

RESOLUTION NO. 1659

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GOLDEN APPROVING AN AGREEMENT WITH TABLE MOUNTAIN SOCCER ASSOCIATION, INC. PERTAINING TO USE OF THE ROONEY ROAD SPORTS COMPLEX

WHEREAS, Golden is a Colorado home rule municipality whose municipal services include provision of parks and recreational facilities; and

WHEREAS, TMSA is organized as a Colorado non-profit corporation whose principal purpose is to organize, foster and administer a youth soccer program, at both competitive and recreational levels, for the benefit of citizens in the Golden Region; and

WHEREAS, Golden and Jefferson County, Colorado, are entering into an agreement pertaining to the development and administration of a sports field complex to be located on top of the Rooney Road Landfill, which is owned by Jefferson County and is generally located north of Interstate 70 and west of C470; and

WHEREAS, TMSA requires the use of athletic fields to accommodate its youth soccer program and would like to secure the use of portions of the Rooney Fields Sports Complex; and


WHEREAS, Golden and TMSA wish to agree as to the terms, conditions and priorities upon which TMSA may use portions of the Sports Complex; and

WHEREAS, Golden and TMSA desire to cooperate in the operation and management of the Sports Complex, subject to Golden's ultimate control and decision making, for the mutual benefit of both parties.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

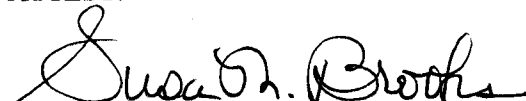
The Agreement for terms, conditions, and priorities of the operation of the Rooney Road Sports Complex by the City of Golden with Table Mountain Soccer Association is approved in essentially the same form as the copy of such agreement accompanying this resolution. The Mayor is authorized to execute the Agreement on behalf of the City.

Adopted this 13th day of April, 2006.



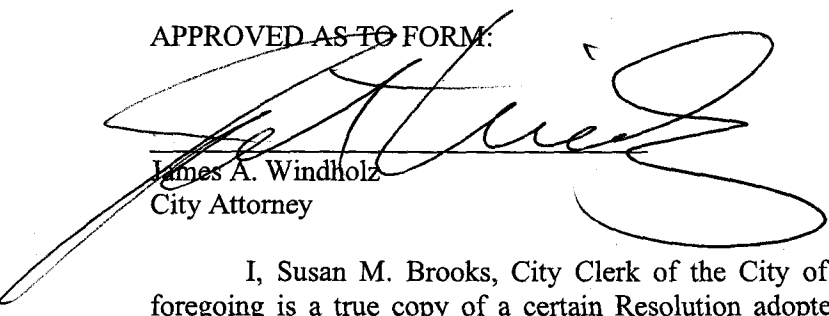
Charles J. Baroch
Mayor

ATTEST:



Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:

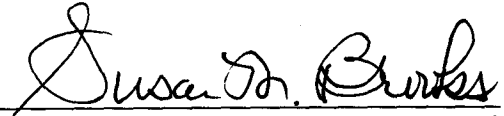


James A. Windholz
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 13th day of April, A.D., 2006.

(SEAL)

ATTEST:



Susan M. Brooks, City Clerk of the City of
Golden, Colorado

AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2006 by and between the CITY OF GOLDEN, a Colorado home rule municipality ("Golden"), and the TABLE MOUNTAIN SOCCER ASSOCIATION, INC., a Colorado non-profit corporation ("TMSA").

RECITALS

A. Golden is a Colorado home rule municipality whose municipal services include provision of parks and recreational facilities.

B. TMSA is organized as a Colorado non-profit corporation whose principal purpose is to organize, foster and administer a youth soccer program, at both competitive and recreational levels, for the benefit of citizens in the Golden Region. At least 75% of the youths that participate in TMSA programs reside in the Golden Region, which region includes the City of Golden, the Golden area, Genesee, Applewood, Evergreen and Conifer. TMSA is an independent organization and not a branch or division of a larger organization primarily operating in another community.

C. Golden and Jefferson County, Colorado, entered into an agreement dated April ____, 2006 ("Jeffco/Golden Agreement") pertaining to the development and administration of an athletic field complex to be located on top of the Rooney Road Landfill, which is owned by Jefferson County and is generally located north of Interstate 70 and west of C470. Pursuant to that agreement, Golden will be constructing and administering athletic fields to be used primarily for youth sports activities. This facility (the "Rooney Fields Sports Complex" or "Sports Complex") is anticipated to be built out in several phases with completion of the first phase being anticipated by November 1, 2006.

D. TMSA requires the use of athletic fields to accommodate its youth soccer program and would like to secure the use of portions of the Rooney Fields Sports Complex.

E. Golden and TMSA wish to agree as to the terms, conditions and priorities upon which TMSA may use portions of the Sports Complex constructed in Phase I.

F. Golden and TMSA desire to cooperate in the operation and management of the Sports Complex, subject to Golden's ultimate control and decision making, for the mutual benefit of both parties.

AGREEMENT

1. **TERM**. The initial term of this Agreement shall be from January 1, 2007 (or such other date as the Sports Complex is available for use) through December 31,

2007. Thereafter, it is the current intent of the parties that the Agreement be for eighteen (18) additional, separate, consecutive, one-year terms, subject to annual review and appropriation by Golden, in its discretion, to coincide with the term of the Jeffco/Golden Agreement. In exercising its discretion, Golden will give favorable consideration to the annual renewal of this Agreement, for so long as the Jeffco/Golden Agreement is in effect and the Sports Complex is being operated by Golden for use for youth sports activities, provided TMSA is not in default hereunder, TMSA retains its status within the highest class of priority users as described in Exhibit C, TMSA continues to serve the youth of the Golden Region as a significant youth sports organization and no other youth sports organization within the highest class of priority users has made a capital contribution to the project which equals or exceeds that of TMSA. Notwithstanding these factors, it is acknowledged that there may be overriding factors which result in a decision not to renew this Agreement in the future. This Agreement will automatically terminate upon termination of the underlying Jeffco/Golden Agreement.

2. **SPORTS COMPLEX-INITIAL DEVELOPMENT PHASE.** (a) The exact size and configuration of the initial development phase of the Sports Complex, Phase I, has not yet been finalized. The parties anticipate that Phase I will consist of four to seven fields (of varying sizes from championship fields, to standard size fields to reduced size fields), and associated appurtenant improvements and personal property, such as parking facilities, access and service roads, shade structures, sanitary facilities, field maintenance machinery and field equipment (e.g., soccer goals, nets, and corner flags). The parties will cooperate in the final physical layout of Phase 1 to maximize the number of championship and standard size fields. This Agreement shall apply only to fields constructed and developed in Phase I.

(b) The "Capital Costs" anticipated in conjunction with construction of Phase I as itemized in subparagraph (a) above is estimated to be a maximum of \$2,925,000, as reflected on the source and use of funds schedule, attached hereto and incorporated herein as Exhibit A.

(c) TMSA will pay to Golden the sum of \$500,000.00 as a non-refundable contribution toward the Capital Costs for Phase I. Said amount will be paid on or before November 1, 2006, at such time as Golden submits a request for payment to TMSA, accompanied by invoices totaling at least \$500,000.00 incurred by Golden in conjunction with actual construction of the Sports Complex.

(d) In addition to the Capital Costs for construction of Phase 1, it is necessary to establish a capital reserve fund for the replacement of the fields. Lump sum contributions to the capital reserve fund from TMSA and Golden, as well as annual contributions to the field from usage fees are set forth on Exhibit B, attached hereto and incorporated herein.

3. **USE OF FIELDS/SCHEDULING.** The Sports Complex will be administered by the City of Golden in the same manner as it administers other athletic fields owned and operated by the City, except, however, the Sports Complex will be administered as a regional facility to serve not only the citizens of the City of Golden, but those residents in the greater Golden Region, as defined in the Jeffco/Golden Agreement and will further be administered in accord with this Agreement. Golden intends to administer the Sports Complex in a manner so as to equitably accommodate all requests for use by the various potential eligible users, including TMSA, recognizing the priority and guaranteed limited use of TMSA hereunder. Golden acknowledges that the current organizational structure of TMSA, and the anticipated use of the fields by TMSA, places TMSA in the highest priority class of potential users (the definitions of priority classes is set forth in Exhibit C, attached hereto and incorporated herein). Recognition of TMSA as within the highest priority of class of users does not, however, guaranty that TMSA will be entitled to use the facility to the total exclusion of potential users in lower priority classes. When scheduling use of the Sports Complex, Golden will consider not only the priority class of the potential user, but the demand for field usage by users in the same priority use category, and the demand by users of a lower class priority users. Golden will attempt to accommodate all eligible users and provide a reasonable and equitable allocation of the use of the Sports Complex, recognizing the priority and guaranteed limited use of TMSA hereunder.

(a) *Scheduling Process.* Scheduling of the fields for the Complex will occur on a semi-annual basis for periods from January 1 to June 30 and July 1 to December 31 of each calendar year. Requests for reservation of fields will be accepted by Golden until 30 days prior to the beginning of the scheduling period. On the basis of the demand for reservations, and the priority class of the potential requesting user, Golden will prepare a use schedule for the relevant period. Scheduling shall be within Golden's reasonable discretion and business judgment, recognizing the provisions of (b) and (c) below and subject to consideration of input from TMSA.

(b) *TMSA Use Periods.* TMSA anticipates several types of use periods throughout the calendar year. These use periods are defined as follows:

i. *Spring and Fall regular soccer seasons.* The spring season generally runs from February 1 through the Saturday immediately preceding Memorial Day weekend. The fall season generally runs from August 1st through November 15th. The time of use will be from 3:00 p.m. until dark on weekdays, Saturdays from 7:30 a.m. to 6:00 p.m., the Sunday before Labor Day, and on other Sundays as needed for makeup games. TMSA anticipates the need for four soccer fields during the soccer seasons.

ii. *Tryout periods.* TMSA anticipates the need for four soccer fields for five days during the two weeks following Memorial Day and two fields during

a two day period near Thanksgiving Day each year for competitive soccer tryouts, with the fields to be utilized from 3:30 p.m. until dark on weekdays and 10:00 a.m. to 4:00 p.m. on Saturdays.

iii. *Tournaments.* TMSA anticipates the potential of hosting up to three soccer tournaments per year during periods other than the regular soccer seasons. Tournaments will typically be scheduled from Thursday through Sunday and will utilize all fields at the Sports Complex.

iv. *Clinics.* Camps or clinics not requiring all fields may be requested during periods other than the soccer seasons.

(c) *TMSA Guaranteed Use.* As partial recognition of TMSA's capital contribution to the initial phase, TMSA shall be entitled to reserve for its use a minimum of one championship field and three standard size fields (or two championship and two standard size fields) during the periods specified in subparagraphs (b)(i) through (iv) above. TMSA's capital contribution shall not relieve TMSA of the obligation to pay user fees for such use as set forth in paragraph 4 hereof.

(d) *Scheduling.* At the commencement of each soccer season, on approximately February 1 and August 1 of each year, TMSA shall provide Golden with a schedule of its actual expected usage of the fields for the upcoming season in order that Golden may schedule use of the fields by other users when not being used by TMSA. Any change in use from the schedule shall be reported promptly by TMSA to Golden.

(e) *Disruptions in field usage.* Both parties recognize that matters that may or may not be beyond Golden's control, including a determination by Golden that operation of the Sports Complex is not economically viable or otherwise in the best interest of the citizens of Golden, may result in the closure of all, or portions of, the Sports Complex by Golden. In the event of such closure by Golden, Golden will utilize reasonable efforts to reschedule such usage at mutually agreeable alternate locations. In the event of such closure by Golden, Golden shall not be liable to TMSA for damages, but will refund any user fees paid for the periods of such loss of use.

(f) *Additional or Restricted Use.* In addition to the guaranteed use described above, TMSA may reserve and use any of the fields in Phase I of the Sports Complex at any time they are not reserved for use by other groups or organizations, given that TMSA's usage fees are based upon paying the entire operational costs of Phase I of the Sports Complex, as set forth in paragraph 4. TMSA may also elect, in its discretion, to voluntarily forego or forfeit portions of its guaranteed use in order to obtain payment of usage fees to Golden from other sources, thereby reducing TMSA's usage fee obligations, as set forth in paragraph 4 below.

4. **USAGE FEES.** On an annual basis Golden, with the input of TMSA as described below, will establish a fee schedule for use of the facilities at the Sports Complex. The fee schedule applicable to TMSA shall be based on recovery of 100% of the estimated costs to Golden to operate and maintain the Sports Complex. The establishment, adjustment, and payment of TMSA usage fees shall be determined in accord with the following statements of intent, parameters and conditions:

(a) The Sports Complex shall be maintained and operated as economically as reasonably feasible.

(b) For calendar year 2007 and subsequent calendar years, Golden shall prepare a draft operational budget and provide it to TMSA by September 15 of the preceding year; Golden shall receive, reasonably consider TMSA's input on the same and consider adjustment to the operational budget by November 1; and shall provide a final budget to TMSA by December 1 of each year. TMSA's input, which shall be considered by Golden, may include, but not be limited to, offers from TMSA to provide certain operational requirements on a volunteer or reduced price basis.

(c) For Sports Complex operations in 2007 and subsequent years, and subject to the maximum payments as provided below, TMSA shall pay Golden an annual usage fee in an amount equal to the annual operational budget for the calendar year in question. 50% of the annual usage fee shall be paid on or before March 15 (for use from January 1 to June 30) and the balance paid on or before September 15 (for use from July 1 through December 31) of each year. For calendar year 2007, the annual usage fee to be paid by TMSA shall not exceed the product of \$15,000.00 times the number of championship and standard size fields in Phase I (e.g., assume five fields, maximum to be paid is \$75,000.00, \$37,500.00 on March 15 and \$37,500.00 on September 15). For years subsequent to 2007, the maximum payment amount may be increased by a maximum of 4% from the prior year's maximum payment amount, unless an addition increase is mutually agreed upon between the parties.

(d) The amounts to be paid under (c) above in each calendar year shall be reduced by amounts equal to the actual revenues for field usage paid to Golden by other users of the Sports Complex. Reductions in TMSA's usage fee by reason of revenues received by Golden after the March 15 payment by TMSA shall be an appropriate credit to the September 15 payment, or by means of a refund to TMSA for revenues received, but not accounted for in the September 15 payment. Reductions in usage fees shall be subject to the following limitations:

(i) Provided that TMSA does not reserve or schedule usage of the fifth field in Phase 1 (i.e., the field not described in paragraph 3(c)), the maximum reduction in or credit against usage fees for that field be \$15,000.00 per year

(to be increased in accordance with the usage fee paid by TMSA for the unused field). Any additional revenues received from users of that field above the \$15,000.00 shall be placed in the capital reserve fund. To the extent TMSA reserves usage of the 5th field, the maximum credit will be reduced by the hourly rate charged by Golden for use of the 5th field times the number of hours of TMSA's use.

(ii) For the four (4) fields contemplated for use by TMSA, 73% of the usage fees paid for use of said fields by other users, up to a maximum of 67% of the usage fees paid by TMSA, shall be credited or reimbursed to TMSA and reduce TMSA's usage fees, and the remaining 27% of those usage fees and anything in excess of the above maximum shall be placed in the capital reserve fund.

(e) The establishment and payment of usage fees under this paragraph 4 and this Agreement as a whole shall only pertain to Phase I of the Sports Complex. In the event the Sports Complex is expanded during the term of this Agreement, the establishment of an operational budget and usage fees shall be prorated such that it is only applicable to Phase I, unless this Agreement is amended by the parties to encompass additional phases of fields constructed at the Sports Complex in the future.

(f) The examples utilized in this paragraph 4 are for illustrative purposes only and do not reflect actual budgets or usage fees.

(g) The intent of this paragraph 4 is to create a cooperative process between Golden and TMSA that results in the Sports Complex being operated on a "break even" basis by Golden, minimizes the cost of operating the Sports Complex and maximizes the use of the Sports Complex and revenues received from such use by organizations and groups other than TMSA, while recognizing TMSA's guaranteed use as set forth herein.

(h) The operational budget for the Sports Complex to be covered by the usage fees will consist of two components: (i) annual operating expenses and (ii) a reasonable field repair and replacement reserve component (as set forth in Exhibit B), but shall not include any component for sports complex expansion or additional fields.

(i) Golden shall provide TMSA access to all budget and accounting records related to the operation of the Sports Complex.

(j) In the event of a delay in opening the Sports Complex beyond February 1, 2007, any usage fees shall be prorated to the date of commencement of operation and use.

(k) A schedule of usage fees for other users of the Sports Complex shall be prepared and finalized as part of the budget process described in subparagraph (b) above. Golden shall not allow other priority users of the Sports Complex as identified on Exhibit C, or other users reserving use of a field or fields to utilize the Sports Complex without payment of a usage fee and shall not allow any free or "comped" use of the Sports Complex, without credit to TMSA for the usage fees otherwise assessable for that time; provided, however, any time the facility is not reserved for use, the general public will have access to the site without charge and the sports complex will be treated as a public park. Golden shall pay fees for its use of the Sports Complex for its organized sports programs.

(l) The schedule of usage fees shall require other seasonal users of the Sports Complex to pay their seasonal usage fees, for seasons which generally coincide with the spring and fall regular soccer seasons, prior to TMSA's March 15 and September 15 semi-annual usage fee payment dates.

(m) The usage fee has two components, the annual operating costs and the capital reserve component. Both will be reflected in the annual operational budget for the Sports Complex. The maximum annual usage fee for 2007, \$15,000.00 per field as described in subparagraph (c) above, is comprised of \$11,000.00 of operating costs (\$5,500.00 per field per season) and \$4,000.00 in capital reserves (\$2,000.00 per field per season, as reflected on Exhibit B). The capital reserve component of the usage fees will increase at a fixed 4% per year, as reflected on Exhibit B. The operating cost component of the usage fee will be subject to the annual budget process and the limitations as described in subparagraphs (b) and (c) above.

5. **CONCESSIONS.** TMSA shall have the exclusive right to operate or contract for food, beverage and merchandise concessions at the Sports Complex during those periods that it uses more than 50% of the fields and to retain all proceeds from such concessions. Any facilities to support such concessions shall be of a temporary nature and shall be approved by the City of Golden prior to placement on the Sports Complex. TMSA shall insure that the concession operation is maintained and cleaned regularly, and is trash free.
6. **INCORPORATION OF JEFFCO/GOLDEN AGREEMENT.** TMSA covenants that neither it, nor those individuals or groups using the Sports Complex under the authority of TMSA, will take any action that will cause a violation of any of the terms of the Jeffco/Golden Agreement, the terms of said agreement, as the agreement may be amended from time to time in the future, being incorporated herein for the purpose of such covenant. TMSA will indemnify and defend Golden from any and all claims arising out of the use of the Sports Complex by TMSA, or its members or individuals participating in TMSA programs which constitute a violation of the Jeffco/Golden Agreement.

7. **INDEMNIFICATION.** TMSA will indemnify and defend Golden from all claims of the damages asserted by third parties against Golden that result from, or based upon TMSA's use of the Sports Complex facility. Such indemnification shall not extend to any claims based upon the negligence of Golden or its employees in the operation and maintenance of the facility. Golden does not, however, waive any provisions of the Colorado Governmental Immunity Act.
8. **SPORTS COMPLEX EXPANSION.** The Sports Complex has the potential of being expanded to include a total of approximately 19 soccer fields (or equivalent for other field sports). It is contemplated that expansion may occur from time to time in phases as capital funds are available to Golden and the demand for additional fields arises. Golden and TMSA, together with other Golden Region and central Jefferson County sports organizations, will cooperate in attempting to secure funds from governmental and private sources to provide the capital necessary for construction of additional fields. Funds secured for this purpose shall be maintained by Golden in a discreet capital fund for expansion to or improvements at the Sports Complex.
9. **ADVERTISING.** TMSA shall have the non-exclusive right to install temporary advertising at the Sports Complex, subject to compliance with the Jeffco/Golden Agreement and any applicable ordinances or regulations now in existence or hereafter adopted. Revenue from temporary advertising installed by TMSA will be retained by TMSA.
10. **NO SUBLEASING OR ASSIGNMENT.** TMSA shall not sublease any of the fields at the Sports Complex to other users or assign its priority usage rights, or any part thereof, to any third parties. All use of the Sports Complex by third parties shall be scheduled through and by Golden.
11. **TMSA GRAND OPENING.** TMSA may schedule and conduct a TMSA Grand Opening for the Sports Complex, which is anticipated to be a TMSA fundraiser.
12. **SPONSORSHIPS.** Users of the Sports Complex may solicit corporate sponsorships for the Phase I fields which may include placing a corporate sponsor's name on the end line(s) of a field (e.g., "XYZ Corporation Field"), via identification on a plaque or similar marking on the field and on project maps. All of the corporate sponsorship contributions shall be paid to Golden. The corporate sponsorship donations shall be placed in the repair and replacement reserve for Phase I of the Sports Complex. Acceptance of any sponsorship proposal, and all details of any corporate sponsorship agreement (e.g., type of marking on fields, location, fee amount to be paid, name approval, etc.) shall be subject to City Council's sole discretion and approval.
13. **OTHER FIELD USAGE.** It is recognized and acknowledged that the fields constructed in Phase I of the Sports Complex will not accommodate all of TMSA's field needs and that TMSA will continue to utilize other Golden parks

(currently anticipated to be Golden Heights and Southridge, at a minimum) under separate agreements between Golden and TMSA.

14. **TMSA REPRESENTATIVE.** TMSA's representative for purposes of coordinating compliance with the requirements of this Agreement shall be its club administrator, currently Laura Albrecht.

15. **APPROPRIATIONS** Golden shall not be obligated by this Agreement to make any payments in any fiscal year beyond the fiscal year for which the funds are appropriated. All fiscal obligations of Golden under this Agreement are from year to year only and do not constitute a multi-fiscal year direct or indirect debt or other financial obligation of Golden. All fiscal obligations of Golden beyond the current year are conditioned upon appropriation of funds for such payment.

CITY OF GOLDEN

TABLE MOUNTAIN SOCCER ASSOCIATION, INC.

By: _____
Mayor

By: _____
Title: _____

ATTEST:

City Clerk

Exhibit A

Rooney Road Sports Complex
Projected Sources and Uses of Funds
Initial Construction
As of March 16, 2006

Sources of Funds:

Jefferson County Open Space	2,425,000
TMSA	500,000
Total Sources	<u>2,925,000</u>

Uses of Funds:

Construction - Fields, Roads, Fence, etc.	2,900,000
Maintenance Shed and Equipment	25,000
Total Uses	<u>2,925,000</u>
Balance	<u><u>0</u></u>

Exhibit B

**Rooney Road Sports Complex
Capital Reserve Analysis**

Turf Area (sq ft) = 410,150 (Fields 1-7)
 Cost per sq ft = \$4.00
 Replacement Cost = \$1,640,600.00
 Turf Life = 15 years

2007 Fee per season (full size field) = \$2,000

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Totals	
Balance Forward	0	140,000	191,300	245,709	463,397	596,748	655,198	759,015	868,477	983,878	1,105,523	1,183,738	1,266,611	1,354,399	1,447,366	1,545,799	0	
Lump Sum Contributions																	0	
Balance from Construction	25,000	25,000	25,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000							425,000	
City	115,000																	250,000
TMSA																		0
Other Sources																		0
Annual Contribution from Fees* 4.00% per year fee increase		20,000	20,800	21,632	22,497	23,397	24,333	25,306	26,319	27,371	28,466	29,605	30,789	32,021	33,301	34,634	400,472	
Subtotal	140,000	185,000	237,700	452,341	535,695	630,145	729,531	834,322	944,796	1,061,249	1,133,990	1,213,343	1,297,400	1,386,419	1,480,668	1,580,433		
Interest at 4.50%	0	6,300	8,609	11,057	20,853	25,054	29,484	34,156	39,061	44,274	49,749	53,268	56,998	60,948	65,131	69,561	574,522	
Ending Balance	140,000	191,300	245,709	463,397	596,748	655,198	759,015	868,477	983,878	1,105,523	1,183,738	1,266,611	1,354,399	1,447,366	1,545,799	1,649,994		

* - Based on 2 seasons per year. Contribution for Fields 1, 2, 5-7 only.

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(d) In addition to the Capital Costs for construction of Phase 1, it is necessary to establish a capital reserve fund for the replacement of the fields. Lump sum contributions to the capital reserve fund from TMSA and Golden, as well as annual contributions to the field from usage fees are set forth on Exhibit B, attached hereto and incorporated herein.

3. ***USE OF FIELDS/SCHEDULING.*** The Sports Complex will be administered by the City of Golden in the same manner as it administers other athletic fields owned and operated by the City, except, however, the Sports Complex will be administered as a regional facility to serve not only the citizens of the City of Golden, but those residents in the greater Golden Region, as defined in the Jeffco/Golden Agreement and will further be administered in accord with this Agreement. Golden intends to administer the Sports Complex in a manner so as to equitably accommodate all requests for use by the various potential eligible users, including TMSA, recognizing the priority and guaranteed limited use of TMSA hereunder. Golden acknowledges that the current organizational structure of TMSA, and the anticipated use of the fields by TMSA, places TMSA in the highest priority class of potential users (the definitions of priority classes is set forth in Exhibit C, attached hereto and incorporated herein). Recognition of TMSA as within the highest priority of class of users does not, however, guaranty that TMSA will be entitled to use the facility to the total exclusion of potential users in lower priority classes. When scheduling use of the Sports Complex, Golden will consider not only the priority class of the potential user, but the demand for field usage by users in the same priority use category, and the demand by users of a lower class priority users. Golden will attempt to accommodate all eligible users and provide a reasonable and equitable allocation of the use of the Sports Complex, recognizing the priority and guaranteed limited use of TMSA hereunder.

(a) *Scheduling Process.* Scheduling of the fields for the Complex will occur on a semi-annual basis for periods from January 1 to June 30 and July 1 to December 31 of each calendar year. Requests for reservation of fields will be accepted by Golden until 30 days prior to the beginning of the scheduling period. On the basis of the demand for reservations, and the priority class of the potential requesting user, Golden will prepare a use schedule for the relevant period. Scheduling shall be within Golden's reasonable discretion and business judgment, recognizing the provisions of (b) and (c) below and subject to consideration of input from TMSA.

(b) *TMSA Use Periods.* TMSA anticipates several types of use periods throughout the calendar year. These use periods are defined as follows:

i. *Spring and Fall regular soccer seasons.* The spring season generally runs from February 1 through the Saturday immediately proceeding Memorial Day weekend. The fall season generally runs from August 1st through November 15th. The time of use will be from 3:00 p.m. until dark on weekdays, Saturdays from 7:30 a.m. to 6:00 p.m., the Sunday before Labor Day, and on other Sundays as needed for makeup games. TMSA anticipates the need for four soccer fields during the soccer seasons.

ii. *Tryout periods.* TMSA anticipates the need for four soccer fields for five days during the two weeks following Memorial Day and two fields during

a two day period near Thanksgiving Day each year for competitive soccer tryouts, with the fields to be utilized from 3:30 p.m. until dark on weekdays and 10:00 a.m. to 4:00 p.m. on Saturdays.

iii. *Tournaments.* TMSA anticipates the potential of hosting up to three soccer tournaments per year during periods other than the regular soccer seasons. Tournaments will typically be scheduled from Thursday through Sunday and will utilize all fields at the Sports Complex.

iv. *Clinics.* Camps or clinics not requiring all fields may be requested during periods other than the soccer seasons.

(c) *TMSA Guaranteed Use.* As partial recognition of TMSA's capital contribution to the initial phase, TMSA shall be entitled to reserve for its use a minimum of one championship field and three standard size fields (or two championship and two standard size fields) during the periods specified in subparagraphs (b)(i) through (iv) above. TMSA's capital contribution shall not relieve TMSA of the obligation to pay user fees for such use as set forth in paragraph 4 hereof.

(d) *Scheduling.* At the commencement of each soccer season, on approximately February 1 and August 1 of each year, TMSA shall provide Golden with a schedule of its actual expected usage of the fields for the upcoming season in order that Golden may schedule use of the fields by other users when not being used by TMSA. Any change in use from the schedule shall be reported promptly by TMSA to Golden.

(e) *Disruptions in field usage.* Both parties recognize that matters that may or may not be beyond Golden's control, including a determination by Golden that operation of the Sports Complex is not economically viable or otherwise in the best interest of the citizens of Golden, may result in the closure of all, or portions of, the Sports Complex by Golden. In the event of such closure by Golden, Golden will utilize reasonable efforts to reschedule such usage at mutually agreeable alternate locations. In the event of such closure by Golden, Golden shall not be liable to TMSA for damages, but will refund any user fees paid for the periods of such loss of use.

(f) *Additional or Restricted Use.* In addition to the guaranteed use described above, TMSA may reserve and use any of the fields in Phase I of the Sports Complex at any time they are not reserved for use by other groups or organizations, given that TMSA's usage fees are based upon paying the entire operational costs of Phase I of the Sports Complex, as set forth in paragraph 4. TMSA may also elect, in its discretion, to voluntarily forego or forfeit portions of its guaranteed use in order to obtain payment of usage fees to Golden from other sources, thereby reducing TMSA's usage fee obligations, as set forth in paragraph 4 below.

4. **USAGE FEES.** On an annual basis Golden, with the input of TMSA as described below, will establish a fee schedule for use of the facilities at the Sports Complex. The fee schedule applicable to TMSA shall be based on recovery of 100% of the estimated costs to Golden to operate and maintain the Sports Complex. The establishment, adjustment, and payment of TMSA usage fees shall be determined in accord with the following statements of intent, parameters and conditions:

(a) The Sports Complex shall be maintained and operated as economically as reasonably feasible.

(b) For calendar year 2007 and subsequent calendar years, Golden shall prepare a draft operational budget and provide it to TMSA by September 15 of the preceding year; Golden shall receive, reasonably consider TMSA's input on the same and consider adjustment to the operational budget by November 1; and shall provide a final budget to TMSA by December 1 of each year. TMSA's input, which shall be considered by Golden, may include, but not be limited to, offers from TMSA to provide certain operational requirements on a volunteer or reduced price basis.

(c) For Sports Complex operations in 2007 and subsequent years, and subject to the maximum payments as provided below, TMSA shall pay Golden an annual usage fee in an amount equal to the annual operational budget for the calendar year in question. 50% of the annual usage fee shall be paid on or before March 15 (for use from January 1 to June 30) and the balance paid on or before September 15 (for use from July 1 through December 31) of each year. For calendar year 2007, the annual usage fee to be paid by TMSA shall not exceed the product of \$15,000.00 times the number of championship and standard size fields in Phase I (e.g., assume five fields, maximum to be paid is \$75,000.00, \$37,500.00 on March 15 and \$37,500.00 on September 15). For years subsequent to 2007, the maximum payment amount may be increased by a maximum of 4% from the prior year's maximum payment amount, unless an addition increase is mutually agreed upon between the parties.

(d) The amounts to be paid under (c) above in each calendar year shall be reduced by amounts equal to the actual revenues for field usage paid to Golden by other users of the Sports Complex. Reductions in TMSA's usage fee by reason of revenues received by Golden after the March 15 payment by TMSA shall be an appropriate credit to the September 15 payment, or by means of a refund to TMSA for revenues received, but not accounted for in the September 15 payment. Reductions in usage fees shall be subject to the following limitations:

(i) Provided that TMSA does not reserve or schedule usage of the fifth field in Phase 1 (i.e., the field not described in paragraph 3(c)), the maximum reduction in or credit against usage fees for that field be \$15,000.00 per year

(to be increased in accordance with the usage fee paid by TMSA for the unused field). Any additional revenues received from users of that field above the \$15,000.00 shall be placed in the capital reserve fund. To the extent TMSA reserves usage of the 5th field, the maximum credit will be reduced by the hourly rate charged by Golden for use of the 5th field times the number of hours of TMSA's use.

(ii) For the four (4) fields contemplated for use by TMSA, 73% of the usage fees paid for use of said fields by other users, up to a maximum of 67% of the usage fees paid by TMSA, shall be credited or reimbursed to TMSA and reduce TMSA's usage fees, and the remaining 27% of those usage fees and anything in excess of the above maximum shall be placed in the capital reserve fund.

(e) The establishment and payment of usage fees under this paragraph 4 and this Agreement as a whole shall only pertain to Phase I of the Sports Complex. In the event the Sports Complex is expanded during the term of this Agreement, the establishment of an operational budget and usage fees shall be prorated such that it is only applicable to Phase I, unless this Agreement is amended by the parties to encompass additional phases of fields constructed at the Sports Complex in the future.

(f) The examples utilized in this paragraph 4 are for illustrative purposes only and do not reflect actual budgets or usage fees.

(g) The intent of this paragraph 4 is to create a cooperative process between Golden and TMSA that results in the Sports Complex being operated on a "break even" basis by Golden, minimizes the cost of operating the Sports Complex and maximizes the use of the Sports Complex and revenues received from such use by organizations and groups other than TMSA, while recognizing TMSA's guaranteed use as set forth herein.

(h) The operational budget for the Sports Complex to be covered by the usage fees will consist of two components: (i) annual operating expenses and (ii) a reasonable field repair and replacement reserve component (as set forth in Exhibit B), but shall not include any component for sports complex expansion or additional fields.

(i) Golden shall provide TMSA access to all budget and accounting records related to the operation of the Sports Complex.

(j) In the event of a delay in opening the Sports Complex beyond February 1, 2007, any usage fees shall be prorated to the date of commencement of operation and use.

(k) A schedule of usage fees for other users of the Sports Complex shall be prepared and finalized as part of the budget process described in subparagraph (b) above. Golden shall not allow other priority users of the Sports Complex as identified on Exhibit C, or other users reserving use of a field or fields to utilize the Sports Complex without payment of a usage fee and shall not allow any free or "comped" use of the Sports Complex, without credit to TMSA for the usage fees otherwise assessable for that time; provided, however, any time the facility is not reserved for use, the general public will have access to the site without charge and the sports complex will be treated as a public park. Golden shall pay fees for its use of the Sports Complex for its organized sports programs.

(l) The schedule of usage fees shall require other seasonal users of the Sports Complex to pay their seasonal usage fees, for seasons which generally coincide with the spring and fall regular soccer seasons, prior to TMSA's March 15 and September 15 semi-annual usage fee payment dates.

(m) The usage fee has two components, the annual operating costs and the capital reserve component. Both will be reflected in the annual operational budget for the Sports Complex. The maximum annual usage fee for 2007, \$15,000.00 per field as described in subparagraph (c) above, is comprised of \$11,000.00 of operating costs (\$5,500.00 per field per season) and \$4,000.00 in capital reserves (\$2,000.00 per field per season, as reflected on Exhibit B). The capital reserve component of the usage fees will increase at a fixed 4% per year, as reflected on Exhibit B. The operating cost component of the usage fee will be subject to the annual budget process and the limitations as described in subparagraphs (b) and (c) above.

5. **CONCESSIONS.** TMSA shall have the exclusive right to operate or contract for food, beverage and merchandise concessions at the Sports Complex during those periods that it uses more than 50% of the fields and to retain all proceeds from such concessions. Any facilities to support such concessions shall be of a temporary nature and shall be approved by the City of Golden prior to placement on the Sports Complex. TMSA shall insure that the concession operation is maintained and cleaned regularly, and is trash free.
6. **INCORPORATION OF JEFFCO/GOLDEN AGREEMENT.** TMSA covenants that neither it, nor those individuals or groups using the Sports Complex under the authority of TMSA, will take any action that will cause a violation of any of the terms of the Jeffco/Golden Agreement, the terms of said agreement, as the agreement may be amended from time to time in the future, being incorporated herein for the purpose of such covenant. TMSA will indemnify and defend Golden from any and all claims arising out of the use of the Sports Complex by TMSA, or its members or individuals participating in TMSA programs which constitute a violation of the Jeffco/Golden Agreement.

7. **INDEMNIFICATION.** TMSA will indemnify and defend Golden from all claims of the damages asserted by third parties against Golden that result from, or based upon TMSA's use of the Sports Complex facility. Such indemnification shall not extend to any claims based upon the negligence of Golden or its employees in the operation and maintenance of the facility. Golden does not, however, waive any provisions of the Colorado Governmental Immunity Act.
8. **SPORTS COMPLEX EXPANSION.** The Sports Complex has the potential of being expanded to include a total of approximately 19 soccer fields (or equivalent for other field sports). It is contemplated that expansion may occur from time to time in phases as capital funds are available to Golden and the demand for additional fields arises. Golden and TMSA, together with other Golden Region and central Jefferson County sports organizations, will cooperate in attempting to secure funds from governmental and private sources to provide the capital necessary for construction of additional fields. Funds secured for this purpose shall be maintained by Golden in a discreet capital fund for expansion to or improvements at the Sports Complex.
9. **ADVERTISING.** TMSA shall have the non-exclusive right to install temporary advertising at the Sports Complex, subject to compliance with the Jeffco/Golden Agreement and any applicable ordinances or regulations now in existence or hereafter adopted. Revenue from temporary advertising installed by TMSA will be retained by TMSA.
10. **NO SUBLEASING OR ASSIGNMENT.** TMSA shall not sublease any of the fields at the Sports Complex to other users or assign its priority usage rights, or any part thereof, to any third parties. All use of the Sports Complex by third parties shall be scheduled through and by Golden.
11. **TMSA GRAND OPENING.** TMSA may schedule and conduct a TMSA Grand Opening for the Sports Complex, which is anticipated to be a TMSA fundraiser.
12. **SPONSORSHIPS.** Users of the Sports Complex may solicit corporate sponsorships for the Phase I fields which may include placing a corporate sponsor's name on the end line(s) of a field (e.g., "XYZ Corporation Field"), via identification on a plaque or similar marking on the field and on project maps. All of the corporate sponsorship contributions shall be paid to Golden. The corporate sponsorship donations shall be placed in the repair and replacement reserve for Phase I of the Sports Complex. Acceptance of any sponsorship proposal, and all details of any corporate sponsorship agreement (e.g., type of marking on fields, location, fee amount to be paid, name approval, etc.) shall be subject to City Council's sole discretion and approval.
13. **OTHER FIELD USAGE.** It is recognized and acknowledged that the fields constructed in Phase I of the Sports Complex will not accommodate all of TMSA's field needs and that TMSA will continue to utilize other Golden parks

(currently anticipated to be Golden Heights and Southridge, at a minimum) under separate agreements between Golden and TMSA.

14. **TMSA REPRESENTATIVE**. TMSA's representative for purposes of coordinating compliance with the requirements of this Agreement shall be its club administrator, currently Laura Albrecht.

15. **APPROPRIATIONS** Golden shall not be obligated by this Agreement to make any payments in any fiscal year beyond the fiscal year for which the funds are appropriated. All fiscal obligations of Golden under this Agreement are from year to year only and do not constitute a multi-fiscal year direct or indirect debt or other financial obligation of Golden. All fiscal obligations of Golden beyond the current year are conditioned upon appropriation of funds for such payment.

CITY OF GOLDEN

**TABLE MOUNTAIN SOCCER
ASSOCIATION, INC.**

By: C. J. Baroch
Mayor

By: Clifford J. Eyster
Title: President

ATTEST:

Susan H. Brooks
City Clerk

Exhibit A

Rooney Road Sports Complex
Projected Sources and Uses of Funds
Initial Construction
As of March 16, 2006

Sources of Funds:

Jefferson County Open Space	2,425,000
TMSA	500,000
Total Sources	<u>2,925,000</u>

Uses of Funds:

Construction - Fields, Roads, Fence, etc.	2,900,000
Maintenance Shed and Equipment	25,000
Total Uses	<u>2,925,000</u>
Balance	<u><u>0</u></u>

Exhibit B

Rooney Road Sports Complex
Capital Reserve Analysis

Turf Area (sq ft) = 410,150 (Fields 1-7)
 Cost per sq ft = \$4.00
 Replacement Cost = \$1,640,600.00
 Turf Life = 15 years

2007 Fee per season (full size field) = \$2,000

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Totals	
Balance Forward	0	140,000	191,300	245,709	463,397	556,748	655,198	759,015	868,477	983,878	1,105,523	1,183,738	1,266,611	1,354,398	1,447,366	1,545,799		
Lump Sum Contributions																		
Balance from Construction	25,000	25,000	25,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000							425,000	
City																		250,000
TMSA	115,000			135,000														0
Other Sources																		0
Annual Contribution from Fees*		20,000	20,800	21,632	22,497	23,397	24,333	25,306	26,319	27,371	28,466	29,605	30,789	32,021	33,301	34,634	400,472	
4.00% per year fee increase																		
Subtotal	140,000	185,000	237,100	452,341	535,895	630,145	729,531	834,322	944,796	1,061,249	1,133,990	1,213,343	1,297,400	1,386,419	1,480,668	1,580,433		
Interest at 4.50%	0	6,300	8,609	11,057	20,853	25,054	29,484	34,156	39,081	44,274	49,749	53,288	56,998	60,948	65,131	69,561	574,522	
Ending Balance	140,000	191,300	245,709	463,397	556,748	655,198	759,015	868,477	983,878	1,105,523	1,183,738	1,266,611	1,354,398	1,447,366	1,545,799	1,649,994		

* - Based on 2 seasons per year. Contribution for Fields 1, 2, 5-7 only.