

RESOLUTION NO. 11-2000

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS FOR USE OF MESQUITE PARKS FACILITIES; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City of Mesquite expects to enter into agreements with various sports organizations prior to the start of such organization's season setting forth the terms and conditions for use of parks facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council of the City of Mesquite authorizes Ted Barron, City Manager of the City of Mesquite, to execute agreements with any sports organizations wanting to use any City of Mesquite parks facilities in substantially the form and substance as attached hereto as Exhibit "A".

SECTION 2. That this resolution shall take effect from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 21<sup>st</sup> day of February, 2000.



Mike Anderson  
Mayor

ATTEST:

APPROVED:



Ellen Williams  
City Secretary



B.J. Smith  
City Attorney

**FACILITY USE AGREEMENT**

**THE STATE OF TEXAS   §**  
  **§**  
**COUNTY OF DALLAS    §**

This lease agreement is entered into between the City of Mesquite, Texas, hereinafter referred to as the "City", and the \_\_\_\_\_, hereinafter referred to as the "Association", acting by and through their duly authorized representatives, respectfully.

FOR AND IN CONSIDERATION of the mutual undertakings hereinafter set out, the parties agree as follows:

**I.**  
**DESCRIPTION OF PREMISES**

The City agrees to permit the use of its facility/ies known as \_\_\_\_\_ attached here to and made a part here of for all purposes, hereinafter called "Premises", for the term of this agreement.

**II.**  
**TERM**

The term of this agreement shall be from \_\_\_\_\_ through \_\_\_\_\_ for the purpose of organizing and implementing athletic leagues on City of Mesquite Parks. The Association shall pay for such use the sum of One Dollar (\$1.00) payable in advance, upon the covenants and conditions as follows.

**III.**  
**OPTION TO RENEW**

Upon termination of this agreement, the Association shall have a right of first refusal to enter into a new agreement. If the Association fails or refuses to enter into a new agreement at least thirty (30) days prior to the usual start of their season, the City shall have the right to enter into an agreement for use of the facility with other organizations. The Association shall have thirty (30) days to remove its owned movable equipment which is not of a permanent nature, upon termination of this agreement.

**IV.**  
**ASSIGNMENT/SUBLEASE**

The Association shall not assign this lease agreement nor shall it sublease or rent out any property of the City without prior written consent of the City. This provision includes any camps, scrimmages and tournaments.

**V.**  
**USE OF PREMISES**

The Association shall not engage in any business on the Premises or do anything in connection therewith which shall be in violation of any existing state or federal law or municipal ordinances, or use the same in such manner as to constitute a nuisance. The City of Mesquite reserves the right to exclude any individual or group from its facilities based on conduct, which it determines in its discretion to be objectionable or contrary to City interests. The Association hereby consents to the exercise of such authority by City over its members, officials, agents and members.

**VI.**  
**INDEMNIFICATION/INSURANCE**

The City shall not be liable to the Association or the Association's agents, officials, employees, contractors, members and participants for any damage to person or property caused by an act of negligence of the Association or the Association's agents, officials, employees, contractors, members or participants, and the Association agrees to indemnify and hold harmless the City, its agents, officials and employees and any umpire or official from any and all claims for any such damage arising out of the activities of the Association, its agents, officials, employees, contractors, members and participants. The Association shall provide the City with a policy of public liability insurance in a reasonable amount to be agreed upon by the City.

**VII.**  
**FOOD/DRINK SALES**

All food or drink prepared, served, sold, or stored shall be done so in strict conformity with all city ordinances, state, county and federal statutes and subject to all applicable terms and conditions set forth in the "Concession Stand Agreement" attached hereto as Exhibit "B" (pg. 20).

### VIII. ROSTERS AND SCHEDULES

The Association shall furnish to the Parks and Recreation Department rosters of all participants, listing where participants are domiciled and listing the full schedule for the season. The rosters shall be submitted at the conclusion of each season and the full schedule shall be submitted after completion of regular registration at least two weeks prior to the first regular season game. Those rosters and schedules effected by U.I.L requirements will be submitted as a supplement within three weeks after termination of U.I.L requirements.

### IX. USER FEES

The Association shall pay the City a Two Dollar (\$2.00) per player User Fee for each individual enrolled in an Association sport each season. User fees must be paid in full to the City by the completion of the sport season. Rosters must be submitted with payment to verify the total number of participants and teams.

Non -Resident individuals actively participating in any athletic association must purchase a Non-resident Athletic Card (NRAC). The NRAC can be purchased at all community centers for a Ten Dollar (\$10.00) annual fee. The Association is responsible for the non-resident participants in their leagues. The Association will be financially responsible for all non-residents listed on their rosters that do not have the proper NRAC documentation.

### X. FIELD LIGHTS

Sponsored athletic organizations may utilize field lighting systems for league games. Lights for practicing may only be used with the consent of the City and with a fee of Ten Dollars (\$10) per 1 1/2 hours. Many systems have timing devices that are programmed to allow lights to be turned on at specific times. Manual lighting systems should not be activated any sooner than one hour before sunset.

The Association agrees to stop play by 11:00 p.m. for league games. During tournaments, the Association agrees to stop play by 11:30 p.m.

**XI.**  
**USE BY CITY**

The City reserves the right to utilize the facilities when league games are not scheduled. If the Association completely abandons use of a particular facility, as determined by the City, this agreement as it pertains to that facility may be terminated by the City as provided herein.

**XII**  
**OFFICERS AND BOARD MEMBERS**

The Association shall submit to the Parks and Recreation Department the names, addresses and phone numbers of all officers and board members within two weeks after election or appointment.

**XIII.**  
**FINANCIAL STATEMENTS**

The Association shall provide financial statements to the Parks and Recreation Department within **60 days** after the conclusion of each season. Statements must include all income and expenditures from the league, associated organizations and concessions. Statements will be accompanied by documentation of a financial audit conducted by a CPA (company of Associations' choice) at the time of submittal. **The Parks and Recreation Department may prohibit the start of any athletic season (dates noted in Athletic Facilities Manual) without adequate financial documentation provided to the City.**

**XIV.**  
**EXHIBITS**

It is especially provided and agreed by and between the Association and the City that the exhibits attached hereto shall be part and parcel of this agreement as if set out in their entirety, said exhibits being:

**1. FIELD MAINTENANCE EXHIBIT**

Exhibit "A" (pg. 19) - City-Owned Field Maintenance Agreement

**2. CONCESSION STAND OPERATION EXHIBIT**

Exhibit "B" (pg. 20) - Concession Stand Agreement

**XV.**  
**ADDITIONAL CONDITIONS**

In addition to the agreements attached hereto as exhibits, this agreement is made subject to the provisions of the City of Mesquite Athletic Facilities Manual and any other policies, procedures, rules, regulations and conditions applicable to the facilities which comprise the premises herein as they currently exist or are hereafter adopted or amended. Failure of the Association to comply with and implement such policies, rules, regulations or conditions shall constitute a breach of this agreement as if the provisions of such policies, rules, regulations or conditions were set forth herein.

**XVI.**  
**INDEPENDENT AGENT**

Nothing contained herein shall be deemed or construed by the parties hereto or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto create a relationship other than the relationship of Lessor and Lessee.

**XVII.**  
**TERMINATION**

The violation of any of the provisions of this agreement constitutes a default, which may result in the termination hereof. In the event of such a default, the City may enforce the performance of this lease in any mode provided by law and this agreement may be terminated at the City's discretion if such default continues for a period of ten (10) days after the City notified the Association of such default and the City's intention to declare the agreement terminated, such notice to be sent by the City by certified mail. Thereupon, unless the Association shall have completely removed or cured said default, this agreement shall terminate. The City's agent or attorney shall thereafter have the right, without further notice or demand and without resort to legal process, to re-enter and remove all persons and Association's property therefrom. Any such property which remains in or on the Premises after termination of this agreement shall be deemed to have become the property of the City and may be removed and disposed of by the City as the City sees fit, without resort to legal process and without the City being deemed guilty of any manner of trespass or becoming liable for any loss or damage which may be occasioned thereby, and the City's agent or attorney may resume possession of the premises.

**XVIII.**  
**AMENDMENTS, GOVERNING LAW, AND VENUE**

Amendments and alterations to this agreement shall be made in writing. This agreement shall be governed by the laws of the State of Texas and the parties agree that this agreement is performable in Dallas County, Texas.

**XIX.  
SEVERABILITY**

If any provision of this agreement shall fail or be stricken for any reason whatsoever, the remainder of this agreement shall remain in full force and effect.

This agreement is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2000.

ATTEST:

CITY OF MESQUITE, A TEXAS  
MUNICIPAL CORPORATION

BY: \_\_\_\_\_  
Ellen Williams, City Secretary

By: \_\_\_\_\_  
Ted Barron, City Manager

“City”

Association:

ATTEST:

\_\_\_\_\_

BY: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print

Title: \_\_\_\_\_

“Association”

Approved as to form:

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

**EXHIBIT "A"**  
**CITY-OWNED FIELD MAINTENANCE AGREEMENT**

1. The Parks and Recreation Department (City) shall maintain all turf areas on the fields to include mowing, weed control, fertilizing and herbicide spraying.
2. The City shall perform all pre-season turf maintenance to include field lines. The City shall also provide sand, soil, etc. to be used in leveling or backfilling low areas when deemed necessary.
3. The City shall cut and/or mark all field lines at least once/week or as needed.
4. The City shall maintain all goals, fences, and gates in a safe and secure condition.
5. The City shall maintain all bleachers in a safe and secure condition.
6. The City shall provide and maintain all area and field lighting systems.
7. The City shall be responsible for the maintenance of any field irrigation system and watering schedules of turf areas.
8. The City shall be responsible for the maintenance of any adjacent park irrigation systems and the scheduling of watering non-athletic turf areas.
9. The Association shall be responsible for daily game day policing of all litter on their field(s) to include playing areas, dugouts, fences, backstops, bleachers, concession stands and adjacent grounds. All litter shall be placed in trash bags for pick up at a designated site. The City shall provide for the pick up of trash bags. The Association will be required to remove any loose litter thrown into receptacles or dumpsters.
10. The Association, with the approval of the City will be responsible for the storage and the pick up of all equipment after the completion of each game i.e.. bases, drags, ladders, concession boxes, bar-b-que grills and any other item needed. There will be no storage of any motorized vehicles in Athletic Complex concession stands.
11. The Association shall be prohibited from performing any maintenance to any turf or field areas without written permission from the City.
12. Associations must submit in writing to the City of Mesquite Parks and Recreation Department within 90 days request for additions/renovations to game/practice sites before the start of each season. However a heavy workload may prevent all requests by the Associations from being honored.



**EXHIBIT "B"**  
**CONCESSION STAND AGREEMENT**

1. The Association shall have exclusive use of the concession stand(s) located on the Premises described in the Agreement for Use of Mesquite Parks Facility (the "agreement") between the City and the Association for the duration of said agreement.
2. The Association shall at all times for the duration of the agreement maintain the inside of the concession stand and shall be responsible for all appliances, and all equipment necessary for storage, preparation, and serving of food and drinks in a clean, safe, sanitary manner commensurate with similar City facilities in compliance with City, County and State statutes and ordinances and acceptable to applicable agencies.
3. The Association shall comply with all State and City Health regulations governing the public sale of food and drink. The Association shall also be responsible for obtaining any Health Department Certificates, which may be required.
4. The Association shall be responsible for all trash, garbage, paper, boxes, cartons, cans, containers, litter, etc., generated by the concession stand inside and outside of the complex area. Adequate trash receptacles shall be furnished by the City and trash will be placed at a designated site for pick-up.
5. The Association shall be responsible for the installation, maintenance and service of telephones and public address systems. The City will work with the Associations to coordinate installation, maintenance, and service of telephone and public address systems. All utility and communication lines will be installed below ground.
6. The City shall be responsible for off-season winterizing of plumbing fixtures and cutting off all water and electricity inside the concession stand no later than December 1<sup>st</sup> following the end of the current season. If winter conditions necessitate winterizing before the end of the season, the City will notify the Association as soon as possible.
7. The City shall be responsible for underground utility lines and pipes leading up to the concession stand. The City will have all water to concession stands turned on by March 1st of each year unless freezing weather conditions are prevalent.
8. The Association shall be responsible for keeping on only the essential appliances during the season's non-use times. Only refrigerators, freezers and ice machines (not air conditioners) may be left on at all times. Ice machines shall be unplugged

and water lines unhooked during the off-season. Storage of any kind is prohibited in and around irrigation controllers and electrical breakers

9. The Association shall at all times during the duration of the agreement be responsible for the sanitary conditions of the walls, ceilings, floors, cabinets, doors, etc., on the inside of the concession stand.
10. The Association shall be responsible for the security of the building property to include any alarm systems and other security devices.
11. The Association shall be responsible for: the total contents of the concession stand, securing any insurance for all of the contents, and paying for insurance premiums.
12. The City reserves the right to utilize the concession stands and/or score booths during times not used by the Association.
13. If the concession stand is abandoned, this agreement may be terminated as provided in the agreement with the Association.
14. Any vehicle used by the Association for the operation of such concessions must comply with State vehicular inspection standards and be approved by the City for park areas and park users. Delivery trucks shall not be permitted within the park area unless there are existing service drives. Persons operating concessions shall see that the deliveries are made from designated service drives leading directly to the building. At fenced facilities, delivery trucks are prohibited from pulling inside the fence area.
15. The concession facilities shall only be operated by the Association, its agents, officers, employees, volunteers, and members and such operation shall occur only during regularly scheduled league games.
16. The Association may use portable concession facilities to be operated by its agents, officers, employees, volunteers, and members and shall leave such portable concession facilities on park premises between games at the Association's own risk. The Association shall not construct any permanent or semi-permanent structure on park property for the purpose of vending concessions. All portable concession/port-o-let facilities may be installed one week prior to the start of their season, at a City approved location, and must be removed from the premises one week of the conclusion of their season.
17. All proceeds from the sale of such concessions shall only be used by the Association, and its individual teams to foster and promote youth recreation in the City of Mesquite.

18. In case of default of any of the covenants herein, the City may enforce the performance of this agreement in any manner provided by law and pursuant to the agreement with the Association.
19. The Association shall take good care of the property and its fixtures and suffer no waste, and shall at the Association's own expense and cost keep said premises in good repair, keep the plumbing work, closets, pipes, and fixtures belonging thereto in repair, and keep the water pipes and connections free from obstructions to the satisfaction of the City during the term of its agreement, and at the end or expiration of the term shall deliver up the demised Premises in good order and condition. The Association agrees to accept possession of the Premises in their present condition, and to allow for changes in such condition occurring by reasonable deterioration between the date hereof and the date the Association occupies said Premises. No improvements or alterations shall be made in or to the hereby demised Premises without the consent of the City in writing.
20. It is agreed for all purposes hereunder, that Association is and shall be an independent contractor and shall not, with respect to its acts or omissions hereunder or those of its agents, officers, employees, contractors, volunteers, members and participants, as well as its concession stand operators, be deemed an agent or employee of the City.
21. The City shall not be liable to the Association or the Association's agents, officials, employees, contractors, volunteers, members, participants or its concession stand customers for any damage to persons or property arising out of the activities of the Association or the Association's agents, officials, employees, contractors, volunteers, members, participants, and the Association agrees to indemnify the City from any and all claims for any such damage. The Association shall maintain a policy of public liability insurance as provided for in the agreement with the City of Mesquite.