

RESOLUTION NO. 46-2002

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 previously approved the form of Facility Use Agreement to be used with various sports organizations on February 21, 2000, setting forth the terms and conditions for use of parks facilities; and

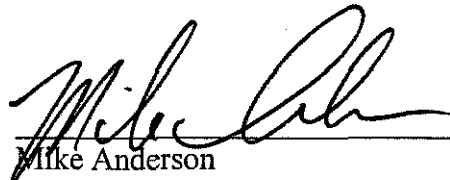
WHEREAS, the City of Mesquite wishes to amend the form of the Agreement to include additional provisions.

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 such sports organizations wanting to use any City of Mesquite parks facility in substantially the form and substance as revised in the attached 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 3rd day of September, 2002.



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 (Insert the name of the youth sports association) 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 (Insert the name and location of the City facilities) 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 (Insert beginning date) through (Insert ending date) for the purpose of using the Premises for 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. At any time during the term of this agreement, either party may cancel by giving sixty (60) calendar days written notice to the other party. This right to cancel is exercisable with or without an occurrence of default as provided in paragraph XVII hereof.

III.
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/or tournaments.

**IV.
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 reserves the right to exclude any individual or group from its facilities based on conduct, which it determines in its sole discretion to be objectionable or contrary to City interests.** The Association hereby consents to the exercise of such authority by City over its officials, agents and members.

**V.
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 or malfeasance 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 at least ten (10) days prior to the beginning of each playing season with a policy of public liability insurance in a reasonable amount to be agreed upon by the City.

**VI.
FOOD/DRINK SALES**

All food or drink prepared, served, sold, or stored shall be done so in strict conformity with all City ordinances, county, state and federal statutes and subject to all applicable terms and conditions set forth in the "Concession Stand Agreement" attached hereto as Exhibit "B" (pg. 9).

**VII.
COACHES TRAINING**

The Association shall furnish to the Parks and Recreation Department at least ten (10) days prior to the beginning of each playing season a roster of all coaches involved in any Association activities related to this agreement. After January 1, 2003, all Association coaches will be required to have completed a Coaching Youth Sports Certification Clinic training program equal to or as provided by the National Youth Sports Coaches Association (NYSCA) or the Texas Amateur Athletic Federation (TAAF). These coaches will also be required to have taken an oath related to a Code of Ethics Pledge as

provided by these training programs or as per Exhibit "C" – Youth Coaches' Code of Conduct Pledge. Each Association coach must have completed both of these activities prior to participating in any Association sponsored practice or game. Said completion will be noted on the Coaches Roster that the Association will provide to the City beginning January 1, 2003. Those coaches that sign up to participate after the original submittal of the Coaches Roster will be trained as needed in follow-up training sessions. The Association will submit a supplement to the Coaches Roster with the new information as needed to update the City files within ten (10) days of completing the new coaches training.

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 at least ten (10) days prior to the beginning of each playing season. The full schedule shall be submitted after completion of regular registration at least one week prior to the first regular season game. Any additions or changes to any rosters and/or schedules will be submitted as a supplement to the City within two (2) weeks of those changes.

IX. USER FEES

The Association shall pay the City a Five Dollar (\$5.00) User Fee for each resident player enrolled in an Association sport for each playing season. Non-Resident players actively participating in any athletic association must pay a \$15.00 User Fee each season.

The Association is responsible for identifying the non-resident players participants on their rosters. User fees must be paid in full to the City at the time that the rosters are furnished to the City. Rosters must be submitted with payment as required to verify the total number of participants and teams.

X. FIELD LIGHTS

The Association may utilize field lighting systems for league games at no cost to the Association. Lights for practicing may only be used with the consent of the City and with a fee of Ten Dollars (\$10) per one (1) hour per field used. Many field lighting 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 all play by 10:00 p.m. for youth league games and 11:00 p.m. for adult league games. During tournaments, the Association agrees to stop all play by 11:30 p.m. Any exceptions to these guidelines must be approved in advance by the City.

**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 current officers and board members at least ten (10) days prior to the beginning of each playing season. The Association shall also submit a copy of their most current constitution, by-laws, grievance procedures and playing rules at that same time.

**XIII.
FINANCIAL STATEMENTS**

The Association shall provide the previous year's financial statements to the Parks and Recreation Department at least ten (10) days prior to the beginning of each playing 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. This submittal shall also include any financial management procedures plan that the Association operates under during the playing season or as a substitute a "Books in Progress" system for the same timeframe. The Parks and Recreation Department may prohibit the start of any athletic season if the required financial documentation is not provided to the City as specified in this agreement.

**XIV.
ASSOCIATION APPEALS PROCESS**

All Association members shall submit any concerns and/or complaints related to any Association operations to their respective Association under that Association's

established grievance procedures. If the Association member does not get his/her grievance addressed or resolved, then that individual may appeal that issue to the City's Youth Sports Appeals Committee. This committee's responsibilities shall be limited to the review of appeals related to any alleged violations of an Association's constitution and bylaws or this agreement. Should this committee find that the Association is engaged in conduct which is objectionable or contrary to City's interests or detrimental to or against the public interests, the committee may recommend that the City cancel this agreement should such conduct continue. The Parks and Recreation Advisory Board shall appoint this committee.

**XV.
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" - City-Owned Field Maintenance Agreement
- 2. **CONCESSION STAND OPERATION EXHIBIT**
Exhibit "B" - Concession Stand Agreement
- 3. **YOUTH COACHES' CODE OF CONDUCT EXHIBIT**
Exhibit "C" - Youth Coaches' Code of Conduct Pledge

Failure of the Association to comply with and implement the above 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.

Association Contact:

Association President
Association Address

City Contact:

Marco A. Cisneros, Director
Parks and Recreation Department
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

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 _____, 2002.

ATTEST:

CITY OF MESQUITE, A TEXAS
MUNICIPAL CORPORATION

By: _____
Ellen Williams, City Secretary

By: _____
Ted Barron, City Manager
"City"

Association Name:

ATTEST:

Print Name: _____

Title: _____

By: _____
Signature

Name: _____
Print

Title: _____

"Association"

Approved as to form:

City Attorney or Designee

EXHIBIT "A"
CITY-OWNED FIELD MAINTENANCE AGREEMENT

1. The Parks and Recreation Department (City) shall maintain as available resources allow all turf areas on the fields to include mowing, weed control, fertilizing, herbicide spraying and irrigation.
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. It will be the City's option to implement any changes as needed in the watering schedules.
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, barbecue grills or any other items as needed. There will be no storage of any motorized vehicles in any 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. The Association must submit in writing to the City of Mesquite Parks and Recreation Department within 90 days before the start of each season any request for additions/renovations to game/practice sites. However a heavy workload may prevent all requests by the Association 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 Facility Use Agreement (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 ordinances, county, state and federal statutes 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 Association to coordinate installation, maintenance, and service of telephone and public address systems. All utility and communication lines will be installed below ground with the necessary utilities locate actions performed prior to any installation work being initiated.
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 15th 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. All appliances shall be unplugged and associated 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, all 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 expense and 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 within one week following 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.
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. The Association shall, at its own expense and cost, keep said premises in good repair. This includes, but is not limited to, keeping the waste water and water systems, closets, pipes, and fixtures belonging thereto in good repair and keeping the water pipes and connections free from obstructions to the satisfaction of the City during the term of its agreement. At the end or expiration of the term, the Association 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.



MESQUITE
T.E.X.A.S

Youth Coaches' Code of Conduct

I hereby pledge to live up to the responsibilities of a youth sport coach and will abide by the following Mesquite Youth Coaches' Code of Conduct:

Coach, please initial by each Code listed below signifying your acceptance of responsibility.

_____ I truly understand that youth sports are intended for the children and not for adults

_____ I will place the well being of my players ahead of my personal desire to win

_____ I will provide a safe and fun environment for my players

_____ I will treat each player with respect and not use abusive language towards my players, parents, spectators and/or league officials

_____ I will be knowledgeable of the rules of the sport that I coach and will teach those rules to all of my players

_____ I will demonstrate good sportsmanship and fairplay towards my players and opponents

_____ I agree that all youth sport coaches must have a criminal background check conducted on an annual basis and it will be kept on file with my league officials

_____ I agree that if I violate any of the above codes, I may be disciplined and/or relieved from my duties by the league as a youth sport coach and/or league official.

Youth Sports League / Organization

Coach

Date

President or League Representative

Date