



## **ATHLETIC FACILITIES UTILIZATION AGREEMENT**

This Agreement is made on the date last written below by and between the City of Joshua hereinafter called "City" and the Joshua Baseball Association, hereinafter called "Association."

### **I. ALLOCATION OFF ACILITIES**

Each organization utilizing any of the athletic facilities for organized play (hereinafter referred to as "Organization") will be assigned facilities by the City. All Organizations shall submit a written request to the City for the use of facilities. In the event two or more Organizations present conflicting requests for the use of the same facility, the City reserves the right to review and adjust scheduling to ensure that all facilities are being fully and fairly utilized for equal representative access. Subject to the foregoing, the Organization supporting the largest number of youth players will have priority in facility assignments.

A. The city agrees to permit the use of City's athletic facilities for the scheduling of events for Association as described in Exhibit "D".

B. The parties agree and understand that, from time to time, the facilities will be closed for maintenance on a schedule to be determined by the City. In addition to scheduled maintenance dates and times, it may be necessary for proper maintenance of the facilities for the facility to be closed to player use at other times. To the extent that such events arise, as much notice as possible will be given to the Association by the City. Activity on the ball fields is prohibited on every Sunday and Wednesday, unless special permission is obtained by the City Manager.

C. The term of this Agreement shall be from the Term Start Date through the Term End Date. Thereafter, the city will review all Organizations' requests for use each year and respond in writing to the requesting Organizations concerning the availability of facilities.

D. **Association may not assign, sublet, or otherwise make available to any other party its rights, if any, under this Agreement without the consent of the City.** Any other activities deemed appropriate may be allowed at the discretion of the City Manager or designee. The city will make reasonable efforts to discuss and coordinate any other activities with the Association.

E. Neither Association nor any of its members, its invitees, or guests, shall engage in any activity on the premises which violates any existing state or federal law or municipal ordinance or use the premises in such a manner as to constitute any hindrance for other park patrons engaged in lawful activities.

## II. ASSOCIATION RESPONSIBILITIES

- A. Association shall maintain, in effect, a general liability insurance policy, naming the City of Joshua as additional named insured, in an amount of at least one million dollars (\$1,000,000) with such a policy designed to cover the cost of defense and liability for any claim of liability or any of the indemnity requirements hereunder including but not limited to injuries suffered by competitors in the Association's activities at the facilities.
- B. The Association warrants that it is a non-profit corporation under Section 501(c)(3) of the Internal Revenue Code of the United States. If non - profit is not established, the association will have 120 days in order to comply.
- C. The Association shall designate to the City a president or chief executive officer and a field operations director. The names of these officers including mailing addresses, email addresses and telephone numbers shall be filed with the city Park Board President, contemporaneous with the execution of this Agreement. In the event of change in such office, within three days of the change, the city will be notified of such change.
- D. The Association shall communicate with the City or its agent only through the president or chief executive officer or the field operations manager of the association for all requests. These persons shall be the persons designated herein.
- E. The Association shall collect a \$24.00 maintenance fee per player per season. Any team including "Select Teams that are not a part of the Association may not use the fields unless a separate agreement with the city has been established. The maintenance fee must be paid to the city on or before the last day of the month in which the first game of the season is played by the Association. The Association shall warrant to the City a list of the number of players, along with the player names participating in each activity and the number of players for which they have admitted to the program or accepted a fee from for play. In Addition, for tournament play, the Association shall pay to the city a fee of \$100.00 per team for any team that participates in tournaments scheduled at the Joshua City Park Facility. The City shall have the right to verify such reports by audit or examination of team rosters or other documents indicating the number of players participating in the Association activities.
- F. The Association shall not make any modifications or alterations to any facilities unless the right to make same are requested in advance and approved by the City or its agent.
- G. All activities of the Association will conclude by 11:00 p.m. The lights must be out by 11:30 p.m. If it is anticipated that such times cannot be observed, upon advance request and approval by the City or its agent, exceptions may be made in the discretion of the City or its agent. There will be no ad hoc exceptions with any exceptions to be requested 72 hours in advance.
- H. Before commencement of any scheduled event, Association must present evidence that a mandatory background check has been completed on all coaches, managers and other persons

having supervisory contact with minors on behalf of Association at the facility. Any background that produces a positive criminal history that involves a felony, or a crime of moral turpitude must be provided to the city and the Police Chief of the City of Joshua will make the final determination of eligibility for the coach, manager or other person having supervisory contact with minor children.

I. The Association shall not drive, operate, or otherwise use any vehicles or machinery on walkways or in the facility for purposes other than those approved by the City. The Association shall not allow any players, coaches, referees, umpires, spectators, vendors, or other invitees of the Association to use any said machinery.

J. (1) Storage. The Association will be allowed one storage facility on-site to use for its equipment. This storage facility must be always kept clean. The city must be granted access when necessary. The City of Joshua will not be responsible for items lost or stolen at the storage facility. It is the Association's responsibility to lock and secure the storage facility. NO PROMISES OR REPRESENTATIONS OF SAFETY OR SECURITY HAVE BEE MADE TO ASSOCIATION BY THE CITY. ASSOCIATION HEREBY RELEASES THE CITY FROM LIABILITY FOR ALL LOSSES AND DAMAGES, INCLUDING THOSE CAUSED BY FIRE, SMOKE, WATER, WEATHER, VERMIN, INSECTS, THEFT BY OTHERS, AND ALL OTHER CAUSES. ASSOCIATION AGREES TO OBTAIN INSURANCE AT ASSOCIATIO 'S EXPE SE FOR ALL LOSSES AND DAMAGES. THE CITY WILL NOT BE LIABLE FOR INJURY, DAMAGE, OR LOSS TO PERSONS OR PROPERTY CAUSED BY {a) INTERRUPTIO OF UTILITIES OR EQUIPMENT BREAKDOWNS, {b) UNEXPLAINED DISAPPEARANCES, (c) THEFT OR CRIMINAL CONDUCT OF OTHERS, OR (d) FIRE, SMOKE, WATER, WEATHER, VERMIN, INSECTS, NEGLIGENCE OF Type B OR Type B'S AGENTS, OR OTHER CAUSES OF EVERY KIND.

Association waives insurance subrogation and releases the city from all liability for all claims covered by Association's insurance. Association's insurance carrier for property stored in city space or in the facility will not be subrogated to any claim of Association against the city or the City's officers, employees, or agents.

(2) Move-out Duties. Following the end of the Term End Date agreed upon between the Association and the City, but in any case, no later than sixty (60) days afterward, the Association must remove all items belonging to the Association. The city may extend this deadline. At such time as the Association requests and is assigned a storage space for the subsequent season, and the appropriate agreements signed, the Association may immediately occupy its assigned space.

- (3) Association MAY NOT STORE under any circumstances the following:
- (a) gasoline, oil, fuel, grease, or flammable chemicals.
  - (b) explosives, fireworks, or ammunition.
  - (c) corrosive, toxic, or hazardous materials or waste.
  - (d) asbestos or asbestos-containing construction materials.
  - (e) construction debris, tires, oil, or batteries, whether new or used; or
  - (f) items having a noxious smell in city's judgment.
  - (g) food, fertilizers, pesticides, or items which are wet and could mildew.

(4) Association may NOT USE the space or any portion of the facility for the following.

- (a) garage sale, flea market, or direct sales from the space.
- (b) business office or full-time work area.
- (c) sanding, painting, welding, soldering, or operating power equipment.
- (d) any use that violates zoning, fire, or criminal codes or other laws; or
- (e) activities classified as a nuisance in the City's sole judgment.

(4) WITHOUT THE CITY'S PRIOR WRITTEN CONSENT, Association MAY NOT DO any of the following:

- (a) alter, paint, or deface any part of the space or facility.
- (b) put weight on or attach anything to structural elements.
- (c) put holes in floors or other parts of the leased space; or
- (d) store or leave any items outside the storage space.

### **III. MANAGEMENT OF FACILITIES**

A. All notices to the city and all obligations by the city to do or receive anything shall be executed by and through the City of Joshua. If anything, herein requires performance decision or discretion on the part of the city, same shall be executed by the City Manager of the City of Joshua or the City Manager's designee. Regarding the city, the address for notice shall be as follows:

City of Joshua  
101 S. Main  
Joshua, TX 75833

The telephone number to be called during business hours is 817-558-7447 and after hours is 817-357-9802 (primary number for Supervisor over Parks and Recreation.) Regarding the Association, the notification address shall be that of the chief executive officer or the field operations officer designated to the City by the Association.

### **IV. EXHIBITS**

The City and the Association do hereby agree that the Exhibits attached hereto shall be part and parcel to this Agreement, as set out in their entirety.

Exhibit "A" Field Maintenance Agreements

Exhibit "B" Closure of Athletic Fields

Exhibit "C" Concession Stand Agreement

## V. INDEMNITY

Association, its successors and assigns agree to defend, indemnify, and hold harmless The City of Joshua, Texas and their officers, owners, partners, guests, invitees, and any of their respective heirs, successors, agents and employees (collectively, the "Indemnified City Parties"), from all costs, losses, claims, judgments, settlements, and damages of every kind and character to property or persons (including violations of environmental laws and regulations, personal injury and death), lawsuits and/or causes of action (including reasonable attorneys' fees, expert fees and court costs), INCLUDING CLAIMS ARISING FROM THE JOINT OR CONCURRENT NEGLIGENCE OF ANY OF THE INDEMNIFIED CITY PARTIES IN WHICH THE INDEMNIFIED CITY PARTY IS NOT FOUND TO BE MORE NEGLIGENT Than ASSOCIATION, and including strict liability, which may grow out of, arise from, or in any manner relate to (i) the activities of Association and Association's agents, invitees, guests, contractors, servants and employees, whether acting within the scope of their employment or not, and whether negligent or not, on the leased premises, or any adjacent property or (ii) the breach of any of the agreements or covenants of Association hereunder.

## VI. DEFAULT

A default of this Agreement shall result in the termination of this Agreement. Any termination of this Agreement will be made with a 30-day notice of the right to cure within ten days of the receipt of said notice provided however that if default endangers the safety of the public or any member thereof, or endangers the facility, notice shall be that which is practical under the circumstances and the cure time shall be as demanded. The following shall constitute defaults under this Agreement:

- A. The failure of the Association to make any monetary payment required hereunder.
- B. The violation by the Association of any rules of the facility or the terms of this Agreement.
- C. The destruction of any property.
- D. Interference with the rights of other persons by the Association or its members and the failure to cure same.
- E. Default of the Association under any other agreement between the Association and Type B Park Board and or the city.

## VII. RISK OF LOSS

- A. The risk of loss to any property of the Association or injury to any member, invitee, or guest of the Association shall be borne by the Association.
- B. The Association assumes all risk of playability and availability of the facilities. Any rain damage, wet fields, natural disasters or other stoppages of play or use of the facility and the risk

thereof shall be borne by the Association.

**VIII. DATES**

- A. The Term Start Date shall be October 1, 2022.
  
- B. The Term End Date shall be September 30, 2024
  
- C. This Agreement is made an entered into on this the \_\_\_\_day of \_\_\_\_\_2022

By JBA Board President

City of Joshua

\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

"A"

**FIELD MAINTENANCE AGREEMENT**

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1. City shall maintain all turf areas, which includes mowing, weed control, fertilization and herbicide spraying for the Joshua City Park.
2. City shall perform all pre-season turf maintenance at the Joshua City Park.
3. City shall maintain game field and bleachers in a safe and secure condition.
4. City shall be responsible for the maintenance of any turf irrigation system and watering of the fields.
5. Association shall mark field lines, when deemed necessary, for scheduled league play and will respond to all reasonable requests of the City.
6. The Association is responsible for the conduct of its players, parents and coaches throughout the specified time set forth in this Agreement.
7. The Association shall be prohibited from performing any maintenance to any turf areas without permission of the city. This does not include routine field dragging, that the association may perform between games.
8. The Association shall be responsible for the game day collection of all litter of the fields. The Association will encourage the collection of litter in the bleachers, concession areas, and adjacent grounds. All litter shall be placed in the receptacles provided by the city. The city will provide for the pick-up of these receptacles. The Association will encourage fans and players to be good stewards by policing trash during all association events. In the event that trash is not collected, the Association shall pay a service fee of \$25.00 per trash receptacle to the city.
9. Association will provide clean fully stocked restrooms at the beginning of each day on which events are scheduled. Extra paper products will be provided for the Association to keep stocked in the event restroom supplies are depleted for that day. Under circumstances of large tournaments or special events and in consultation with the Association, the city reserves the right to require appropriate numbers of portable restrooms if the size of the event warrants.
10. The association may request additional opportunities to assist in field maintenance on an as needed basis for tournament play or special occasions, that may be approved by the City Manager or his/her designee, and such equipment as needed to be furnished by the Association.



**EXHIBIT "B"**  
**FIELD INSPECTION AND CLOSURE AGREEMENT FOR THE BASEBALL FIELDS**

The City will close the Baseball fields under the following conditions:

1. The athletic fields are too wet for play.
2. The athletic fields need to be closed in the interest of participant safety and/or preservation of the playing surfaces.
3. City determines that the fields are to be closed.
4. Final decisions regarding the opening or closing of the fields will rest with the City Manager or designee, agent for the City and the Type B Park Board.

**PROCEDURES FOR ATHLETIC FIELD CLOSURE**

1. The primary responsibility to determine athletic field closure decision shall rest with the City Manager or designee responsible for athletic field maintenance. The city will provide the Association Field Operations Manager with the names, addresses and telephone numbers of the City's designee responsible for athletic field maintenance.
2. The appropriate Association Field Operations Manager has the responsibility to inform the Association and participants concerning field closure decisions.
3. The City or its designee will inspect the athletic fields by 3:00p.m. on game day and will decide based upon field conditions. On weekends the city will decide as soon as possible prior to the scheduled event and monitor the weather and field conditions throughout the weekend and make decisions on field closure (s) as needed. The City or its designee will notify the Association Field Operations Manager of its decision immediately.
4. The decision of city will be final.
5. If inclement weather becomes a factor prior to or after the games have started the game officials and/or Association officials shall cancel or postpone any games until conditions are safe. The City reserves the right of final authority to cancel or postpone an event. Of specific concern, storm events involving lightning pose a major concern. Within reason, all parties are encouraged to err on the side of caution.

**Exhibit "C"**  
**CONCESSION STAND AGREEMENT**

The Concession Stand agreement is constituted in a separate Lease agreement between the parties.

**EXHIBIT "D"**  
**JOSHUA BASEBALL ASSOCIATION**  
*Fall 2019 FIELD USE REQUIREMENTS*

The purpose of this exhibit is to provide information necessary to schedule field setup, maintenance activities and scheduling of personnel to support planned activities.

***EXAMPLE ONLY (USE WHATEVER FORM CONSISTENT WITH YOUR TRADITION, BUT MAKE SURE ALL APPLICABLE INFORMATION IS INCLUDED)***

<u>FIELD #s</u>	<u>DATES</u>	<u>DAYS</u>	<u>TIME</u>
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The Association shall furnish a copy of the league game schedules to the city at least one (1) week before the start of the season. In the event of changes, the Association will immediately furnish changes in schedule to the city designee. The city will make every reasonable effort to accommodate requested changes, but the city reserves the right to deny any changes if not done so in a timely period or at a reasonable time.

All makeup game schedule requests will be given to the city in writing at least 48 hours before the makeup game date **for approval**. Information will contain dates, times, and fields for makeup times.

Any request for additional use shall be the subject of a new agreement.