

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH KINGSPORT TRIBE YOUTH FOOTBALL AND CHEER RELATED TO THE USE OF THE ATHLETIC FIELDS AT TRIBE ATHLETIC COMPLEX AND J. FRED JOHNSON STADIUM

WHEREAS, the city entered into an agreement with Kingsport Tribe Youth Football and Cheer ("KTYFC") through Resolution No. 2023-017; and

WHEREAS, the agreement with KTYFC was for a term of twelve months with an option to renew, city has decided to renew the agreement with additional terms; and

WHEREAS, the agreement covers KTYFC's use of the Tribe Athletic Complex fields at 2533 North John B. Dennis Highway, Kingsport, Tennessee and the field at J. Fred Johnson Stadium.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the agreement with the Kingsport Tribe Youth Football and Cheer for a football youth sports program is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an agreement with the Kingsport Tribe Youth Football and Cheer for the purpose of operating a youth football program at Tribe Athletic Complex fields, 2533 North John B. Dennis Highway and the fields at J. Fred Johnson Stadium, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution, said agreement being as follows:

**AGREEMENT BETWEEN
CITY OF KINGSPORT, TENNESSEE
AND**

KINGSPORT TRIBE YOUTH FOOTBALL AND CHEER

THIS AGREEMENT (hereinafter "Agreement") is hereby made and entered into as of this _____ day of August, 2023 ("Effective Date"), by and between CITY OF KINGSPORT, TENNESSEE, a Tennessee municipal corporation (hereinafter "CITY") and KINGSPORT TRIBE YOUTH FOOTBALL and CHEER (hereinafter "KTYFC") a Tennessee nonprofit corporation.

W I T N E S S E T H

WHEREAS, CITY does not provide a competitive regional travel youth football and cheer SPORTS program for the citizens of KINGSPORT; and

WHEREAS, KTYFC is a non-profit organization organized to provide a competitive regional travel youth football and cheer program for the citizens of Kingsport and to provide a feeder program for Dobyns-Bennett High School Football; and

WHEREAS, KTYFC is a newly formed non-profit organization for the benefit of Kingsport's Citizens; and

WHEREAS, CITY and KTYFC wish to formalize an agreement for the utilization of CITY facilities for the purpose of providing a recreational youth sports program; and

WHEREAS, CITY is the owner of athletic amenities located at 2533 J B Dennis Bypass, and hereafter referred to as the "Facilities"; and

WHEREAS, KTYFC and CITY desire to enter this Agreement for the purpose of evidencing the Agreement of the parties with regard to the use of the Facilities by KTYFC and respective obligations contained herein;

NOW, THEREFORE, the premises considered, the parties agree as follows:

I. TERM.

1. This Agreement shall be for a term of twelve (12) months which shall commence upon the effective date state above. However, either party may terminate the Agreement, with or without cause, giving sixty (60) days written notice to the other party.

II. USE OF FACILITIES.

1. KTYFC will be the primary competitive regional travel youth football and cheer provider for CITY during the period of August 1, 2023, to July 30, 2024. KTYFC shall have the primary right to use CITY's Athletics Facilities at 253 J B Dennis Bypass furthered described as the North Campus football field and field house, as assigned by CITY, during KTYFC regular fall recreational seasons, league playoffs and make-up games, skills and coaches camps, and any tournaments, without assignment of any associated facility rental fees or utility fees. At any time, the facilities are not being used by KTYFC, CITY may use the facilities for any other purpose.

Special Note: The KTYFC agrees to work cooperatively with CITY on scheduling any events or programs. Nothing in this Agreement shall prevent the CITY from utilizing CITY owned or operated facilities for it or a third party's use. The CITY shall always have precedence for the use of any facility for any CITY program, third party designee, or event for any facility.

2. KTYFC shall be provided space for the storage of equipment and supplies the selection of which shall be at the sole discretion of CITY.

3. KTYFC may not make any additions and/or alterations to the facility buildings, equipment, grounds, and/or furnishing without written consent from CITY of Kingsport.

4. KTYFC understands and agrees that at times weather, electrical storms, scheduled maintenance and/or field conditions may result in CITY denying the use of certain fields on dates for which approval has been granted. KTYFC shall use appropriate judgment in ensuring the safety of the participants.

5. CITY shall at all times have the right to inspect its Facilities being used by KTYFC and all KTYFC sponsored activities related to the use of such Facilities.

If KTYFC should desire to use CITY facilities for additional special events or programs, KTYFC shall make a request to CITY in accordance with the guidelines established for assigning and scheduling of activities at CITY athletics facilities. Any and all additions or special programs shall not be included in this Agreement but shall require a separate written agreement between the parties.

III. OBLIGATIONS OF CITY. CITY agrees to:

1. Provide the following maintenance and oversight for the Sports Fields at North Campus.

a. Perform general maintenance and repairs to the facilities.

b. Work with KTYFC on maintenance items that could improve operations.

c. Provide KTYFC with contact information for after-hour and everyday needs.

d. Determine all rental fees and rules for usage of facility.

e. Establish all rules to include facility safety, signage as appropriate, emergency notification process, traffic control, and environmental regulations.

f. Provide instructions and access for North Field lights at the football stadium for use during extended hours of need.

g. Establish policy for field lighting usage.

h. Provide for insurance on buildings.

i. Perform field maintenance and line fields as needed.

j. Continue to pay the utilities for the 2023-2024 season. This will be reviewed again at the end of the year and a determination from year to year will be made on what best suits CITY and KTYFC.

2. Reserve the right to utilize the Facilities when KTYFC league activities are not scheduled. If Facilities are abandoned, the Agreement is terminated. "Abandonment" shall be defined as no play taking place on allocated field(s) during the entire term of the Agreement.

3. Assist KTYFC with distribution of information and refer interested parties to KTYFC when necessary.

4. It is understood and agreed CITY's obligations under this Agreement will be performed as soon as, and to the extent that, budgeted funds and personnel are available for performance of its obligations. If CITY is unable to fulfill its obligations due to budget restraints, it will not be obligated to KTYFC for any monetary damages.

5. Provide reasonable staff assistance in the promotion, marketing, expansion, technical expertise, maintenance of KTYFC as it relates to the Tribe Sports initiative.

6. Work in good faith with KTYFC to schedule league games at J. Fred Johnson Stadium for no rental or utility cost. Nothing in this Agreement shall supersede any Kingsport City Schools field priorities, rules, or regulations.

IV. OBLIGATIONS OF KTYFC. KTYFC shall:

1. Provide the following information within thirty (30) days of the effective date of this Agreement:

- a. Current by-laws of the organization.
- b. Proposed budget for the upcoming year.
- c. List of current officers and board members with addresses, phone numbers and e-mail (if applicable). CITY is to be notified of changes within two weeks of appointment.
- d. List of officers, recreation program personnel, field coordinators, competitive coaches, and Board of Directors members.

e. List of designated personnel who have facility keys & access.

f. Proposed Annual Calendar including all events.

2. Provide financial reports of all expenditures and revenues within 90 days after the completion of each playing season.

3. Comply with Tenn. Code Ann. § 68-55-501 *et seq.* regarding concussions which shall include but not necessarily be limited to:

a. Inform and educate coaches, youth athletes and their parents and require them to sign a concussion information form before competing.

b. Require removal of a youth athlete who appears to have suffered a concussion from play or practice at the time of the suspected concussion.

c. Require a youth athlete to be cleared by a licensed health care professional before returning to play or practice.

4. Comply with state law on Cardiac arrest training. Adopt guidelines and other pertinent information and forms as approved by the department of health to inform and educate coaches, school administrators, young athletes, and their parents or guardians of the nature, risk, and symptoms of sudden cardiac arrest including the risks associated with continuing to play or practice when experiencing any of the following symptoms. Tenn. Code Ann. §68-55-501 *et seq.* has 6 symptoms to watch for:

a. fainting or seizures;

b. unexplained shortness of breath;

c. chest pains;

d. dizziness;

e. racing heart; and

f. extreme fatigue.

City of Kingsport has developed policies and procedures to ensure compliance.

5. Provide to the citizens of Greater Kingsport a quality recreational youth sports program that operates with reasonable participant fees and associated services. All fees must be approved by CITY on a yearly basis.

6. Provide reasonable opportunities and methods to include indigent participants.

7. Conduct background checks on all coaches who are in a leadership role and have direct contact with children. KTYFC agrees that no coach shall come in direct contact with children if the background check indicates that he or she has ever been convicted of any of the offenses listed in Tenn. Code Ann. § 49-5-413 including the following offenses, or the same or similar offense in any jurisdiction, including convictions for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to:

a. a sexual offense or a violent sexual offense as defined in Tenn. Code Ann. § 40-39-202;

b. any offense in Title 39, Chapter 13 (offenses against persons);

c. Tenn. Code Ann. § 39-14-301 AND § 39-14-203 (arson, aggravated arson);

d. Tenn. Code Ann. § 39-14-401 through § 39-14-404 (definitions for burglary and related offenses; burglary; aggravated burglary; especially aggravated burglary);

e. Tenn. Code Ann. § 39-15-401 through § 39-15-402 (child abuse and child neglect or endangerment; Haley's Law – aggravated child abuse and aggravated child neglect or endangerment);

f. Tenn. Code Ann. § 39-17-417 (controlled substances offenses);

g. Tenn. Code Ann. § 39-17-1320 (providing handgun to juveniles); or

h. any other offenses in Title 39, Chapter 17, Part 13 (weapons).

KTYFC shall certify to CITY in writing that all coaches coming into direct contact with children have successfully completed the required background and that such individual has none of the convictions listed above, are not registered sex offenders and have no other disqualifications.

8. At no expense to CITY, perform the following necessary maintenance and repair:
 - a. all football equipment;
 - b. each daily game day properly dispose of all litter on field(s) to include playing areas, bleachers, concession stands, offices, maintenance buildings, and adjacent grounds;
 - c. monitor and clean restroom facility and stock the restroom facilities with supplies;
 - d. adhere to CITY rules pertaining to field usages and provide input on overuse.
9. Furnish to CITY a calendar of events within thirty (30) days of the effective date of this Agreement. The schedule may be updated and adjusted as the season progresses and will serve as a guide for maintenance of Facilities. Notice of any changes to the calendar of events shall be provided to the CITY within thirty (30) days of the change.
10. Notify CITY's Risk Management Department (423-229-9464) within twenty-four (24) hours of any accident or injury which occurs at Facilities.
11. Sign a usage agreement annually with CITY.
12. Report any facility maintenance problems to CITY within ten (10) days of KTYFC's discovery of same.
13. Comply with any pouring or exclusivity rights CITY has in effect for concessions. Comply with all City, County, and State Health Codes as it relates to concessions.
14. Maintain a minimum of seventy-five percent (75%) city residents and Kingsport City School (hereinafter "KCS") students as registered participants. Verification of residency percentages shall be made annually to CITY in the form of addresses. CITY and KTYFC will utilize annual data to determine future percentage goals. If this percentage is not met KTYFC must furnish the CITY with a plan to achieve the target near season. If the goal is not met the following season KTYFC will be assessed \$50.00 fee per child over twenty-five percent (25%) non-resident or KCS student.
15. Provide a reasonable adult to be on-site at each and every activity scheduled on CITY facilities.
16. Agree not to make any permanent changes to facilities or fields without the expressed prior written permission of the CITY.
17. Adhere to facility rules and regulations which includes proper use and care of lights, grounds, keys, facilities, and amenities.
18. Follow all rules that have been established by CITY per code and ordinance as related to the facilities, general operating guidelines, etc.
19. Assist CITY in moving and relocating equipment within the facilities as necessary.
20. Conduct only KTYFC sanctioned and organized events and activities under the terms of this usage agreement. Personal use of the facility by KTYFC members is outside the scope of this Agreement.
21. Indemnify and hold CITY harmless from any damage or loss to KTYFC equipment located at the facility.
22. Work in good faith with CITY and KCS:
 - a. to address concerns of CITY and/or KCS as to the oversight, operation, and performance of the league;
 - b. to coordinate a coaching clinic for league coaches and skills camp on a yearly basis;
 - c. implement feedback from Dobyns-Bennett coaches on how to improve player performance and coaching to better athletes feeding into Dobyns-Bennett.
23. Work in good faith with CITY to promote the Tribe Sports initiative and provide and relevant data, resources, and support.
24. Shall have the Dobyns-Bennett Football Head Coach or designee as a voting member of the KTYFC board. KTYFC shall not change their bylaws to remove this position from their Board.
25. Shall include the Assistant City Manager or designee as an advisory and non-voting member at all business meetings and other KTYFC business.
26. Shall reimburse CITY for any costs related to facility cleanliness if not done by KTYFC in a satisfactory manner. Shall reimburse the CITY for any damage to CITY facilities.

V. ASSIGNMENT and EXCLUSIVITY.

1. This Agreement is a privilege for the benefit of KTYFC only and may not be assigned in whole or part by KTYFC to any other person or entity. Both parties understand that KTYFC use of the facility is nonexclusive.

VI. INSURANCE and INDEMNIFICATION.

1. KTYFC shall, at all times, during the term of this Agreement maintain in effect Commercial General Liability insurance on a Special Risk Form covering KTYFC program for bodily injury and property damage at the Facilities in an amount of not less than one-million dollars

(\$1,000,000.00). The CITY and its Board of Mayor and Alderman, officers, volunteers, and employees as additional insureds for all policies listed herein or otherwise applicable on a primary and noncontributory basis. Each policy shall provide, at least thirty (30) days' notice of cancellation or changes of any kind. KTYFC shall provide the CITY with certificate(s) of insurance upon execution of this Agreement and the entire policy including any endorsements and exclusions promptly after written notice requesting them.

2. KTYFC shall indemnify, defend and hold harmless CITY, its officers, employees and agents from any and against any and all suits, actions, or claims of every kind or nature whatsoever, foreseen or unforeseen, known or unknown that arises out of, or is any way related to the acts or the failure to act of KTYFC or its agents, volunteers, or employees in the use of the Facilities arising out of obligations of KTYFC as set forth in this Agreement.

VII. MISCELLANEOUS PROVISIONS.

1. No modification of this Agreement shall be effective unless it is made in writing and is signed by the authorized representatives of the parties hereto.

2. This Agreement shall be construed under and in accordance with the laws of the State of Tennessee, and all obligations of KTYFC and CITY created hereunder are performable in Sullivan County, Tennessee.

3. Nothing in this Agreement shall be construed to make CITY or its respective agents or representatives liable in situations it is otherwise immune from liability.

4. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

5. Each party represents to the other that the individual signing this Agreement below has been duly authorized to do so by its respective governing body, and that this Agreement is binding and enforceable as to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement, dated above, in duplicate originals.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort, and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 18th day of July, 2023.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY