



CITY OF WASHINGTON, ILLINOIS
Committee of the Whole Agenda Communication

Meeting Date: April 12, 2021

Prepared By: Ray Forsythe, City Administrator

Agenda Item: Washington Area Community Center Use Agreement

Explanation: The City of Washington approved Ordinance No. 2897 on 08/02/2010 which approved and authorized approval of an Intergovernmental Use Agreement with the Washington Area Community Center. Section III Transactions Related to the City Bond includes the following provisions:

1. WACC shall make an annual, lump sum payment of \$50,000 for each of ten (10) consecutive years commencing in 2011 and shall make an annual, lump sum payment of \$75,000 for each of ten (10) consecutive years commencing in 2021. Said annual payments shall be made on or before March 31st of each respective year.

WACC has made each of the required \$50,000 payments according to the agreement. At the February 17, 2021 Finance & Personnel Committee Meeting, Sherill West, President of the WACC Board of Directors, gave a presentation which included the impacts of the COVID-19 pandemic. The minutes of that meeting are attached to this Memo for reference.

Since the meeting, the City Administrator and the President of the Board of Directors have worked on a proposal to support the reopening of the event/banquet space. Below is draft language that we are seeking feedback from the City Council on prior to putting together an amendment to the Use Agreement.

Given the financial impact of state mandated closure of Five Points Washington due to COVID-19 pandemic of 2020 and subsequent significant restrictions to gatherings in the event/banquet center and theater that continue for 2021, essentially all planned gatherings and events have been non-existent. While there is some hope that the state will allow indoor gatherings in the latter part of 2021, there have not yet been any optimistic signs of that happening. Several regional/national performers that were under contract to appear at Five Points Washington for 2020 have since delayed committing to a contract prior to 2022.

Given these unusual circumstances the City of Washington agrees to establish a "Performance Support Fund" utilizing \$25,000 of the \$75,000 payment for next three years beginning with the payment due in 2021. Said fund would be governed by the following policies:

1. *Fund would be used to offset performer fees (including usual rider fees such as accommodations, meals, lighting/audio equipment, etc.).*
2. *Washington City Administrator and Five Points Washington General Manager would review potential events prior to contract signing to verify the event would qualify for coverage by the fund.*
3. *Five Points Washington General Manager would report final results of the event expenses to the City Administrator within 60 days of the event.*
4. *Any dollars remaining in the fund on December 31 would be retained in the fund for use the next year.*
5. *After year three, this agreement would be revisited to review the impact/success that performing arts events at Five Points Washington have had on bringing additional business to other businesses in the community.*

Date Prepared: 04/08/2021

Fiscal Impact: For the preliminary 3-year period: \$150,000 to be used to meet the WACC Bond Obligations. \$75,000 to fund the Performance Support Fund.

Recommendation/

Committee Discussion Summary: The Finance & Personnel Committee discussed supporting WACC/Five Points and recommended that a proposal be developed which could be presented to the Committee of the Whole.

Action Requested: Recommendation on a proposed amendment to the Use Agreement.

Additional Documentation: Finance & Personnel Committee Meeting Minutes, 02/17/2021; Ordinance No 2897 including the Intergovernmental Use Agreement with the Washington Area Community Center.

ORDINANCE NO. 2897

**AN ORDINANCE APPROVING AND AUTHORIZING
THE MAYOR AND CITY CLERK OF THE CITY OF
WASHINGTON, TAZEWELL COUNTY, ILLINOIS, TO
ENTER INTO AN INTERGOVERNMENTAL USE AGREEMENT
WITH THE WASHINGTON AREA COMMUNITY CENTER**

WHEREAS, on or about April 3, 2003, the City of Washington and Washington Area Community Center, Inc. ("WACC") entered into an Intergovernmental Agreement with other entities for the purpose of constructing and operating a community center; and

WHEREAS, the City pledged to pay for a portion of the construction of said community center and issue bonds pursuant to the Intergovernmental Agreement; and

WHEREAS, WACC has completed construction of the building complex; and

WHEREAS, the parties wish to more particularly define the parties' rights and responsibilities with regard to the various facilities available in the community center; and

WHEREAS, the parties wish to establish a method by which WACC may partially reimburse the City for its contribution toward the construction of the building complex.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WASHINGTON, TAZEWELL COUNTY, ILLINOIS, as follows:

Section 1. That the Intergovernmental Use Agreement between the City of Washington, an Illinois home-rule municipality, and Washington Area Community Center, Inc., a copy of which is attached hereto as Exhibit "A," and by reference expressly made a part hereof, be, and the same is hereby approved.

Section 2. That the Mayor and the City Clerk of the City of Washington be, and hereby are authorized, empowered, and directed to enter into and execute said Intergovernmental Use Agreement on behalf of the City of Washington in substantially the form of the document attached hereto, marked "Exhibit A," and by reference

expressly made a part hereof, and to make, execute, and deliver any and all documents necessary for the effectiveness thereof.

Section 3. That this ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Section 4. That all ordinances, or parts thereof, in conflict herewith are hereby expressly repealed.

PASSED AND APPROVED this 2nd day of August, 2010

AYES: Howerter, Schneider, Newman, Dingleline, Gee, Brubaker

NAYS: -0-

ATTEST:

Patricia S. Brown
City Clerk

May W. Marier
Mayor

**USE AGREEMENT BETWEEN CITY OF WASHINGTON
AND WASHINGTON AREA COMMUNITY CENTER**

This Use Agreement is made and entered into this ____ day of _____, 2010, by and between City of Washington and Washington Area Community Center, an Illinois not-for-profit corporation ("WACC"), for the purposes and on the terms and conditions described below.

RECITALS

WHEREAS, on or about April 3, 2003, the City of Washington, Tazewell County, Illinois, an Illinois home rule municipal corporation ("City"), and WACC entered into an Intergovernmental Agreement (the "Intergovernmental Agreement") with the Washington District Library, an Illinois public library district ("Library"), the Washington Community High School District 308, an Illinois school district ("School"), and the Washington Park District for the joint construction of a community center; and

WHEREAS, the City issued General Obligation Bonds, Series 2006, (the "Bonds") in the principal amount of \$5,000,000 to pay for a portion of the construction of said community center and is servicing the associated debt from municipal revenues; and

WHEREAS, WACC has completed construction of that building complex which is the subject of the Intergovernmental Agreement referenced above (the "Building"); and

WHEREAS, the community center includes a Performing Arts Center, an Aquatic Center, a Gymnasium, Fitness Center, Banquet Center, and various common areas and facilities; and

WHEREAS, pursuant to the Intergovernmental Agreement, the City and WACC desire to enter into a use agreement which will more particularly define the parties' rights and responsibilities with regard to the various facilities available in the community center; and

WHEREAS, the City and WACC wish to 1) set forth City's limited rights to the use of the Gymnasium, Banquet Center, Performing Arts Center, and Aquatic Center, 2) define certain meeting room set-up services that will be provided by WACC, and 3) establish a method by which WACC shall partially reimburse the City for its contribution towards the construction of the building complex;

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, the parties hereto covenant, consent, and agree as follows:

**SECTION I
PREMISES**

In accordance with the Intergovernmental Agreement, WACC owns that certain real estate located on North Wilmor Road, Washington, Illinois, more particularly described in the Intergovernmental Agreement (the "Community Complex Site") which is the subject real estate

on which the community center and its related components which are the subject of said Intergovernmental Agreement are constructed. It is contemplated that the City will be entitled to use the Community Complex Site and Building as provided herein (each component of which is referred to collectively herein as the "Facilities").

SECTION II TERM

The term of this Agreement shall commence on the date this agreement is signed by both parties (the "Commencement Date"), and shall end on March 31, 2030, provided that each party is in compliance with the terms and conditions set forth herein.

SECTION III TRANSACTIONS RELATED TO THE CITY BOND

WACC shall, pursuant to this Use Agreement, repay some of the city's debt service cost associated with the above referenced \$5 million bond issue in accordance with the following provisions:

1. WACC shall make an annual, lump sum payment of \$50,000 for each of ten (10) consecutive years commencing in 2011 and shall make an annual, lump sum payment of \$75,000 for each of ten (10) consecutive years commencing in 2021. Said annual payments shall be made on or before March 31st of each respective year.
2. The above referenced annual payments shall receive higher funding priority than forgiveness of the initial annual construction debt service received from the Washington Park District in the amount of \$15,000.
3. The above referenced annual payments supplant and supersede all payment obligations described in the Intergovernmental Agreement dated April 3, 2003.

SECTION IV USE OF THE PREMISES

(a) Common Issues Regarding Use.

(1) The City shall have, pursuant to this Use Agreement, limited use of the Facilities and any equipment associated with the use of such Facility (including, by way of example, tables and chairs, podium, etc.) (excepting Library) for such purposes as provided for herein below.

(2) In no event shall the City or WACC sublet or assign their respective interests under this Agreement except that WACC may enter an agreement with a third party to manage the community center and uphold the obligations of WACC described herein.

(3) The City shall at all times while using the Facilities comply with all federal and state statutes and regulations of all administrative bodies having jurisdiction thereof, whether federal, state or municipal, and the City shall at all times save and keep harmless WACC from all loss, cost, damage, or liability under any federal or state statute, law or regulation or otherwise by reason of any use of the Facilities or lack thereof on account of any business conducted therein or any part thereof or by reason of any act or acts of negligence of the City, its employees or any person or persons occupying the Facilities, or any part thereof, by, through or under the City.

(4) All requests for reservations of a particular community center facility shall be in writing addressed to the community center General Manager.

(5) Except as provided for hereinbelow, the City shall pay WACC for all use of the Facilities at a rate which is regularly charged to third party users of the Facilities.

(6) No security deposit of any kind or reservation deposit shall be required of the City for any event properly scheduled under the terms herein. Notwithstanding the foregoing, should the City desire to reserve the premises for its use other than as provided for herein, the WACC reserves the right to subject the City to the same security deposit and forfeiture provision as all non-participating community center entities or individuals.

Banquet facilities

Priority Scheduling: City's priority preference use of the Banquet Center without charge shall be limited to two annual weekday (Monday thru Friday noon) events (currently known as Mayor's Prayer Breakfast and Washington Day Banquet). The City shall provide the General Manager of Five Points Washington the dates and times desired at least twelve (12) months in advance.

Non-priority Scheduling: City may schedule additional use of the Banquet Center on a non-priority basis for limited, occasional use for council meetings and other public meetings or special meetings where attendance is expected to exceed the normal City Council meeting room capacity. Such "short notice" use should be sought by the City Administrator contacting the General Manager requesting if the space is available. Such "non-priority" scheduled use shall be free of charge and shall be limited to no more than six times annually.

Revenues: The City reserves the right to operate, manage, and collect revenue from all ticket sales and event registration fees supporting all programs it presents at the facility, and expressly reserves the right to revenues from ticket sales for any such events/performances.

Promotions. WACC and the City shall agree upon a mutually acceptable location for the City to post advertisements and displays related to upcoming City events utilizing the Banquet Center.

Support of City Meetings: WACC agrees to provide room set-up and tear-down service for scheduled City Meetings (such as City Council, Planning Commission, and Zoning Board of Appeals) held in the Library Meeting Room or other areas within the facility under the control of WACC. The City will provide to the Five Points Washington General Manager or Maintenance Manager a schematic of desired room arrangement at least 24 hours prior to the meeting.

SECTION V MANAGEMENT

WACC is responsible for the management of, and maintenance concerning, the Facilities. The City shall have one elected position on the WACC board in accordance with the governance guidelines and by-laws of the WACC board.

SECTION VI REPAIRS AND MAINTENANCE

- (a) WACC agrees and represents that WACC shall be responsible for all maintenance and repairs to the interior and improvements in the Facilities at WACC's own expense. WACC further agrees that WACC shall be responsible for all maintenance and repairs of the exterior of the Community Complex Site including the realty and all improvements thereon and for all permanent, structural improvements to the exterior of the Facilities, including the roof, walls, foundation and mechanical systems.
- (b) WACC agrees to keep all mechanical systems, including but not limited to plumbing, electrical, sewer, toilets, heating and air conditioning, and all other equipment and machinery in the Facilities in good repair.
- (c) Any additions to the present mechanical systems, including but not limited to all heating systems, water pressure pipes, electrical power or electrical wiring or sewers, shall be done at the expense of WACC, and shall be and become the property of WACC.
- (d) It is further agreed that if any insects, rats, or other pests shall hereafter infest the Facilities, or any part thereof, all damage shall be assumed by WACC and City shall not be liable for any such damage, and WACC agrees to take reasonable actions to rectify any such infestation.
- (e) Notwithstanding the above, the City will be solely responsible for the cost of repairs or other damage caused by the City, its agents, employees or invitees.

SECTION VII INSURANCE

- (a) The City's Insurance Responsibility. The City shall provide during the term of this Agreement such general liability insurance as is necessary to insure against injuries to participants in the City's programs or meetings or third parties or damage to the Facilities arising from its use of the Facilities which shall at a minimum cover (through any combination of primary and secondary coverage policies) bodily injury in the minimum amount of \$1,500,000.00 per occurrence and property damage in a minimum of \$250,000.00 per occurrence.
- (b) WACC's Insurance Obligation. WACC shall pay for and maintain fire and extended coverage insurance insuring the Facilities to full replacement value as well as extended coverage general liability insuring the Facilities in the following amounts: bodily injury \$1,500,000.00 per occurrence; property damage \$250,000.00 per occurrence.
- (c) Obligation to Rebuild. In the event that the Facilities shall be damaged by fire or other casualty so as to be unusable, all obligations herein shall abate until the same is repaired or rebuilt and in such case the terms of this Use Agreement or any renewal thereof shall be extended the same length of time as the Facilities were unusable, and in case the Facilities shall be rendered so unusable, WACC shall repair the same within a reasonable time to put the Facilities in substantially the same condition as they were in immediately prior to such damage. WACC shall be obligated to rebuild the Facilities in the event that the Facilities are entirely destroyed or destroyed to such extent that they are not reasonably capable of being repaired. In the event that WACC desires to not rebuild the Facilities, it may do so as long as it has obtained the approval of each of the parties to the Intergovernmental Agreement and so long as proceeds of any insurance covering such casualty are distributed to the parties in proportion to their contribution to construct the Facilities pursuant to the Intergovernmental Agreement.

SECTION VIII WAIVER OF CLAIMS; INDEMNIFICATION

- (a) The City Waivers and Indemnity. WACC and any of WACC's agents, employees, officers, or directors will not be liable for any injury or damage to personal property sustained by the City, its agents, employees, or invitees, except for damages caused by the acts or omissions of WACC. The City waives all claims against the foregoing parties for damage to personal property sustained by the City, and/or any claim by any person claiming by or through the City resulting from any accident or occurrence in or on the Facilities from time to time or for personal injury to the City's agents, employees, or invitees. The City agrees to indemnify and hold harmless WACC, and any of WACC's respective agents, employees, officers, or directors from all liabilities, injuries, losses, causes, damages, costs and/or expenses (including reasonable attorneys' fees): (a) in

respect to any injury or death of any person and/or damage to or loss or destruction of any property while on any part of the Facilities occasioned by any action or omission of the City or anyone claiming by or through or under the City; (b) as a result of actions performed or caused to be performed by the City within the Facilities; (c) as a result of any failure by the City hereunder; and (d) as a result of the failure of City to comply with any law, ordinance, or other requirements or any governmental authorities.

- (b) WACC Waivers and Indemnity. The City, and any of the City's agents, employees, officers, or directors will not be liable for any injury or damage to personal property sustained by WACC, its agents, employees, or invitees, except for damages caused by the acts or omissions of the City. WACC waives all claims against the foregoing parties for damage to personal property sustained by WACC, and/or any claim by any person claiming by or through WACC resulting from any accident or occurrence in or on the Facilities from time to time or for personal injury to WACC's agents, employees, or invitees. WACC agrees to indemnify and hold harmless the City, and any of the City's respective agents, employees, officers, directors, or students from all liabilities, injuries, losses, causes, damages, costs and/or expenses (including reasonable attorneys' fees): (a) in respect to any injury or death of any person and/or damage to or loss or destruction of any property while on any part of the Facilities occasioned by any action or omission of WACC or anyone claiming by or through or under WACC; (b) as a result of actions performed or caused to be performed by WACC within the Facilities; (c) as a result of any failure by WACC hereunder; and (d) as a result of the failure of WACC to comply with any law, ordinance, or other requirements or any governmental authorities.
- (c) Indemnity for Utility Service. The City shall not be liable for any personal injury or property damage resulting from the negligent operation or faulty installation of utility services provided for use at the Facilities, nor shall the City be liable for any injury or damage suffered by the City or its invitees as a result of the failure to make necessary repairs to the utility facilities.

SECTION IX UTILITIES

- (a) WACC shall initiate, contract for, and obtain, in its name, all utility services required for the Facilities, including gas, electricity, telephone, water, and sewer connections and services. WACC shall pay all charges for those services as they become due.
- (b) The City shall be liable for any injury or damages to the equipment or service lines of the utility suppliers that are located in the Facilities, resulting from the negligent or deliberate acts of the City, or the agents or invitees of the City.

**SECTION X
RIGHTS AND REMEDIES ON BREACH**

In the event any action is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums either party may be called on to pay, a reasonable sum for the successful party's attorney's fees. The parties agree that reasonable attorney's fees shall include those incurred for the purpose of negotiation, trial, appellate, or other legal fees.

**SECTION XI
BINDING EFFECT**

This Agreement shall bind the successors and assigns of the parties hereto.

**SECTION XII
TIME OF ESSENCE**

It is specifically declared that time is of the essence of this Use Agreement.

**SECTION XIII
GOVERNING LAW**

This Use Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Illinois.

**SECTION XIV
REVIEW, EVALUATION AND MODIFICATION OF AGREEMENT**

The terms and conditions set forth in this Agreement shall be subject to good faith review and evaluation for fairness and efficacy on or before March 31, 2015 and every five (5) years thereafter. Such review and evaluation shall consider, among other matters, the purpose of this Agreement, the accomplishment of that purpose and the relative burdens and benefits to the parties in fulfilling such purpose. Changes to the terms and conditions shall be sought in good faith to address any undue burden or benefit to the parties.

Any change in the terms or modification of this Use Agreement shall be by mutual consent and shall be binding only if evidenced in writing signed by an authorized representative of each party.

**SECTION XV
NOTICES**

- (a) All notices, demands, or other writings in this Use Agreement provided to be given or made or sent, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when made in

writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

To WACC: President
 P.O. Box 352
 Washington, IL 61571

To City Mayor of Washington
 301 Walnut St
 Washington, IL 61571

**SECTION XVI
PARAGRAPH HEADINGS**

The titles to the paragraphs of this Use Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Use Agreement. The Recitals, however, shall be considered part of the Use Agreement between the parties hereto.

WASHINGTON AREA COMMUNITY
CENTER, INC., an Illinois not-for-profit
corporation

CITY OF WASHINGTON

By: _____
 Its President

By: _____
 Its Mayor

ATTEST:

ATTEST:

 Its Secretary

 Its City Clerk