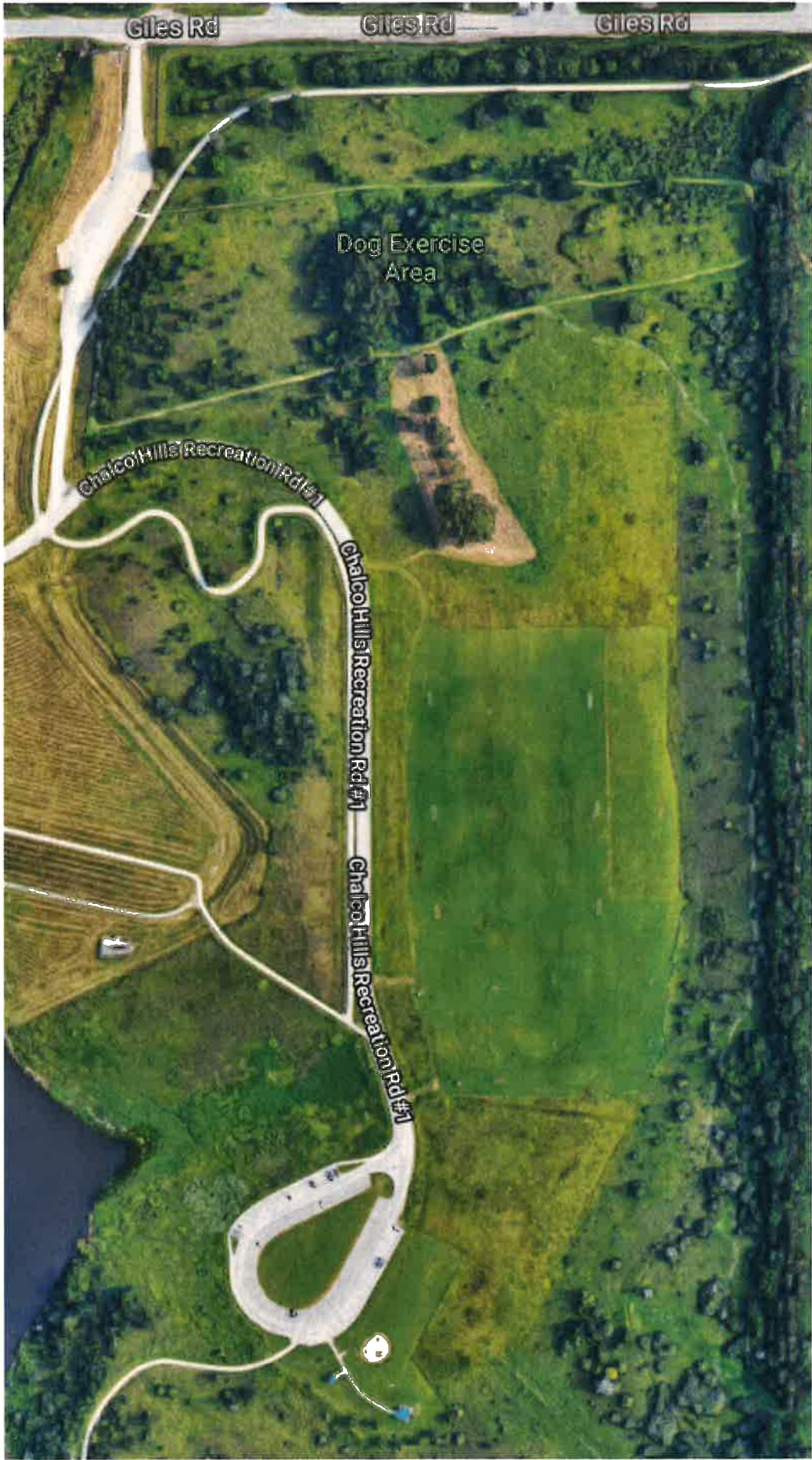
The sole bidder submitted a base bid of:

Annual Fee	\$7,000
Annual in-kind costs	<u>\$20,500</u>
	\$27,500

And an Optional bid which reflects a few minor modifications to the proposed agreement:

Annual Fee	\$12,000
Annual in-kind costs	<u>\$20,500</u>
	\$32,500

Management recommends that the Subcommittee recommend to the full Board of Directors that the District enter into a Management/Lease Agreement with the Omaha Sports Complex per the terms and conditions outlined in the attached agreement as presented and to approve any changes deemed necessary by the General Manager and District Legal Counsel.





April 20, 2018

Papio-Missouri River NRD
8901 South 154th Street
Omaha, Nebraska 68138
Attn: John Winkler, General Manager

RE: Request for Proposals for Lease of Soccer Complex located at Chalco Hills Recreation Area (the "RFP")

Dear Mr. Winkler,

We are pleased to make the following base bid (the "**Base Bid**") for the Management Agreement, Chalco Hills Recreation Area Soccer Complex Request for Proposal:

Annual License Fee Amount:	\$7,000, plus
Estimated Annual In-kind Maintenance Costs:	<u>\$20,500*</u>
	\$27,500

With **no** clarifying terms to the Management Agreement.

In addition, we would like to offer you the following additional optional bid (the "**Optional Bid**"):

Annual License Fee Amount:	\$12,000 plus
Estimated Annual In-kind Maintenance Costs:	<u>\$20,500*</u>
	\$32,500

With the following clarifying terms to the Management Agreement:

1. The last sentence of Section 5 (Management Term) shall be amended and restated as follows: "Either party may terminate this Agreement without cause at any time upon six (6) months prior written notice of termination given to the other party."
2. The second sentence of Section 14(b) (Master Lease) shall be amended and restated as follows: "The Licensee shall be allowed to limit public use of the soccer complex during those times that the Licensee is conducting scheduled practices, training, special event or tournaments as approved by the NRD."

*in accordance with and pursuant to the Management Agreement provided as part of the RFP.

Greg Waldron
April 20, 2018
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We value our relationship with the NRD and have enjoyed the partnership our two organizations have shared over the last decade in managing and maintaining the Soccer Complex at Chalco Hills Recreation Area. Whether the NRD elects to accept our Base Bid or prefers to accept our Optional Bid, we hope to continue our relationship managing and maintaining the Soccer Complex.

If you have any questions regarding this bid, please don't hesitate to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'GWaldron', with a long horizontal flourish extending to the right.

Greg Waldron, Director of Facilities
Omaha Sports Complex
gwaldron@omahasportscomplex.com
402-933-6400

**Management Agreement
Chalco Hills Recreation Area Soccer Complex**

This AGREEMENT (hereinafter referred to as "this Agreement") is between the Papio-Missouri River Natural Resources District (hereinafter referred to as "the NRD") and the party identified on the signature page hereto as "Licensee".

WHEREAS, the United States Army Corps of Engineers (hereinafter referred to as "the Corp") is the owner of the Chalco Hills Recreation Area (hereinafter referred to as "the Recreation Area"), located in Sarpy County, Nebraska;

WHEREAS, pursuant to that certain Lease DACW45-1-88-6045, as amended, by and between the NRD and the Corps (hereinafter the "Master Lease"), the NRD possesses and operates the Recreation Area for park and recreational purposes;

WHEREAS, the NRD owns certain soccer facilities within the Recreation Area; and

WHEREAS, the Licensee is experienced in the management of soccer facilities and in the provision of soccer-related activities and services, and the NRD desires to contract with Licensee for the provision of such services on the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of their mutual covenants hereinafter expressed, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the NRD and the Licensee agree as follows:

1. **LICENSE; DESIGNATION OF SOCCER COMPLEX.** Subject to Licensee's compliance with the terms and conditions of this Agreement, the NRD grants to Licensee a non-exclusive license to use the portion of the Chalco Hills Recreation Area Soccer Complex (hereinafter referred to as "the Soccer Complex"), which depicted on the diagram marked **Exhibit "A"**, attached hereto and incorporated herein by reference, for hosting soccer leagues and providing other youth soccer-related activities, but for no other use whatsoever.

2. **SOCCER COMPLEX IMPROVEMENTS.** The Soccer Complex improvements consist of four (4) sod soccer fields, parking facilities, irrigation equipment, signage, and trash receptacles. Additional permanent improvements made by the Licensee to the Soccer Complex shall become the property of the NRD. Licensee must first obtain the NRD's prior written approval before causing or permitting any renovations, changes or improvements to the Soccer Complex and/or to the improvements located thereon.

3. **NRD MAINTENANCE OBLIGATIONS.** During the Management Term (as defined herein) the NRD will be responsible for the following obligations with respect to the Soccer Complex:

a. Perform regular maintenance of the Soccer Complex, in such manner and at such times as determined by the NRD in its sole and absolute discretion. Such

maintenance may consist of applying turf maintenance materials, irrigating and emptying trash containers.

b. The NRD, in its sole discretion, shall determine what, if any, portion of the fees payable by Licensee hereunder shall be employed for maintenance of the Soccer Complex.

c. In the event the Soccer Complex is damaged due to inundation from operation of the emergency spillway of the Lake Wehrspann Dam, or damaged due to any other casualty, and the NRD, in its sole discretion, determines that it is not practical or desirable to repair such damage or restore the usability of the Soccer Complex for the sport of soccer, the NRD may terminate the Management Term, close the Soccer Complex and/or terminate NRD's maintenance obligations under this section.

d. The NRD reserves the right to prohibit access to the northern-most field in the Soccer Complex at any time when Bald Eagles are nesting in the area.

e. No permanent structures may be constructed or installed by Licensee in the Soccer Complex.

4. MANAGEMENT OF SOCCER COMPLEX; LICENSEE OBLIGATIONS. During the Management Term, Licensee will be responsible for the following obligations with respect to the Soccer Complex:

a. Perform all other management and maintenance obligations not otherwise required of the NRD pursuant to Section 3 above.

b. Keep and maintain the Soccer Complex in a clean, sanitary and safe condition.

c. As manager of the Soccer Complex, the Licensee will coordinate the irrigation and fertilization of the Soccer Complex with the NRD staff.

d. Take all feasible steps as may be required to secure compliance with the NRD's Rules and Regulations for the Chalco Hills Recreation Area by persons admitted to the Soccer complex by the Licensee.

e. Schedule the utilization of the soccer fields in the Soccer Complex and, prior to the spring and fall seasons, provide to the NRD copies of field utilization schedules adopted by the Licensee and lists identifying the persons designated by Licensee to supervise such field utilization.

f. Obtain liability waivers from each and every person and entity utilizing the Soccer Complex prior to the beginning of each soccer season. Such liability waivers

shall explicitly release and waive all claims and liability of the NRD and the Corps from any and all liability, damage or injury with respect to each such person's and/or entity's use of the Soccer Complex.

g. Patrol and inspect the physical condition of the Soccer Complex (including the improvements thereon) prior to each scheduled utilization thereof.

h. Prohibit, in consultation with the NRD, the utilization of any field, portion or whole of the Soccer Complex if any obstructions, debris, washouts, holes, erosion, standing water, ice, or other defects or physical condition(s) existing thereon (regardless of cause) renders the same unfit or unsafe for athletes or spectators, or if the Licensee or NRD, in their discretion, determine that such utilization could cause unreasonable damage to the Soccer Complex (and/or to the improvements thereon) or violate principles of good soccer field management.

i. Provide such security and supervisory personnel as may be required for crowd control and traffic control for activities scheduled by Licensee at the Soccer Complex.

j. Ensure no parking on the sides of the roads located within the Recreation Area and ensure the access to park remains open and free of obstructing vehicles.

k. Provide all necessary stationary soccer goal devices, field stripe devices and services, field markers, and qualified officials required for the conduct of Licensee's scheduled games at the Soccer Complex.

l. Patrol the Soccer Complex after each Licensee scheduled use thereof and secure the deposit of all debris in the trash containers provided by the NRD.

m. Advise the NRD of any conflicts between the irrigation and fertilization of the Soccer Complex and the scheduling of soccer activities.

n. Give the NRD reasonable advance notice in writing of any maintenance of the Soccer Complex, or change in maintenance practices, which the Licensee believes may be required.

o. Prohibit any use of the Soccer Complex on any Sunday without the express prior written consent of the NRD.

p. Regular mowing of the Soccer Complex as required for play by the Licensee.

5. MANAGEMENT TERM. The "Management Term" will be a period of five (5) consecutive fiscal years, commencing as of May 1, 2018. The NRD, at its option, and by a written notice given to the Licensee at least three (3) months prior to the end of the Management Term, or at least three (3) months prior to the end of any extension thereof, may extend the Management Term for an additional consecutive five (5) year periods. Either party may terminate this Agreement without cause at any time upon ~~threesix~~ (36) months prior written notice of termination given to the other party.

6. FEES. The Licensee shall pay to the NRD a flat fee of ~~(bid amount)~~ \$12,000 per year for each fiscal year during the Management Term and for each fiscal year during any extension(s) thereof, with the first half of such annual flat fee being due on April 1st of the fiscal year and with the remaining half of such flat fee being due on August 15th of such fiscal year. The flat fees provided by this paragraph shall be due to the NRD in the amounts provided by this paragraph, together with interest at the rate of ten percent (10%) per annum after the same shall become due, regardless of the amount, if any, of user fees actually received by the Licensee.

7. EQUAL EMPLOYMENT OPPORTUNITY. The Licensee agrees that, during the performance of this Agreement:

a. The Licensee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Licensee shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. As used herein, the work "treated" shall mean to include, without limitation, the following: recruited (weather advertising or by other means); compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

b. The Licensee agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this non-discrimination clause.

c. Licensee shall, in all solicitations or advertisements for employees placed by or on behalf of Licensee state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

d. The Licensee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of Licensee commitments under the Equal Employment Opportunity clause of the district and shall post copies of the notice in conspicuous places available to applicants for employment.

e. The Licensee shall furnish the NRD's contract Compliance Officer all Federal forms containing the information and reports required by the Federal government for Federal contracts under Federal rules and regulations, and including the information required by Neb. Rev. Stat. Sections 10-192 to 10-194, inclusive, and shall permit reasonable access to its records. Records accessible to the Contract Compliance Officer shall be those which are related to subparagraphs "a" through "g" and only after reasonable notice is given to the Licensee. The purpose for this provision is to provide for investigation to ascertain compliance with the program provided for herein.

f. The Licensee shall take such actions with respect to any subcontractor as the District may direct as a means of enforcing the provisions of paragraphs "a" through "g" herein, including penalties and sanctions for noncompliance, provided, however, that in the event the Licensee becomes involved in or is threatened with litigation as the result of such directions by the District, the District will enter into such litigation as is necessary to protect the interests of the District and to effectuate the provisions of the Ordinance and in the case of contracts receiving Federal assistance, the Licensee or the District may request the United States to enter into such litigation to protect the interests of the United States.

g. The Licensee shall file and shall cause all subcontractors, if any, to file compliance reports with the Licensee in the same form and to the same extent as required by the Federal government for Federal contracts under Federal rules and regulations. Such compliance reports shall be filed with the Contract compliance Officer, Compliance reports shall be filed with the Contract Compliance Officer. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractors and his subcontractors.

The Licensee shall include the provisions paragraphs "a" through "g" of this Paragraph, Equal Employment Opportunity Clause, and Neb. Rev. Stat. Section 10-193 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

8. **INSURANCE.** The Licensee agrees to add the NRD as an additional name insured to its policy of comprehensive general liability insurance (including automobile and contractual liability), which insurance shall be in an amount of not less than \$1,000,000 as to each occurrence and \$2,000,000 in the aggregate. Said coverage shall be maintained during the initial Management Term and during any renewal thereof. Said policy of insurance is to be with a company licensed to do business in the State of Nebraska. A Certificate of Insurance certifying that the Licensee carries the aforesaid insurance shall be delivered to the General Manager of the District prior to the beginning of each fiscal year during the Management Term or any renewal thereof.

9. **INDEMNIFICATION.** The Licensee agrees to indemnify and hold the NRD and the Corps and their respective officers, agents, employees, volunteers and contractors harmless from and against all claims, demands, and causes of action for damages for personal injury or property damage caused by or arising out of the Licensee's and/or Licensee's officers', agents', volunteers', invitees', licensees', employees' or contractors' management and/or use of the Soccer Complex and Recreation Area.

10. **GOVERNING LAW.** Parties to this Agreement shall conform with all existing and applicable ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this contract.

11. **COMPLETE AGREEMENT.** This Agreement shall not be merged into any other oral or written agreement, lease, or deed of any type. This contract 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 hereon unless done in writing and signed by an authorized officer of the respective parties.

12. **ASSIGNMENT.** The Licensee may not assign its rights under this Agreement without the express prior written consent of the NRD, which may be withheld, delayed or conditioned by the NRD in its sole and absolute discretion.

13. **AMENDMENTS.** All provisions of this Agreement and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from an authorized representative.

14. **MASTER LEASE.** This Agreement is subject at all times to the terms and conditions of the Master Lease, which is expressly incorporated herein by this reference. Specifically, the following terms of the Master Lease are incorporated into and made a part of this Agreement:

(a) This Agreement is subject to and subordinate to all terms and provisions of Lease DACW45-1-88-6045, executed by and between the NRD and the United States of America for park and recreational purposes. Nothing in this Agreement, nor approval by the U.S. Army Corps of Engineers, shall affect, waive, modify/ or interpret in any manner whatsoever, the terms, covenants, and conditions of the United States of America Lease DACW45-1-88-6045.

(b) The Licensee shall be permitted to use the soccer field complex facilities to conduct the related activities. The soccer complex shall be open and available, without restrictions, to the public at times as approved by the NRD. The Soccer Association shall be allowed to limit public use of the soccer complex during those times that the Licensee is conducting scheduled practices, training, special events or tournaments as approved by the NRD.

Please note that in accordance with Condition (b) of the Master Lease, the Licensee shall submit final construction-modification plans of soccer facilities within the spillway area through the NRD to the Corps for review and approval prior to any construction activity. Also, all improvements-modifications of facilities shall be in compliance with all local, state and federal building codes and regulations.

In accordance with Condition 5 of the Master Lease, the Licensee may not assign or transfer its rights under this Agreement without the expressed prior written consent of the Corps.

Also, in accordance with Condition No. 10 of the Master Lease, the Licensee agrees to indemnify and hold the Corps and its officers, agents, employees, and contractors harmless from and against all claims, demands and causes of action for damages for personal injury or property damage caused by or arising out of negligence of the Licensee, its officers, agents, employees, or contractors, in managing and/or using the Soccer Complex.

15. NOTICES. In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process, during the term of this Agreement and for the period of any applicable statute of limitations thereafter, in the absence of written notice to the contrary, the individuals identified on the signature page shall be the authorized representative of each such party. All notices herein required shall be in writing and shall be served on the parties at their respective addresses identified on the signature page hereto, or at such other address as a party may hereafter designate. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service hereunder.

IN WITNESS WHEREOF, this Agreement is executed by the parties, pursuant to resolutions duly adopted by their respective governing boards.

EXECUTED by the _____ this 1st day of May, 2018.

Papio-Missouri River Natural Resources District

By _____
JOHN WINKLER, General Manager

Notice Address for NRD:

Attn: General Manager
Papio-Missouri River NRD
8901 South 154th Street
Omaha, Nebraska 68138

EXECUTED by the _____ this 1st day of May, 2018.

~~[LICENSEE NAME]~~ Omaha Sports Complex

By _____
Name:
Title:

Notice Address for Licensee:

