

★ **Roll Call Number**

Agenda Item Number

36

November 20, 2006

Date

WHEREAS, the Des Moines Park and Recreation Department is charged with maintaining and programming the James W. Cownie Baseball Park ("Baseball Park"); and

WHEREAS, the Greater Des Moines Baseball Co. ("GDMBC") grounds crew is recognized as having a very high level of expertise in horticultural field maintenance and has expressed a desire to provide custodial care and horticultural maintenance at the Baseball Park; and

WHEREAS, on March 20, 2006, by Roll Call No. 06-568, the City Council approved an agreement with GDMBC to provide horticultural maintenance at the James W. Cownie Soccer Park for an initial term of 3 years with two 3 year renewal terms upon mutual agreement of the parties ("the Agreement"); and

WHEREAS, the Park and Recreation Department staff and the GDMBC have negotiated an addendum to the Agreement which includes the Baseball Park in the maintenance responsibilities of the GDMBC, a copy of which is on file in the City Clerk's Office; and

WHEREAS, it is in the best interests of the City to enter into the Addendum to the Maintenance Agreement; and

WHEREAS, the City Manager recommends that the above described services procurement be exempted from the request for proposals process for good cause shown, pursuant to Section 2-710(b) of the Municipal Code of the City of Des Moines.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa:

1. That good cause has been shown to exempt the procurement of custodial care and horticultural maintenance services at the James W. Cownie Baseball Park from the request for proposals process under the Procurement Ordinance.
2. That the Addendum to Maintenance Agreement, which is on file in the City Clerks Office, is hereby approved and the Mayor is hereby authorized and directed to sign such agreement on behalf of the City and the City Clerk is hereby directed to attest to said signature.

Moved by \_\_\_\_\_ to adopt.

(Council Communication No. 06-740 )

APPROVED AS TO FORM:

Ann DiDonato  
Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**ADDENDUM TO  
MAINTENANCE AGREEMENT  
James W. Cownie Soccer Park  
By and Between  
City of Des Moines  
and  
Greater Des Moines Baseball Co.**

This ADDENDUM, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the City of Des Moines (hereinafter referred to as "CITY" and the Greater Des Moines Baseball Co., an Iowa Corporation (hereinafter referred to as "CONTRACTOR").to the MAINTENANCE AGREEMENT entered into on March 20, 2006 (the "Agreement") .

WHEREAS, the parties desire that the CONTRACTOR also provide maintenance services to the CITY owned James W. Cownie Baseball Park located at 2050 S.E. 22<sup>nd</sup> Street.

NOW THEREFORE, for and in consideration of the mutual promises and covenants of the parties hereto, it is agreed as follows:

1. The following shall be added after "Exhibit A" in the first WHEREAS clause on page one of the Agreement:

... "and the James W. Cownie Baseball Park located at 2050 S.E. 22<sup>nd</sup> Street, as shown on the attached as Exhibit "B" (the "Soccer Park"), collectively hereinafter referred to as "Premises").

2. Section 1 shall be deleted and replaced with the following:

1. PREMISES, CONSIDERATION, TERM. In consideration of the CONTRACTOR maintaining the Premises to provide excellent horticultural maintenance, custodial care and other services to the general public and for other good and valuable consideration subject to the terms and conditions of

this Maintenance Agreement, the City authorizes unto the CONTRACTOR and the CONTRACTOR accepts from the City, the right to provide the maintenance at the Premises as described above for an administrative fee of twenty-five thousand dollars (\$25,000.00) plus an amount not to exceed two hundred-eighty thousand dollars (\$280,000.00) in year one and an administrative fee of thirty thousand (\$30,000) in years two and three plus an amount not to exceed three hundred and five thousand (\$305,000) a year for the actual labor and supply costs of performing the services under this Agreement for the term commencing on March 20, 2006 and continuing thereafter until December 31, 2008 with an option for two (2) additional three (3) year renewals with mutual agreement of both parties. Beginning in January 2007, the CITY shall pay to the CONTRACTOR the administration fee by the 15<sup>th</sup> of January each year for the remaining term of this Agreement. The CONTRACTOR shall submit invoices of actual expenses to be reimbursed by the CITY. Such invoices shall include actual costs of employee payroll including wages, benefits and hours worked and copies of invoices for commodities and supply purchases used to perform the services needed to carry out the terms and conditions set forth in this Agreement. Upon receipt of CONTRACTOR invoices, the CITY shall reimburse the CONTRACTOR within two weeks of receipt of said invoices. Reimbursement to the CONTRACTOR shall be capped at \$280,000 during 2006 and \$305,000 each year thereafter over the course of the calendar year beginning January 1<sup>st</sup> and ending on December 31<sup>st</sup> of each year of this Agreement. The relationship between the CITY and the CONTRACTOR shall be that of independent contractor and not one of employer/employee.

2. Sections 2(5) and 2(6) are amended by adding "at the Soccer Park" at the end of both subsections.
3. Except as modified above, all other terms of the Agreement shall remain in effect.

IN WITNESS WHEREOF, we have hereunto set our hands on the day and year first written above.

GREATER DES MOINES BASEBALL CO.

CITY OF DES MOINES, IOWA

By [Signature]

By \_\_\_\_\_

Sam Bernabe, General Manager

T.M. Franklin Cownie, Mayor:

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_

[Signature]

Diane Rauh, City Clerk

Ann DiDonato, Assistant City Attorney

State Of Iowa )  
                           ) ss:  
 County Of Polk )

On this \_\_\_\_ day of \_\_\_\_\_, 2006 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared T. M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, and, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively of the CITY OF DES MOINES, IOWA; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution adopted by the City Council, under Roll Call No. 06-\_\_\_\_\_ of the City Council on the \_\_ day of \_\_\_\_\_, 2006, and that T. M. FRANKILN COWNIE and DIANE RAUH acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.

\_\_\_\_\_  
 Notary Public in the State of Iowa

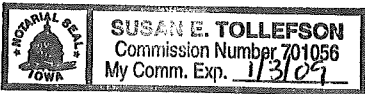
My commission expires: \_\_\_\_\_

State Of Iowa )  
                           ) ss:  
 County Of Polk )

On this 21<sup>st</sup> day of June, 2006 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Sam Bernabe, to me personally known, and, who, being by me duly sworn, did say that he is the General Manager of the GREATER DES MOINES BASEBALL CO., and that the instrument was signed and sealed on behalf of the organization, by authority of its board, and that Sam Bernabe acknowledged the execution of the instrument to be his/her voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.

[Signature]  
 Notary Public in the State of Iowa

My commission expires: 1/3/09





SAM BERNABE  
PRESIDENT/GENERAL MANAGER

November 13, 2006

The Iowa Cubs 501C3 Youth Baseball Foundation and the Greater Des Moines Baseball Club will commit a total of \$25,000 a year for the calendar years 2006, 2007 and 2008 to maintenance and turf management of the Cownie Baseball Fields.

Please contact Sam Bernabe at 515-243-6111 if there are any questions regarding this commitment.

Sam Bernabe  
President / G.M.

