

OFFICE OF GENERAL COUNSEL
117 W. DUVAL, SUITE 480
JACKSONVILLE, FL 32202
(904) 630-1700

MEMORANDUM

TO: Jody McDaniel, Parks & Recreation Department

FROM: Sharon Chappelle, Legal Secretary

RE: **Contract: Duval County School Board - Lawn Equipment for Terry Parker-
High School**

DATE: October 19, 2001

Attached are two (2) originals of the above referenced document which have been fully executed by the City of Jacksonville.

Please note that this document has been assigned City Number 7391-33, all invoices and/or correspondence pertaining thereto should show reference to that number.

Attachment

cc: Accounting Division

**AGREEMENT BETWEEN
THE CITY OF JACKSONVILLE
AND
THE DUVAL COUNTY SCHOOL BOARD
FOR
PURCHASE OF CERTAIN LAWN EQUIPMENT
FOR USE AT
TERRY PARKER HIGH SCHOOL FOR THE UPKEEP OF ATHLETIC FIELDS
AND FOR CONTINUED JOINT PUBLIC RECREATIONAL USE OF FACILITIES**

THIS AGREEMENT, made and entered into this 19th day of October, 2001, by and between THE CITY OF JACKSONVILLE, a municipal corporation ("City"), and DUVAL COUNTY SCHOOL BOARD, a public body corporate ("DCSB").

WITNESSETH:

WHEREAS, the City, in Section 106.315, Ordinance Code, authorizes City Council members to "self appropriate" up to \$100,000 from their respective district funds for various public projects; and

WHEREAS, Council Member Lake Ray has designated an amount of money up to, but not to exceed \$40,000, from District 1 funds, for the purchase of certain lawn equipment, as more particularly described in Exhibit A, attached hereto, and by this reference, made a part hereof, for use in maintaining athletic fields at Terry Parker High School for use by said school and the public; and

WHEREAS, the athletic fields at Terry Parker High School are owned and maintained by DCSB and are public property in the City of Jacksonville and, pursuant to that certain agreement between the City and DCSB, dated on or around January 20, 1998, are subject to joint use by and between the DCSB and the City; and

WHEREAS, said ordinance authorizes the Mayor to enter into a contract with DCSB to accomplish such purchase of said lawn equipment, specifying basic terms and conditions of said contract; and

WHEREAS, this Agreement is made and entered into pursuant to the direction and authority specified in said ordinance; and

WHEREAS, the undersigned representatives for the parties hereto are fully authorized to execute this Agreement and to bind each respective party hereto; now therefore:

IN CONSIDERATION of the mutual covenants herein contained and for other good and valuable consideration, the parties agree that

1. The above stated recitals are true and correct and, by this reference, are incorporated herein and made a part hereof.

2. The City agrees to purchase for DCSB certain lawn equipment as more particularly described in Exhibit A (or equivalent products) attached hereto and, by this reference made a part hereof (the "Equipment") for use by Terry Parker High School for maintenance of its athletic fields.

The cost for said Equipment shall be an amount not to exceed \$38,393.24, which amount shall be the City's maximum indebtedness, under this Agreement. Said payment shall be on a draw or cost reimbursement basis, paid by the City, directly to the vendor(s), and the purchase shall be made no later than sixty (60) days after execution of this Agreement.

3. If the actual costs of the Equipment exceed the \$38,393.24, then, and in such event the City shall not be responsible for such excess.

4. If the actual costs of the Equipment are less than the \$38,393.24, then and in such event, the City shall pay only the actual cost, of the Equipment, and excess funds shall be returned to the proper District 1 account.

5. To the extent that DCSB, receives funds directly, under this Agreement, DCSB shall provide the City's representative, as specified in Section 8, with all documentation, including bills and invoices satisfactory to justify a draw or reimbursement payment.

6. DCSB agrees to accept such Equipment in accordance with Section 106.315, *Ordinance Code*. Provisions of Section 106.315(b), *Ordinance Code*, are attached hereto as Exhibit B and, by this reference, are incorporated herein as if set out in their entirety. Additionally, DCSB agrees to comply with all bond covenants and restrictions as well as all other federal, state and local laws, rules and regulations in the expenditure of the \$38,393.24.

7. To the extent that DCSB receives and spends funds, from the District 1 account, DCSB shall provide to the Division Chief of the Planning, Research and Grants Division of the Parks, Recreation and Entertainment Department, with a full accounting of the sources and uses of funds for the purchase of the Equipment (including, but not limited to copies of all invoices and checks). Such accounting shall be submitted at the time the Equipment is purchased. Said accounting shall be on forms approved by the council Auditor and Director of Administration and Finance.

8. The Planning, Research and Grants Division of the Parks, Recreation and Entertainment Department is the City's representative to ensure compliance with all ordinances and other laws related to the purchase, and for the joint use specified in Section 8 of this Agreement. DCSB shall be solely responsible for all repairs and maintenance of and to said Equipment; and

DCSB shall be solely responsible for using the Equipment in the care and maintenance of the Terry Parker High School Athletic Fields, and DCSB shall be solely responsible for the care and maintenance of all facilities at Terry Parker High School, at no additional cost to the City.

9. Any unspent funds, from the District 1 funds existing on sixty (60) days after the day and year first above written, shall be returned to the City, for re-deposit into the proper District 1 account.

10. DCSB agrees that the Terry Parker High School Athletic fields will be made available for public recreational use by the general public, pursuant to that certain agreement by and between the City and DCSB, dated on or around January 20, 1998, except as otherwise provided herein. The City shall have the right to use such athletic fields at Terry Parker High School, for public municipal recreational purposes and for uses by the public, at times that do not conflict with use by Terry Parker High School, in high school related sports events and other school activities; *provided however*, that DCSB shall be solely responsible for all maintenance, care and repair of all facilities at Terry Parker High School, as specified in Section 8, of this Agreement, notwithstanding any contrary provisions in any other contract, memorandum of understanding, or other agreement, by and between the parties. Such joint use by the City, for public recreational purposes, shall be at no additional cost or expense to the City.

11. The City may terminate this Agreement, at any time, without cause, by giving thirty (30) days advance written notice to DCSB; or upon twenty-four (24) hours' advance written notice if funds become unavailable, for any reason.

12. The Parties agree that they have had meaningful discussions and/or negotiations of the provisions, terms and conditions of this Agreement. Therefore, doubtful or ambiguous

provisions, if any, contained in this Agreement shall not be construed against the party who physically prepared this Agreement. The rule commonly referred to as "*Fortius Contra Profereutum*" shall not be applied to this Agreement or any interpretation thereof.

13. For purposes of notice, the representatives of the parties shall be:

For the City:

Bob Baughman
Parks, Recreation and Entertainment Department
851 North Market Street
Jacksonville, Florida 32202

For the DCSB:

Principal
Terry Parker High School
7301 Parker School Road
Jacksonville, Florida 32211

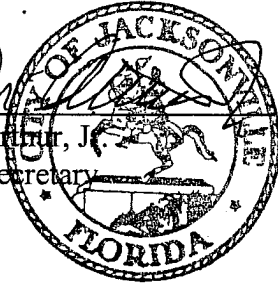
Notice shall be by certified mail, return receipt requested, or by hand delivery with signed receipts.

14. This Agreement represents the entire agreement between the parties for the purchase, and receipt of the Equipment using District 1 funds. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party or any representative of either party, which are not expressed in this Agreement, shall be binding. All revisions, changes, modifications or amendments to this Agreement must be in writing and signed by the authorized representative of each of the parties herein.

IN WITNESS WHEREOF, the parties, by and through their authorized representatives have executed this Agreement on the day and year first above written.

ATTEST:

By: *Neill W. McArthur, Jr.*
Neill W. McArthur, Jr.
Corporation Secretary



CITY OF JACKSONVILLE

By: *Sam E. Mousa*
John A. Delaney, Mayor

Sam E. Mousa
Chief Administrative Officer
For: Mayor John Delaney
Under Authority of
Executive Order No. 00-10

ATTEST:

By: _____
Signature
J.T. LOEHNERT
Type/Print Name
DIRECTOR REAL ESTATE
Title
10/9/01

DUVAL COUNTY SCHOOL BOARD

By: *McGlade L. Holloway*
Signature
MCGUADE L. HOLLOWAY
Type/Print Name
ASSISTANT SUPERINTENDENT
Title
10/9/01

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In compliance with the Ordinance Code of the City of Jacksonville, I do certify that there is an unexpended, unencumbered and unimpounded balance in the corporation sufficient to cover the foregoing and that provision has been made for the payment of the monies provided therein to be paid.

[Signature]
Director of Administration and Finance
7391-33 *[Signature]*

FORM APPROVED
[Signature]
OFFICE OF GENERAL COUNSEL

EXHIBIT A

LAWN EQUIPMENT FOR TERRY PARKER HIGH SCHOOL

One (1) - John Deere 4300 Tractor	\$13,143.60
One (1) - John Deere 4 x 2 Turf Gator Utility Vehicle	\$5,840.00
Three (3) - 01007 Toro Reel Master 7 Blake reels @ #1,837.51	\$5,512.53
Three (3) -01304 16" Semi-Pneumatic Wheels @ \$337.61 each	\$1,012.83
One (1) - 3 - gang lift frame	\$2,250.00
One (1) - 2001 Club Car Villager 4	\$4,183.00
One (1) - John Deere 200A Walk Behind Greens Mower	\$4,652.00
One (1) - 15 HP - 38" Hydro Lawn Tractor Utility Mower	<u>\$1,799.28</u>
TOTAL:	\$38,393.24

EQUIVALENT EQUIPMENT MAY BE PURCHASED WITHIN THE MAXIMUM INDEBTEDNESS AMOUNT OF THE AGREEMENT.

EXHIBIT B

Sec. 106.315. District Council expenditures.

City funds ("funds"), which may from time to time be appropriated to District Council accounts for various projects ("project(s)" defined herein to be any operating or capital expenditure of city funds"), shall be governed by this code section's requirements for the expenditure of said funds. The ordinance appropriating funds to District Council accounts shall define the project (i.e. operating or capital) and specify the permitted use(s) of the funds (e.g. recreational and/or other uses) and shall specify the term of the appropriation. Upon the expiration of the term, unexpended or unencumbered funds shall lapse into the Special Council Reserve Account. Except for projects undertaken by the city, all expenditures of funds shall be restricted to an organization ("organization" defined herein to be a legal entity making a contribution, whether monetary or otherwise, to the project) whose project is both open to the public and located upon public property ("public property" defined herein to include property leased to the city). In addition, uses of the funds shall be subject to the following requirements:

(a) District Council funds of twenty-five thousand dollars or less shall be expended in accordance with the following procedures:

(1) The District Council Member shall prepare a letter which provides Funds to an organization or city department in an amount certain and describes the purpose of the project and the public benefits of the project and the contributions of the organization. A copy of the letter shall be delivered to the Mayor.

(2) Based upon the letter, the Mayor is directed to process the request as follows:

- (i) Assign the project to the appropriate city department for project oversight and/or implementation;
- (ii) Prepare and process the appropriate budget and/or accounting and purchasing entries; and
- (iii) If the project is to be performed by an organization the Mayor shall prepare and execute a contract for the project requiring the organization to:
 1. Complete the project in a time certain;
 2. Provide project accounting/reporting back to the oversight department and council auditor's office;
 3. Comply with all applicable bond covenants/restrictions, ordinances, laws and regulations;
 4. Return unused funds to the District Council Fund;
 5. Provide for release of city funds to the organization on a draw for work done or cost reimbursement basis; and
 6. Such other contract provisions as may be deemed appropriate or necessary by the Mayor.

(b) District Council expenditures in excess of twenty-five thousand dollars shall, in addition to complying with the requirements of subsection (a) of this section, require the District Council Member to obtain City Council approval as evidenced by an ordinance appropriating the District Council Funds to a specific project.

(Ord. 1999-786-E, § 1.3(g))