

Introduced by: Councilmember Clay

**RESOLUTION NO. 2010-72**

**RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A MEMORANDUM OF UNDERSTANDING REGARDING TAKOMA-PINEY BRANCH PARK**

WHEREAS, in 1998, the City and the Maryland-National Park and Planning Commission (M-NCPPC) entered into an agreement by which the City could control, and issue permits for, the use of Ed Wilhelm Field in Takoma-Piney Branch Local Park, which is owned by M-NCPPC; AND

WHEREAS, the agreement has worked well and the City and M-NCPPC wish to continue the partnership; AND

WHEREAS, M-NCPPC is renovating the park, relocating utility lines, creating a constructed wetland, and making stormwater improvements; AND

WHEREAS, a revised MOU is desired to reflect the park changes and clarify the responsibilities of each party; AND

WHEREAS, a revised MOU has been prepared that ensures that Ed Wilhelm Field and its irrigation system will be repaired by M-NCPPC if either is damaged during the construction process; AND

WHEREAS, the revised MOU also specifies that a wetland area to be constructed as part of the renovation would be maintained by the City; AND

WHEREAS, the revised MOU clarifies the responsibility for utility payments related to the park.

NOW, THEREFORE, BE IT RESOLVED THAT the Council of the City of Takoma Park authorizes the City Manager to sign the attached revised Memorandum of

**Agreement with the Maryland-National Park and Planning Commission regarding  
Takoma-Piney Branch Park.**

**Adopted this 22nd day of November, 2010.**

**MEMORANDUM OF UNDERSTANDING ON USE AND MAINTENANCE  
OF FACILITIES AT THE TAKOMA-PINEY BRANCH LOCAL PARK**

THIS MEMORANDUM OF UNDERSTANDING is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between the City of Takoma Park, Maryland, a municipal corporation, 7500 Maple Avenue, Takoma Park, MD 20912 (hereinafter referred to as "City") and The Maryland-National Capital Park and Planning Commission, a public body corporate, 9500 Brunett Avenue, Silver Spring, MD 20901 (hereinafter referred to as "Commission").

WHEREAS, the Takoma-Piney Branch Local Park (hereinafter referred to as "Park"), located at 2 Darwin Avenue, Takoma Park, Maryland, is an approximately 17.4 acre park which is owned and operated by the Commission; and

WHEREAS, the Park contains, among other things, a softball field overlaid with a soccer field designated as Ed Wilhelm Field (hereinafter referred to as "Field" and more particularly described on Exhibit "A" attached and incorporated herein by reference); and

WHEREAS, the Commission is undertaking a renovation of the Park which will include a constructed wetland facility; and

WHEREAS, in accordance with a Memorandum of Understanding for Permitting and Maintenance of Ed Wilhelm Field at the Takoma-Piney Branch Local Park between the City and the Commission dated September 14, 1998 (hereinafter referred to as "September 14, 1998 MOU"), the City assumed responsibility for maintenance of the Field at the Park, including mowing, trash collection, grass seeding, and infield and soccer field maintenance, and the Commission granted the City authority to control the issuance of permits for the use of the Field; and

WHEREAS, the parties desire to make certain modifications to the agreements set forth in the September 14, 1998 MOU and for this Memorandum of Understanding on Use and Maintenance of Facilities at the Takoma-Piney Branch Local Park (hereinafter referred to as "2009 MOU") to replace and supersede the September 14, 1998 MOU.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **PREMISES.**

1.1 The recitals set forth above are incorporated herein by reference.

1.2 The September 14, 1998 MOU between the City and the Commission is hereby repealed and replaced with this 2010 MOU.

2. **TERM.**

The term of this 2010 MOU begins on the date this MOU is signed by both parties and it shall continue in force until: (i) the parties mutually agree to terminate this MOU; (ii) either party terminates the MOU for default (*see* Section 7); or (iii) either party gives the other party 60 days written notice of termination.

3. MAINTENANCE AND USE OF THE FIELD.

3.1 Maintenance of the Field. In exchange for the right to use the Field as further described below, the City shall agree, at its sole cost and expense, to assume responsibility for maintenance of the Field, including, but not limited to, mowing, lining, collecting trash, maintaining the irrigation system, repairing any damage to the Field, and signage. The City agrees to keep the field in as good repair and condition as it was as of September 14, 1998, normal wear and tear excepted, and shall make or cause to be made all necessary routine repairs, alterations, and/or replacements thereto. The City shall be responsible for keeping the Field in a neat, orderly, clean and sanitary condition in accordance with all applicable federal, state, county, local rules and standards and in accordance with all requirements imposed by the Commission governing the use and maintenance of Commission-owned parkland.

3.2 Permitting of the Field. The City shall be responsible for issuing permits for the use of the Field. The City agrees to limit the issuance of permits for use of the Field to no more than five (5) days in any given week. The City may charge all users of the Field a reasonable permit fee. The City also agrees to allow the continued use of the Field by Piney Branch Elementary School during the school year.

3.4 Method of Permitting. The parties agree to the following:

a. Permits for use of the Field for baseball or softball may be issued to adult or youth groups and sports leagues.

b. Permits for use of the Field for soccer, lacrosse or football may be issued as follows:

i. Permits shall be issued to youth groups and sports leagues which are operated under the auspices of or associated with the City Recreation Department.

ii. In the event permitting time remains for use of the Field after City youth groups or sports leagues have submitted their permit requests, then permits may be issued to youth groups and sports leagues from anywhere in Montgomery or Prince George's County.

c. The City reserves the right to close the field and prohibit use for regeneration of turf, wet conditions, safety reasons or any other reason deemed necessary by the City.

3.5 Review of Permits by the Commission. The City agrees that any permit request for use of the Field for other than athletic purposes (such as the Takoma Park Folk Festival) shall be reviewed and approved by the Commission prior to approval and issuance of a permit by the

City. This provision is to ensure, among other things, public safety and compatibility of uses within the Park.

3.6 Commission Regulations. The City may establish rules and regulations regarding the use of the Field and such rules and regulations shall comply with all Commission rules and regulations set forth in The Maryland-National Capital Park and Planning Commission's Regulations Governing Use of Commission Park and Recreation Facilities in Prince George's and Montgomery Counties, effective May 9, 1987, as amended from time to time.

3.7 Signage. The City will not establish any permanent signs on the Field without the prior written consent of the Commission.

#### 4. RENOVATION OF PARK.

4.1 The Commission is undertaking a renovation of the Park, as set forth on the plans attached as Exhibit "B" and incorporated herein by reference.

4.2 As part of the Park renovation, controls for the Field irrigation system will be moved and installed in a locked box and the City will have the key for the box with the water controls.

4.3 If the Field or irrigation system is damaged during the renovation of the Park, the Field or irrigation system must be restored to its previous condition by the Commission.

4.4 As part of the Park renovation, a concrete pad will be installed at a location determined by the Commission in consultation with the City. The City will purchase and install a shed on this concrete pad to store equipment related to the use and maintenance of the Field. The Commission will pay up to \$5,000.00 towards the shed purchase and installation. If the cost exceeds \$5,000.00, then the balance will be paid by the City.

4.5 The constructed wetland facility located between the City Maintenance Yard and Park Ritchie Apartments will be maintained by the City, as shown on the Park Map attached as Exhibit "C" and incorporated herein by reference. The City will obtain written permission from the Park Ritchie Apartments to allow access for construction and maintenance of this facility.

4.6 The stormwater management facilities constructed within the active use portions of the Park will be maintained and managed by the Commission.

#### 5. OBLIGATIONS OF CITY

5.1 Liability Insurance. The City must, during the term of this MOU, carry at its sole cost and expense, comprehensive general liability insurance with an insurance company duly licensed and qualified to do business in the State of Maryland, providing for a minimum coverage of at least One Million Dollars (\$1,000,000.00) per occurrence for bodily injury or death, and property damage of Five Hundred Thousand Dollars (\$500,000.00) for accident and damages at the leased Field. This policy will also provide for medical payments to others in the amount of Five Thousand (\$5,000.00) per person per occurrence. In the event the Five

Thousand Dollars is exhausted, additional medical bills will be considered under the general liability provision of said policy. The City will furnish the Commission with a copy of a valid certificate of insurance by the commencement date of this MOU. The certificate of insurance shall name the Commission as an additional insured, and shall provide Commission with thirty (30) days advance notice of cancellation. City further agrees to waive any subrogation rights against the Commission.

5.2 Additional Insurance. The City at its own cost throughout the term must maintain, or cause to be maintained, the following additional insurance with respect to the Field:

a. Workers' compensation insurance covering City's employees.

b. Each truck, automobile or motor vehicle for which registration is required by the Transportation Article of the *Annotated Code of Maryland*, as amended from time to time, and used by the City in connection with its use of the Field, must be covered by automobile liability and property damage insurance in the minimum amount of One Million Dollars (\$1,000,000.00) against any claim for bodily injury or wrongful death and Five Hundred Thousand Dollars (\$500,000.00) property damage.

5.3 Utilities. Beginning upon the completion of the reconstruction of the water connections, which are part of the Commission's Park renovation work, the City will pay all water and sewer bills associated with the Park. The Commission shall be responsible for the electricity and any other utility charges (except water and sewer) for the Park.

5.4 Alterations and Changes to Field. Unless otherwise permitted by this MOU, the City may not make material changes, alterations or improvements to the Field without the Commission's prior written consent. Unless otherwise agreed by the parties, all changes, alterations and improvements shall be done solely at City's expense. Any changes, alterations, and improvements to the Field will comply with all applicable building codes and regulatory requirements of any governmental agency with jurisdiction over the Park. The City will not alter any water courses, place fill within the 100-year flood-plain, construct trails or access roads, cut any living trees, or excavate or build any improvements upon the Field without express prior written consent from the Commission.

5.5 Statutory Obligations. City's use and maintenance of the Field and shall comply with all present and future laws, including but not limited to ordinances and regulations of the Federal Government, State of Maryland, Montgomery County, Maryland Department of Natural Resources, and The Commission. The City shall make no illegal, unlawful, or unsafe use of the Field. The City shall comply with all regulations with respect to health, sanitation, permits, and use of pesticides, insecticides, and herbicides. The Commission agrees promptly to forward to City any notice from any governmental authorities with respect to the Field. The City may, in good faith, dispute the validity of any complaint or action taken pursuant to any of the foregoing, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequences of the same. The City agrees that any such contest shall be prosecuted to a final conclusion as speedily as possible, and City shall save the Commission harmless with respect to any actions taken by any governmental authorities resulting from City's maintenance of the Field. The Commission will save the City harmless

from any governmental action resulting from the Commission, its agents or employees actions on the Field or any other part of the Park.

5.6 Reports of Damage to Field. Upon discovery of either party of damage on or about the Field which occurs by any cause, including, but not limited to accident, fire, water, flood, freezing, wind, explosion, and vandalism, the City shall notify the Park Police at (301) 949-3010 and the Commission shall notify the City Recreation Department at (301) 891-7290.

5.7. Assignment and Subleasing Prohibited. City shall not assign, transfer, sublet, pledge, mortgage, surrender or in any manner encumber or dispose of the Field or any interest in any portion of the same without the express prior written consent of the Commission.

5.8. Noxious Weeds. The City agrees not to allow noxious weeds as defined by Maryland and Montgomery County laws (and any amendment thereto) to go to seed on the Field. City further agrees that it will prevent injury to and take proper care of all other trees, vines, shrubs and herbaceous plants on the Field, during the removal of noxious weeds.

## 6. OBLIGATIONS OF THE COMMISSION.

The Commission's Covenant of Quiet Enjoyment. The City, in performing all obligations hereunder, shall be entitled to and have exclusive possession of the Field, and rights and privileges leased hereunder, to the extent of and subject to the provisions on this MOU. The Commission, however, has the right to enter the Field at any time without prior notice for the purpose of inspecting the Field for compliance with the provisions of this MOU or in passing as a means of access to adjacent parkland.

## 7. TERMINATION.

7.1 Event of Default. Any one or more of the following events shall constitute a default of this MOU:

a. If City fails to keep in effect any financial obligations that are City's responsibility under the Memorandum of Understanding (e.g., to maintain insurance); or

b. If either party fails to perform as required by this MOU or fails to comply with any other covenant, agreement or condition of this MOU.

7.2 Notice of Default. Upon any Event of Default, the party claiming default shall serve a Notice of Default upon the other in accordance with paragraph 8.6. The defaulting party shall cure the default within fifteen (15) calendar days of such Notice.

7.3 Termination. If the defaulting party does not comply with a Notice of Default within the time limits imposed in Section 7.2, then the party claiming default may serve a Notice of Termination upon the defaulting party in accordance with paragraph 8.6, specifying the date and time of termination.

7.4 City Surrender Upon Expiration or Termination. Upon the expiration or

termination of this MOU, the City shall immediately quit and peaceably surrender the Field, without further notice, and without institution of legal proceedings. The City shall deliver up the Field and all improvements thereon in as good order and condition as when the City took possession, except for ordinary wear and tear, loss by fire or casualty, or loss by any cause beyond the City's control. City shall have the right to remove its personal property at any time prior to or at the expiration of the term of the MOU, including but not limited to, all materials, equipment, trade fixtures and items of every other sort or nature installed by City thereon, provided that such property is removed without substantial injury to the site and City has not obtained reimbursement from the Commission for such installed personal property. No injury shall be considered substantial if it is promptly corrected by restoration to the condition existing prior to the installation of such property, to the reasonable satisfaction of the Commission.

7.5 Temporary Suspension of Agreement. Either the City or the Commission may suspend this MOU, without notice, in an emergency situation if necessary to protect the public's safety and welfare. Additionally, the Commission may temporarily suspend this MOU, with ninety (90) days advance written notice to the City, in the event the Commission needs to temporarily suspend use of the Field for purposes such as, but not limited to, repair, renovation or replacement of structures or facilities.

## 8. MISCELLANEOUS PROVISIONS.

8.1 Indemnification. Regarding the use of the Field or any other matter relating to this MOU, each party shall indemnify and save the other harmless against and from, and shall reimburse the other for all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, not including attorneys' fees, which may be imposed upon or incurred or paid by or asserted against the other by reason of or in connection with any negligent, tortious, or any illegal act on the part of it, its agents or employees.

8.2 Applicable Law. This MOU shall be construed, interpreted and enforced according to the laws of the State of Maryland. The parties waive all right to a jury in the event any term or covenant of this MOU is in dispute, including disputes relating to possession, termination, or monetary claims.

8.3 Severability Clause. If any word, phrase, clause, sentence or any paragraph of this MOU shall be held unconstitutional or otherwise void or unlawful, such holding shall not affect the validity of the remainder of this MOU. Either party's failure to enforce any provision of this MOU does not waive such party's right to enforce any other provision of the MOU.

8.4 Integrated Agreement. This MOU contains all of the agreements and conditions made between the parties with regard to the Field and may not be modified orally or in any other manner other than by an amendment in writing, dated and signed by the parties, such amendment to be made a part of this MOU.

8.5 Successors and Assigns. All of the covenants, provisions, terms, agreements and conditions of this MOU shall inure to the benefit of and be binding upon the Commission, or any successor or assignee of the Commission, and upon City, or any successor or assignee of the City.

8.6 Notice. All notices to be sent to the parties shall be by postage pre-paid first class mail and may be copied by facsimile or e-mail.

a. Notices to the City pursuant to this MOU shall be addressed to:

Debra Haiduven, Recreation Director  
City of Takoma Park  
7500 Maple Avenue  
Takoma Park, MD 20912  
Fax: (301) 270-8794  
E-mail: DebraH@takomagov.org

b. Notices to the Commission pursuant to this MOU shall be addressed to:

Director of Parks  
The Maryland-National Capital Park and Planning Commission  
9500 Brunett Avenue  
Silver Spring, Maryland 20901  
Fax: (301) 495-9340  
E-mail: \_\_\_\_\_

8.7 Non-Discrimination. Neither party will discriminate against any employee or applicant for employment because of age, sex, race, creed, sexual orientation, national origin or disability. If either party is determined by final order of an appropriate agency or court to have engaged in conduct related to this MOU that violates any applicable non-discrimination provisions of Federal, State or local laws, this MOU may be terminated by the non-offending party.

IN WITNESS WHEREOF, the City of Takoma Park and The Maryland-National Capital Park and Planning Commission have set their hands on the day and year first written above.

Attest:

CITY OF TAKOMA PARK, MARYLAND

\_\_\_\_\_

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

Barbara B. Matthews, City Manager

Date signed: \_\_\_\_\_

Approved as to legal sufficiency:

\_\_\_\_\_  
City Attorney, City of Takoma Park

THE MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION

Attest:

\_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

Date signed: \_\_\_\_\_

Approved as to legal sufficiency:

\_\_\_\_\_  
M-NCPPC Legal Department