

STATE OF TEXAS §
 §
COUNTY OF ECTOR §

ATHLETIC FACILITY USE AGREEMENT

This Athletic Facility Use Agreement (the “Agreement”) is entered into by and between the City of Odessa, a municipal corporation, located in Ector County, Texas, hereinafter referred to as “City”, and _____, hereinafter referred to as “Association”, to provide for the use of certain City of Odessa parks system facilities (“Facilities”), park recreation services and for recreational purposes pursuant to the following terms and conditions:

ARTICLE I
GENERAL STATEMENT OF DUTIES

1.1 The Association agrees to provide all services relating to the operation of the Association, including the development of roster lists, the payment of association fees, the scheduling of all practices, games, and tournaments, the assignment, training, and payment of referees and score keepers and other services which may be necessary for the orderly administration of such Association. Scheduling shall be accomplished so as to not conflict with Parks and Recreation sponsored activities on the premises. Parks and Recreation will give reasonable notice of dates for Parks and Recreation sponsored activities.

1.2 The City agrees to allow the Association to use certain Park Facilities described in Attachment “A” to be used for the purpose of conducting games and practice sessions on an exclusive basis based on historical use as listed in Section 4.1.1. In the event that an athletic facility is to be shared (i.e. tournament purposes), facility use shall be negotiated between the Association hosting the event and the Association that historically uses the facility.

1.3 The City disclaims any responsibility for the operation of the activities of the Association and any sub-league or team connected to the Association. City’s involvement is limited solely to those specific tasks identified in this agreement. Any complaint between participants, spectators or officials, or between any Associations, shall be resolved without recourse to the City or the Director of Parks and Recreation, their employees, or contractors.

1.4 It is understood that the City has leased property from the University of Texas of the Permian Basin (“UTPB”) and that said Lease Agreement includes requirements, such as insurance, that must be complied with by the Association.

1.5 The more specific duties of the Parties are listed in the subsequent Section of this agreement.

1.6 It is also understood that any association that utilizes any park facility located on the campus of the University of Texas of the Permian Basin is also subject to the conditions of the lease that the City has with the UT System Board of Regents. A copy of that lease can be requested from the Parks Department of the City of Odessa.

ARTICLE II
TERM OF AGREEMENT

2.1 This agreement shall commence upon its execution by the Parties and shall terminate when the last Association game has been played or the last tournament has been completed according to the schedule required in Section 5.1.1 below.

2.2 Either party may terminate this agreement with 30 days-notice in the event of a violation of the terms and conditions of this Agreement by the other Party, and such violation is not cured within 14 calendar days of receiving written notice of said violation.

ARTICLE III
CONSIDERATION

3.1 As partial consideration for the use of Facilities, the Association shall perform its own maintenance on the fields as described in Section 4.9 below.

3.2 In addition, the Association shall use all money it collects, in excess of its reasonable expenses, for improvements to the fields or other park facilities unless the Association is run by a charitable organization, as determined by the Director of Parks and Recreation.

3.3 All improvements to the fields and/or park facilities shall be subject to the prior approval of the Director of Parks and Recreation pursuant to a written agreement, and shall become the property of the City.

ARTICLE IV
ADMINISTRATIVE PROVISIONS

4.1 Special Requirements. The Association shall provide the following information to the Director of Parks and Recreation for his/her review and approval at least one week prior to Association play:

.1 Attachment "B" to be submitted prior to term of agreement. The schedule of play/practice shall be developed in cooperation with other athletic associations, leagues and organizations utilizing the same facility. Schedule changes shall be submitted to Parks and Recreation Department prior to actual play/practice.

.2 A current list of all Board Members of the Association, that board member's position, telephone number, and email address.

.3 A report listing the total number of participants within the Association or sub-league. The Association shall maintain a copy of current rosters that will include each participant's name, address, telephone number, and a copy of an executed City of Odessa Assumption of Risk form. If a participant is a minor, the Association's roster shall include name, address, telephone number and an Assumption of Risk form that is executed by the participant's parent or guardian.

.4 A current listing of board members showing board position, address and telephone numbers.

.5 The Association shall appoint a person that will handle all communications and maintenance requests with City of Odessa Parks and Recreation Department for the Association (“Contact Person”).

.6 In the event that the Association installs their own locking mechanisms on Facilities located on City property, a duplicate key or combination shall be filed with the City of Odessa Parks and Recreation Department, prior to its use.

.7 The Association shall keep an up to date list of all keys issued and the name of a key holder. A fee of \$75.00 will be charged to the Association for a replacement key in the event that the key is lost or is not returned upon the conclusion of this lease.

.8 A “Year’s End” report in the format provided in Attachment “C” shall be submitted to the Director of Parks and Recreation. Failure to submit Year-End reports 30 days before the end of the calendar year will result in non-renewal of this Agreement.

.9 Other reports required by Director of Parks and Recreation to provide adequate information regarding the operation of the Association during the term of this agreement.

.10 The Association shall be responsible for administering the following:

- i. Assumption of Risk forms
- ii. Maintenance Requests
- iii. Construction volunteers indemnity agreement
- iv. Sponsor sign policy
- v. Vehicle Access Authorization permits
- vi. By-Law interpretation/implementation
- vii. Complaint process for Association sponsored events, spectators, participating members and officials
- viii. Contracts and independent contractors
- ix. Accounting and security for funds
- x. Rental/Light Use Requests (Attachment “D”)

.11 The City makes available for the Association’s use its premises and park facilities “as is” and without any representation or assumption of risk by City and its employees, directors, contractors, or assigns for injuries, cost or expense, arising out of the condition, operation, maintenance or design of such premises and park facilities including the light facilities, bleachers, fences, buildings, parking area and any other structure, facility or improvement located on City property.

.12 The Association shall not utilize the lights at parks for practice sessions, practice games, scrimmages or the like without approval of the Parks and Recreation Department Director.

4.2 Records and Inspection. The City shall have the right to examine, inspect and audit all records and files of the Association relating to the operation of the Association. Such records shall be kept accurate and complete, and available for inspection at any reasonable time.

4.3 Non-Discriminatory Policy. The Association agrees that as to all of its programs and activities conducted on the subject premises, it will comply fully with all Civil Rights Acts and specifically will not discriminate against any person on the basis of race, color, national origin, sex, religion, age or disability.

4.4 Compliance With Applicable Regulations. The Association agrees that it promptly will comply with all applicable ordinances, laws and regulations of the City, County, State and Federal Government, and all orders or rules of any city or county departments or official. The Association agrees to comply strictly with all park rules established by the Odessa Department of Parks and Recreation. It is understood and agreed that City may change these rules at any time with prior written notice to the Contact Person for the Association.

4.5 Payment of Utilities. Water and electrical utilities will be furnished by the City. In the event the Association uses utilities for an unauthorized purpose, the City reserves the right to bill the Association a reasonable amount to compensate for said charges.

4.6 Notice. Any notice herein required to be made to the Association may be made personally to the Contact Person designated by the Association and any notice herein required to be made to the City may be made to the Director of the Parks and Recreation Department.

4.7 Liability Insurance Coverage.

.1 The Association shall at its own expense provide and maintain certain insurance in full force and effect at all times during the term of this Agreement and any extensions thereto. Such insurance shall provide coverage for all of the Association's programs and activities conducted on City premises, and there shall not be an exclusion for claims of participants, spectators or property immediately adjacent to such premises. Such insurance, at a minimum, must also include the following coverages and limits of liability:

<u>Coverage</u>	<u>Limit of Liability</u>
Commercial General Liability	\$1,000,000 per occurrence
Bodily Injury and Property Damage Liability	\$2,000,000 Aggregate

.2 Comprehensive General Liability insurance shall include terms and conditions that are as broad as the insurance market offers on the standard policy form and endorsed to cover all exposures associated with athletic events. The City, its officers and employees shall be included as an additional named insured.

.3 *If applicable*, in the event that the Association is using property leased from U.T.P.B., the Board of Regents of the University of Texas System, for and on behalf of the University of Texas of the Permian Basin, will also be named as an additional insured. A certificate evidencing such coverage shall be submitted to the Director of Risk Management prior to use of City Facilities by the Association and thirty (30) days before the policy renewal date. The Director of Risk Management shall also be given 30 days prior notice of termination by the insurer. If the Association is using U.T.P.B. property, a certificate shall also be provided to the Business Office of U.T.P.B.

.4 All insurance provided for in this section shall be effective under policies issued by solvent insurance carriers qualified to do business in the State of Texas and having a rating

reasonably satisfactory to the City, and shall be written on policy forms satisfactory to the Director of Risk Management. Each issuer must be responsible and reputable and must have financial capacity consistent with the risks covered.

.5 The payment of any deductible on such policies shall be the responsibility of the Association and at the sole cost of the Association. The Association waives any claim it may ever have for the same against the City, its officers, agents or employees.

.6 The Association shall also maintain such additional insurance as may be necessary to adequately protect itself and the City in connection with the activities to be performed pursuant to this Agreement. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents or employees.

4.8 **INDEMNIFICATION.** *The Association shall indemnify and hold harmless City, its officers, agents and employees from and against all claims, damages, losses and expenses including, but not limited to attorneys' fees arising out of or resulting from any act, omission or defect connected with the programs and activities of the Association and the use, condition, maintenance and repair of the property licensed for use by the City without regard to who owns the property or constructs the facilities, including all parking, concessions, restrooms and common ground area; provided that such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom and (b) is caused in whole or in part by any condition of the premises or the materials, or by any act or omission of the Association, anyone directly or indirectly employed by the Association or anyone for whose acts the Association may be liable regardless of whether or not it is caused by any concurrent negligence on the part of the party indemnified.*

4.9 **Maintenance of Premises.** The City shall perform maintenance on the athletic facility in which the Association conducts games, as specifically described herein. Major repairs to City owned equipment and fixtures shall also be made by City. At the expiration of this agreement or earlier termination thereof, the Association agrees to surrender the premises in good condition, reasonable wear and tear excepted. Each Party shall perform the following designated maintenance service:

.1 **Baseball**

i. The City shall perform:

- Turf maintenance program on in-field and out-field areas. This includes mowing, fertilizing, irrigating, applying herbicide and pesticide, aerating.
- Irrigation repair
- Provide refuse containers
- Repair fencing and bleachers
- Provide utilities (water, sewer, and electricity)
- Repair plumbing on restrooms and permanent concession buildings
- Other services at the sole discretion of the Director of Parks and Recreation

- ii. The Baseball Association shall perform:
 - Maintain a regular dragging schedule of infields
 - Mark field areas
 - Maintain proper level of surface material in the in-field areas
 - Provide, install and maintain bases and pitcher plates
 - Remove refuse from premises after scheduled games and tournaments and place in proper container
 - Provide concessions at selected facilities
 - Ensure safety of participants and spectators

.2 Softball

- i. The City shall perform:
 - Turf maintenance program out-field areas. This includes mowing, fertilizing, irrigating, applying herbicide and pesticide, aerating.
 - Irrigation repair
 - Provide refuse containers
 - Repair fencing and bleachers
 - Provide utilities (water, sewer, and electricity)
 - Repair plumbing on restrooms and concessions buildings
 - Other services at the sole discretion of the Director of Parks and Recreation
- ii. The Softball Association shall perform:
 - Maintain a regular dragging schedule of infields
 - Mark field areas
 - Maintain proper level of surface material in the in-field areas
 - Provide, install and maintain bases and pitcher plates
 - Remove refuse from premises after scheduled games and tournaments and place in proper container
 - Provide concessions at selected facilities
 - Ensure safety of participants and spectators

.3 Soccer

- i. The City shall perform:
 - Turf maintenance program, including mowing, fertilizing, irrigating, applying herbicide and pesticide, aerating.
 - Irrigation repair
 - Provide refuse containers
 - Repair fencing and bleachers
 - Provide utilities (water, sewer, and electricity)
 - Repair plumbing on restrooms and concession buildings

- Other services of the sole discretion of the Director of Parks and Recreation
- ii. The Soccer Association shall:
- Mark fields
 - Provide, install and maintain goals, nets and corner flags
 - Remove refuse from premises after scheduled games and tournaments and place in proper containers
 - Provide concessions at selected facilities
 - Ensure safety of participants and spectators

.4 Note

- i. At no time shall anyone perform nor contract for the performance of any fertilizing or herbicide or pesticide application without written permission from the Director of Parks and Recreation.
- ii. Any modifications or construction to parks facilities must be reviewed and approved by the Parks and Recreation Director in advance. With regard to construction contracts, a written contract must be approved in advance of the performance of construction.
- iii. Any proposed parks improvement projects shall be submitted at least 60 days before commencement of the project. Furthermore, the Association agrees to comply with all city, state and federal rules regarding all projects including, but not limited to, review/approval by Parks and Recreation Advisory Board, City Council, Engineering, Building Inspection (including permits).

4.10 participant and/or spectator behavior. The Association is responsible for the behavior of both the participants (coaches, players, managers etc.) and of the spectators, whether that be at a practice, game, or tournament occurring at the Facilities.

4.11 Non-Assignment. The Association shall not assign this agreement nor any interest therein, nor any right or privilege pertaining to, nor permit the occupancy or use of any part thereof by any other person, without having first obtained prior written consent of the City.

4.12 Subletting. The Association shall be permitted to sublet the facilities subject to this agreement to any other group or person, without having first obtained prior written consent of the City. However, the Association shall take full responsibility for any damage caused by the group or person. Additionally, if the aforementioned person or group fails to maintain facilities just as the Association is required to do, the Association accepts all responsibility and any consequences that may arise from that failure, in accordance with this agreement.

4.13 Relationship to City. In performing services under this contract, the relationship between the City and the Association is that of independent contractor, and the City and the Association by the execution of this contract do not change the independent status of the Association. No term or provision of this contract or act of the Association in the performance of this contract shall be construed as making the Association the agent, servant, or employee of City.

4.14 Specific Performance. Neither Party shall be required to perform any term, condition or covenant in this agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, civil riots, floods, pandemics and any other cause not reasonably within the control of the Party except as herein provided, and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome.

4.15 U.T.P.B. Lease. If the Association uses U.T.P.B. leased property, it must also comply with all conditions in the Amended and Restated Ground Lease Agreement, a copy of which can be provided by the Director of Parks and Recreation.

4.16 Complaints. In the event that the City of Odessa Parks and Recreation Department receives a written complaint concerning the Association, the Parks and Recreation Director shall submit a notice to the Association along with the complaint. The Association shall then have fourteen (14) days to supply the Parks and Recreation Director with a written response fully addressing the complaint. The Association's Board shall vote and produce an official response to the complaint.

4.17 S.M.A.R.T. Parents for Youth Sports. The S.M.A.R.T. Parents for Youth Sports program is designed to help prevent and minimize negative situations that occur too often today, and to create a quality, safe and enjoyable athletics experience for the youth of Texas. As a requirement of this Athletic Facility Use Agreement, the Association must submit an invoice memorializing their payment for each parent to participate in the Smart Parent Program. The Association is also required to maintain a copy of all Certificates of Completion of the program with full access allowed to authorized representatives of City of Odessa, upon request, for purposes of evaluating compliance with this and other provisions of the Agreement.

EXECUTED this the ____ day of _____, 20__, by the duly authorized representatives of City and Association.

“CITY”

By: _____
Director of Parks and Recreation

“ASSOCIATION”

By: _____
Association Representative

Association Practice Sites

Marked fields indicating field use is available at the parks and recreation website, www.odessatxparks.org, or by this link, [Association Practice Sites](#).

In accordance with the Athletic Facility Use Agreement

- Vehicles are NOT to be driven or parked on the turf.
- Light towers must be approved prior to use on city property. If approved, city staff will coordinate delivery and placement.
- Field space is scheduled thru the appropriate sport association.
- Associations are responsible for their marked field space, including any space that may be sublette to another sport.
- Significant site improvements, outside the scope of routine maintenance, MUST be approved by the City of Odessa.
- Park space with no association designation will remain open to the public on a first come first serve basis.
- See "Attachment D" to request lights on applicable fields.

Association/League Financial Sheet

2020-to be submitted by Jan 30, 2021

Association/League Name _____

Date _____

Number of Participants Jan 1- Dec 31, 2020:

Spring _____

Summer _____

Fall _____

Other _____

Tournament Participants _____

Number of Tournaments other than league play _____

Total _____

Does your Association/League Provide a scholarship program? Yes / No

If yes, does the scholarship cover all fees/ costs associated with:

Participant fee: Yes / No

Uniform (if applicable) Yes / No / NA

Tournament fees (if applicable) Yes / No/ NA

Travel to/from tournaments (if applicable) Yes / No/ NA

Number of Scholarships Provided _____

Provide information on how scholarships are administered within your Association/League:

Attachment D

Athletic Facility Rental/Light Use Request

Association or League Administering Athletic Field Rental/ Light Use and Name of Requestor:

Athletic Facility and Field # being rented:

Date of Rental:

Light Schedule On/Off

On:

Off:

Entity Utilizing/Renting the Athletic Facility:

Is Rental Entity utilizing Athletic Field Lights Y/N:

Renter's Contact Information:

Name:	Address:
Phone:	Email:

Amount collected by Athletic Association/League for **Field** Use:

Amount collected by Athletic Association/League for **Light** Use:

Organized Sports must have insurance in the coverage amounts specified in the Athletic Facility Use Agreement, naming the city of Odessa as co-insured, must be on file with those organized Sports Associations/Leagues utilizing any City of Odessa Athletic Facility.

Any changes to date or times indicated above, must be made at least 24 hours in advance of indicated time.