

Memorandum

To: Parks and Recreation Committee

From: Dean R. Gazza, Director of Parks, Recreation and Facilities Management

Date: February 19, 2014

Re: Mini-Park Agreement

In 1987, the City of Appleton and Aid Association for Lutherans (Thrivent Financial) entered into a 10-year agreement for the use of a small area east of the AAL building on College Avenue for a mini-park. That agreement was extended for an additional 10 years in 1997. A new agreement was executed in 2004 after the sale of the building from Thrivent Financial to 222 Building, LLC. The agreement executed in 2004 expires May 31, 2014.

Attached is the proposed agreement between the City of Appleton and 222 Building, LLC for the continued use of this property as a mini-park. The agreement is similar to the previous agreement with 222 Building, LLC and has been reviewed by the City of Appleton Attorney's office and legal counsel from 222 Building, LLC.

This agreement will appear on the Parks and Recreation Committee meeting agenda as an action item on February 26, 2014.

Please contact me at (920) 832-5572 or dean.gazza@appleton.org with any questions or concerns.

Your consideration of this matter is greatly appreciated.

COLLEGE AVENUE MINI-PARK AGREEMENT

I. THE PARTIES

- 1.01 The City of Appleton, a Wisconsin municipal corporation, doing business at 100 N. Appleton Street, Appleton, Wisconsin (“City”)
- 1.02 222 Building, LLC, a Wisconsin limited liability company, with offices at 200 E. Washington St., Suite 2A, Appleton, Wisconsin 54911 (“Owner”)

II. THE RECITALS

WHEREAS,

- 2.01 The City owns and maintains various parks throughout the city.
- 2.02 Part of Owner’s property located at 222 West College Avenue (“Property”), is a small outdoor area adjacent to the sidewalk and East of the building located on the Property (the “Outdoor Area”).
- 2.03 The Owner and the City previously had a long-standing agreement allowing the City to maintain this Outdoor Area as a park.
- 2.04 It is the desire of the City and Owner to continue the maintenance of this Outdoor Area as a park.

III. THE AGREEMENT

NOW, THEREFORE,

- 3.01 The Recitals are hereby made a part of the Agreement.
- 3.02 The City shall be responsible for routine maintenance of the Outdoor Area including litter and trash clean-up and removal as well as snow removal.
- 3.03 Major maintenance, landscaping, repair of structures and the like, including, but not limited to, fencing and screening, shall be the responsibility of the City.
- 3.04 The City agrees to indemnify, defend and hold harmless the Owner and its officers, officials, employees and agents from and against any and all liability, loss, damage expense, costs (including attorney fees) arising out of this agreement, caused in whole or in part by the City or anyone for whose acts any of them may be liable, except where caused by the sole negligence or willful misconduct of the Owner. Likewise, the Owner agrees to indemnify, defend and hold harmless the City and its officers, officials, employees and agents from and against any and all liability, loss, damage expense, costs (including attorney fees) arising out of this agreement, caused in whole or in part by any negligent act or omission of the Owner, anyone directly or indirectly employed by the Owner, except where caused by the sole negligence or willful misconduct of the City.

3.05 This Agreement shall be in effect until May 31, 2024 or unless terminated sooner by either party by providing written notice to the other at least sixty (60) days prior to the date set forth in the Notice for Termination.

IV. SEVERABILITY CLAUSE

4.01 In the event that any part of this Agreement is found to be invalid or unenforceable, it shall be stricken from the Agreement and the Agreement interpreted as if that clause did not exist.

IN WITNESS WHEREOF, the parties have caused the foregoing instrument to be executed by their duly authorized representatives as set forth below.

222 BUILDING, LLC

By: _____
John Pfefferle, Manager

Date: _____

Attest: _____

CITY OF APPLETON

Attest: _____

By: _____
Timothy M. Hanna, Mayor

Attest: _____

By: _____
Charlene Peterson, City Clerk

Provision has been made to pay the liability that will accrue under this contract.

Approved as to form:

Tony Saucerman, Deputy Finance Director

James P. Walsh, City Attorney