

Draft

**RESOLUTION NO. R25-79**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF COLUMBUS, NEBRASKA, APPROVING THE AGREEMENT WITH THE LEGACY YOUTH FOUNDATION FOR USE OF PART OF THE MEMORIAL STADIUM PARKING LOT IN PAWNEE PARK FOR A DRIVE-IN MOVIE THEATER, A COPY OF WHICH IS ATTACHED HERETO; AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY OF COLUMBUS.

WHEREAS, the Legacy Youth Foundation desires to use part of the parking lot at Pawnee Park Memorial Stadium to host drive-in movie theater events; and,

WHEREAS, the City is willing to allow this use pursuant to specific terms and conditions for said use; and,

WHEREAS, a copy of the Agreement for Use of Municipal Property For Drive-In Movie Theater which will govern said use is attached hereto and incorporated herein by this reference.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF CITY OF COLUMBUS, NEBRASKA, that the Agreement with the Legacy Youth Foundation for Use of Municipal Property For Drive-In Movie Theater, a copy of which is attached hereto and incorporated herein by this reference, is hereby approved; and, the mayor is authorized, directed, and empowered to execute the same on behalf of the City of Columbus, Nebraska.

This resolution shall repeal all resolutions or portions thereof in conflict herewith.

INTRODUCED BY COUNCIL MEMBER \_\_\_\_\_

PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2025.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY



Accountability - Dedication  
Honesty - Integrity - Respect

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## MEMORANDUM

**DATE:** May 14<sup>th</sup>, 2025  
**TO:** Committee of the Whole  
**FROM:** Tara Vasicek, City Administrator  
**RE:** Legacy Youth Foundation Use of Memorial Stadium Parking lot for Drive-In Theatre

### RECOMMENDATION:

Recommend approval of the agreement with the Legacy Youth Foundation.

### DISCUSSION:

We have been working with the Legacy Youth Foundation group for about a year and a half on this project. We have negotiated the use and agreement based on their intended use and the City's typical requirements related to use of public space by a private entity.

### ALTERNATIVE:

Do not approve.

### CONCURRENCE:

*Betsy Eckhardt*

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Betsy Eckhardt, Director of Park and Rec.

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# **AGREEMENT FOR USE OF MUNICIPAL PROPERTY FOR DRIVE-IN MOVIE THEATER**

THIS AGREEMENT (hereinafter referred to as the "Agreement") is hereby made and entered into by and between Legacy Youth Foundation, a non-profit corporation of the State of Nebraska (hereafter referred to as "Licensee"), and The City of Columbus, Nebraska, a Municipal Corporation of the State of Nebraska (hereafter referred to as "Licensor").

## **RECITALS**

- A. Licensor owns and operates Real Property commonly referred to as Memorial Stadium in Pawnee Park. Licensee desires to license a portion of said real property. The actual use areas contemplated include a parking lot outside of the stadium, and the concessions facilities and restrooms inside the stadium. A Site Map of the real property which delineates the desired and contemplated use areas is further described and/or shown on "Exhibit A". The actual use areas of the real property to be leased and used by Licensee is hereafter referred to as the "Premises".
- B. Licensee is involved in organizing recreational activities in the municipality in the form of "drive-in movie theater".
- C. Licensee desires to utilize the Premises for its drive-in movie theater and is willing to enter into this Agreement in order to ensure that the operation and use of the real property during follows the current applicable rules for safe operation.
- D. Licensee acknowledges and agrees that the use of the Premises for drive-in movie theaters or other recreational activities and related activities, and the participation in those activities thereon, presents an inherent risk of harm both foreseeable and unforeseeable. By choosing to conduct and participate in activities on the Premises, Licensee, its employees, volunteers, agents, contractors, participants, and spectators are accepting that risk and wave any and all liability on the part of the Licensor to the extent permitted by law.
- E. Licensor desires to enter into this Agreement whereby Licensee shall license and manage the Premises for Licensor, subject to the following terms.

NOW THEREFORE, IT IS AGREED TO BY AND BETWEEN LICENSOR AND LICENSEE AS FOLLOWS:

1. Premises. Licensor desires to nonexclusively license the Premises or a portion thereof during set dates and times. Such areas include the parking lot outside of the stadium, and concessions facilities and restrooms inside the stadium (a Site Map of the Premises which delineates the contemplated use areas is further described and/or shown on "Exhibit A"). Licensor hereby non-exclusively licenses the Premises to Licensee, and Licensee hereby non-exclusively licenses the Premises from Licensor for its events during the License Term. Licensee agrees to pay the facility fee, if any, and to perform

all of Licensee's obligations described herein. The parties agree that Licensee shall have the non-exclusive right to use the Premises and such other portions of the real property as is necessary for Licensee to access and use the Premises. The parties agree that the use of the Premises is subject to such time and locations, and procedures and rules, as may be designated or set by Licensor's Parks Department.

2. Parties' Obligations. The Parties agree to be responsible for the following tasks at the Premises:

a. Licensee Obligations:

- Licensee shall continuously provide to Licensor's Park Department an up-to-date schedule of its desired events and movie showings at the Premises as soon as available and practicable.
- Licensee agrees that no food or drink is allowed on the Field Turf or Track at Memorial Field, and it shall actively enforce this during the entirety of each and every one of its events at the Premises.
- Licensee shall ensure the concession stand is maintained in a state of cleanliness for the duration of its use.
- Licensee shall thoroughly pick up all garbage and permanently dispose of garbage after each event.
- Licensee shall clean and return all Premises used for each event to its condition prior to each event.
- Licensee shall provide and install barricades for the areas which will be used by pedestrian in Pawnee Park and Memorial Stadium on the day of their events; Licensee shall work directly with Licensor to determine the location(s) and material(s) necessary for all such barricades.
- Licensee shall provide upon request a written report of its activities and the numbers of individuals participating in its' events whenever requested by Licensor and in any form that Licensor may desire or require.
- Licensee shall, prior to each use, inspect the Premise and report to the Licensor any conditions which appear to create a danger to either anyone.
- Licensee shall provide equal access to its events and shall not discriminate against any person on the basis of race, color, religion, sex, age, national origin or disability.

b. Licensor Obligations:

- Licensor will open and close the concession stands before and after use or provide a means for the Licensee to do so;
- Licensor will turn on the parking lots lights as it may deem necessary.
- Licensor will provide trash receptacles for use by the Licensee.

3. Management. The parties acknowledge and agree that Licensee shall be solely responsible for the operation, management, policing, and enforcing of the Premises during its events during the term of the Agreement when the Premises are being utilized for a drive-in movie theater and any related activities.

4. Maintenance By Licensee. Licensee shall be responsible to maintain the Premises in accordance with the policies, procedures, and rules set forth by Licensor so that the Premises may be utilized for drive-in movie theater and related activities hereunder. Licensee shall ensure that the stadium amenities facilities are only utilized in accordance with the applicable rules set forth by Licensor and that any participants and spectators permitted to be in attendance at the Premises, act in accordance with said rules. Licensee shall be responsible for providing, purchasing, and utilizing the supplies (cleaning supplies, rope, etc.) necessary to follow all rules, policies, procedures, guidelines, and/or any directed health measures set forth by Licensor.
5. License Term. The License shall be for a term beginning June 1, 2025, and ending May 31, 2027, subject to any conditions found within this Agreement. Either party shall have the right to terminate this License by providing the other party with no less than thirty (30) days' prior written notice. Such notice shall specify the date that the License shall terminate. Notwithstanding the foregoing or any other provision herein, the parties acknowledge and agree that Licensor retains the right, at any time, to terminate this License by written notice to Licensee if such termination is required under the applicable rules set forth by Licensor or any amendment, replacement, or supplement thereto, or in the event Licensor determines, in Licensor's discretion, that Licensee has failed to manage and operate the Premises in accordance with the rules set forth by Licensor. Any such termination shall not relieve the Licensee of the obligations of Licensee hereunder that have occurred or accrued hereunder prior to the termination.
6. Specific Event Dates and Times. Licensee agrees that it must have each event date pre-approved in writing by Licensor's Park and Recreation Department, which approval is at the sole discretion of Licensor; and, that it may only begin site set up no earlier than three (3) hours prior to each event and that it must complete site tear down within three (3) hours after each event concludes.
7. Facility Fee. Licensee agrees to pay Licensor a license fee. This license fee has been set by resolution of the City Council of the Licensor and is listed on the Schedule of Fees of the Licensor. The Licensor's Schedule of Fees is subject to amendment and revision from time to time; therefore, Licensee acknowledges and agrees that the license fee of this Agreement may be amended and changed at the sole discretion of the Licensor. Licensee shall make all payments of the license fee and other expenses to Licensor at the Licensor's then current address or at such other address as Licensor may from time-to-time request in writing. Such payment shall be made within ten (10) days after demand.
8. Acceptance of Premises. By taking possession of and or using the Premises, Licensee accepts the Premises in its current condition. Licensee further agrees that Licensor has not provided Licensee with any warranty or representation as to the condition of the Premises and that Licensee has investigated the Premises and has determined to Licensee's satisfaction that the Premises is satisfactory for Licensee's proposed use. Licensee also acknowledges and agrees that Licensee is only utilizing a portion of the Real Property that is described herein as the Premises and that Licensor and other parties also shall have the right to use the Real Property during the License Term, subject to

the reasonable licensing discretion of Licensor.

9. Improvements and/or Alterations. Licensee shall not permit any permanent improvements, alterations, or additions to any part of the Premises which will affect or impair any structure that is on the Premises, or lessen the value of the Premises, or change the purposes of the Premises, except by the prior express written consent and permission of Licensor. Licensor reserves the right to withhold its consent for any improvements, alterations, or additions in Licensor's sole discretion. All permanent improvements, alterations, or additions made by Licensee to the Premises erected during the term of this agreement shall remain for the benefit of the Licensor and become part of Premises, unless otherwise agreed to in writing. Licensee may make temporary improvements, alterations, or additions, to the Premises of a non-structural nature with verbal consent from Licensor. Any permanent or temporary alterations, additions, repairs, and/or improvements performed by Licensee shall be performed in a satisfactory manner to Lessor. Licensee hereby indemnifies Licensor against any liens, costs, damages, and expenses with respect to any such permanent or temporary alterations, additions, repairs, and/or improvements.
10. Restoration of Property. If the construction, maintenance or operations outlined in this agreement requires excavation of earth, or removal of hard surface, grass, vegetation, landscaping, or any other disruption of the existing conditions of the city's property, Licensee shall restore such conditions to the same condition as it existed immediately prior to Licensee's work in the area.
11. Utilities. Licensor is responsible for utilities at the Premises.
12. Security at Events. Licensee shall be responsible for arranging and providing adequate security for all scheduled events involving its use of the Premises.
13. Insurance. During the term of the Agreement, Licensee shall, at its own cost and expense, procure and continue in force such insurance policies as are required by Licensor. Such insurance shall, at a minimum include commercial general liability insurance with a combined policy limit of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate, or such other amount as is reasonably agreed to by the parties. Licensor shall be named as an additional insured on all such policies of insurance. A renewal policy shall be procured not less than ten (10) days prior to the expiration of any policy. Each original policy or a certified copy thereof, or a satisfactory certificate of the insurer evidencing insurance carried with proof of payment of the premium, shall be deposited with Licensor prior to the commencement date of the term hereof and within ten (10) days of each anniversary date thereafter. Licensee shall provide workers' compensation and employer liability coverage as may be required by the State of Nebraska.
14. Indemnification. Licensee agrees to indemnify and hold Licensor harmless from and against any and all claims, damages, or causes of action and all liability, cost or expense specifically including court costs and all reasonable attorney fees to the extent the same arise out of or in any way connected with Licensee's or Licensee's agents' use of the

Premises during the term hereof. Whether the same are raised during the term hereof or after. Without limiting the foregoing, the parties acknowledge and agree that the foregoing indemnification specifically includes any claims, damages, or causes of action and all liability, cost or expense specifically including court costs and all reasonable attorney fees for any pandemic, or related issues.

15. Entry by Licensors. Licensors, its agents, and employees shall have the right to enter the Premises at all reasonable times during Licensee's usage, for examination and to determine compliance on the part of the Licensee with the Agreement.
16. Waste, Nuisance, or Unlawful Use. From set up to tear down of its events, Licensee agrees that it will not commit waste upon the Premises, or maintain or promote the Premises to be used as a nuisance thereon, or permit the Premises to be used in an unlawful manner.
17. Photos and Videos of Events. Licensee gives Licensors and its agent's permission to take photos and record videos of its events, volunteers, agents, and participants and to later use them without payment or notice to promote the City of Columbus.
18. Assignment. Licensee shall not assign, sub-license, or otherwise transfer, by operation of law or otherwise, this License or any interest herein without the prior written consent of Licensors, which consent may be withheld in Licensors's sole discretion.
19. No Re-license. Licensors's consent to any assignment, encumbrance, sub- license, occupation, or other transfer shall not release Licensee from any of Licensee's obligations hereunder or be deemed to be a consent to any subsequent assignment, sub-license, or occupation unless Licensors agrees in writing. The collection or acceptance of the facility fee or other payment by Licensors from any person other than Licensee shall not be deemed the acceptance of any assignee or sub-licensee as the Licensee hereunder or a release of Licensee from any obligation under this License.
20. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default: (i) the failure by Licensee to make any payment of the facility fee or any other payments required to be made by Licensee under this License when due; and (ii) the failure by Licensee to observe or perform any of the provisions of this Agreement to be observed or performed by the Licensee if such failure continues for a period of ten (10) days, or such other period if this License specifically provides a different period for a particular failure, after written notice by Licensors to Licensee of such failure; provided, however, that with respect to any failure which cannot reasonably be cured within ten (10) days, an Event of Default shall not be considered to have occurred if Licensee commences to cure such failure within such ten (10) day period and continues to proceed diligently with the cure of such failure.
21. Remedies. Should Licensors, in its sole discretion, determine at any time that any terms of the Agreement and/or this Agreement are in default or are not being strictly followed by Licensee, Licensors has the absolute right to immediately cause the event to be suspended until the violations is corrected or to declare the same terminated; to

cancel any remaining events for that day; to suspend the Licensee's use of the Premises until further notice; and/or, to declare the License at an end and terminate the Agreement outright. In the event of a default, Licensors may sue Licensee for any damages sustained by Licensors. The remedies of Licensors set forth in this provision, or elsewhere in this Agreement, shall not be exclusive, but shall be cumulative and in addition to all rights and remedies now or hereafter provided or allowed by law or equity, including, but not limited to, the right of Licensors to seek and obtain an injunction and the right of Licensors to seek damages in addition to those specified herein.

22. Notices. Any notices required or permitted to be given under this License shall be in writing and may be delivered personally or by certified mail to the other party at the address set forth below. Any notice given by mail shall be deemed received two (2) business days following the date such notice is mailed as provided in this Section. Any notice given by electronic mail or personally delivered shall be effective upon receipt. Either party may change its address for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

a. Licensors's Address:      City of Columbus  
Attn: City Administrator  
2500 14 Street, Suite 3  
Columbus, NE 68601

b. Licensee's Address:      Legacy Youth Foundation  
Attn:

Columbus, NE 68601

23. Partial Invalidity. If any term or provision of the terms of the Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
24. Non-Waiver. No waiver by Licensors of any default, breach or violation of the Agreement or the application thereof, to any person or circumstances, shall operate as a waiver of any other default or of the same default on a future occasion.
25. Applicable Laws. This License shall be governed by and construed in accordance with the laws of the State of Nebraska.
26. Modification. This License contains all of the terms and conditions agreed upon by the Licensors and Licensee with respect to the Premises. All prior negotiations, correspondence, and agreements are superseded by this License and any other contemporaneous documents. This License may not be modified or changed except by written instrument signed by Licensors and Licensee.



27. Relationship of Parties. The Parties acknowledge that Licensor is a separate, independent, and standalone legal entity from Licensee and that each party has no say or control over its management or day to day operations of the other. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of Licensee and Licensor.
28. Waiver. The acceptance of the facility fee or other payments by Licensor, or the endorsement or statement on any check or any letter accompanying any check for the facility fee or other payment shall not be deemed an accord or satisfaction or a waiver of any obligation of Licensee regardless of whether Licensor had knowledge of any breach of such obligation. Failure to insist on compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder, at any one time or more times, be deemed a waiver or relinquishment of such rights and powers at any other time or times or under any other circumstance(s).
29. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this License, but shall be interpreted according to the application of rules of interpretation of contracts generally.
30. Memorandum of License. Licensee shall not be permitted to file a memorandum of the License or other documents in the real estate records of the County including the Premises.
31. Binding Effect. This License shall be binding upon and shall inure to the benefit of Licensor, Licensee, and their respective successors and assignees.
32. Counterparts. This Agreement may be executed in two or more counterparts, all of which shall, in the aggregate, be considered one and the same instrument.
33. Terms. Any capitalized terms used herein and not otherwise defined in this Agreement shall have their plain and ordinary meaning. Whenever required by the context, the singular shall include the plural, the plural the singular, and one gender shall include all genders. When not inconsistent with the context, words used in the present tense include the future. The words “shall” and “will” are mandatory, and the word “may” is permissive.
34. Caption Headings. Caption Headings in this Agreement are for convenience only and are not to be used to interpret or define the provisions of the Agreement.
35. Understanding of the Parties. The Parties understand and represent that they have both read and understand the foregoing and that the instrument contains all the agreements and understandings between the parties as it relates to this Agreement. The undersigned

represents that neither relied upon any promise, inducements, covenants, oral statements, or agreements of any kind or nature which are not expressly set forth herein.

36. Effective Date. This Agreement shall be effective as of the signature date of each Party.

[Execution Pages to Follow]

IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement:

Executed on the \_\_\_\_ day of \_\_\_\_\_, 2025, by the  
Legacy Youth Foundation:

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Position/Title: \_\_\_\_\_

Executed on the \_\_\_\_ day of \_\_\_\_\_, 2025, by the  
City of Columbus, Nebraska:

\_\_\_\_\_  
James Bulkley, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



