

RESOLUTION NO. _____

A RESOLUTION APPROVING A FACILITIES USE AGREEMENT
WITH KINGSPORT TRIBE BASEBALL CLUB AND AUTHORIZING
THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER
DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE
THE PURPOSE OF THE AGREEMENT

WHEREAS, Tribe Baseball Club of Kingsport (TBCK) will serve as a competitive regional travel baseball organization for the Tribe Sports initiative; and

WHEREAS, the TBCK and staff desire to enter into an agreement for a term of 12 months with which will automatically renew for an additional 12 months for the use of various city athletics facilities, based on availability, without rental costs for purposes of providing a competitive youth baseball program; and

WHEREAS, by making these facilities available the city is fostering youth sports initiatives which will benefit its citizens.

Now therefore,

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

SECTION I. That a Facilities Use Agreement with Tribe Baseball Club of Kingsport (TBCK) for the use of various athletic fields, 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, the Facilities Use Agreement with Tribe Baseball Club of Kingsport for the use of various athletic fields, 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

TRIBE BASEBALL CLUB OF KINGSPORT

THIS AGREEMENT effective as of this _____ day of _____, 2023 entered into by the CITY OF KINGSPORT, hereinafter called "CITY", and the TRIBE BASEBALL CLUB OF KINGSPORT, (TBCK), hereinafter called "TBCK".

WITNESSETH

WHEREAS, CITY does not provide a competitive youth baseball program for the citizens of KINGSPORT; and

WHEREAS, TBCK is a non-profit organization organized to provide a competitive youth baseball program for the citizens of Kingsport and to provide a feeder program for Dobyns-Bennett High School Baseball; and

WHEREAS, CITY and TBCK 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 various athletics facilities for the benefit of the citizens of Kingsport; and

WHEREAS, TBCK 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 TBCK and respective obligations contained herein;

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

I. Term

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. Option to Renew

This Agreement will automatically be renewed for an additional twelve-month (12) term unless otherwise terminated.

III. Use of Facilities

1. TBCK will provide competitive youth baseball CITY during the period of February 28, 2023 to February 28, 2024. TBCK shall have the right to use various CITY's Athletics Facilities as assigned by CITY, during TBCK regular 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.

The TBCK agrees to work cooperatively with CITY on scheduling any events or programs. Nothing in this agreement shall impair the CITY's ability to utilize CITY owned or operated facilities. The CITY shall always have precedence for the use of any facility for any CITY program or event for any facility. The CITY shall determine and assign scheduling through various departments. The CITY shall reserve the right at any time to cancel any TBCK scheduled event, game, play-off, skills, tournaments, etc. without cause.

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

3. TBCK 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. TBCK 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. TBCK 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 TBCK and all TBCK sponsored activities related to the use of such Facilities.

6. If TBCK should desire to use CITY facilities for additional special events or programs, TBCK 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.

IV. Obligations of City

CITY agrees to:

1. Provide the following maintenance and oversight for the Sports Fields:
 - a. Perform general maintenance and repairs to the facilities.
 - b. Work with TBCK on maintenance items that could improve operations.
 - c. Provide TBCK 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 Field lights.
 - g. Establish policy for field lighting usage.
 - h. Provide for insurance on buildings.
 - i. Continue to pay the utilities for the 2023 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 TBCK.

2. Assist TBCK with distribution of information and refer interested parties to TBCK when necessary.

3. 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 TBCK for any monetary damages.

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

V. Obligations of TBCK

TBCK shall:

1. Provide the following information within 30 days of the effective date of this agreement:
 - a. Current by-laws for organization.

- b. Proposed budget for 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 TCA § 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. TCA §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 insure 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. Perform background checks on all coaches who are in a leadership role and are left alone with children. CITY will provide TBCK with the background service that it uses for Athletic programs, however the funds to pay for this service must be provided by the TBCK.
 - 8. At no expense to CITY, perform the following necessary maintenance and repair:
 - a. 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;
 - b. Adhere to City rules that pertain to field usage and provide input on overuse.
 - 9. Furnish to the CITY a calendar of events within 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 the Facilities. Notice of any changes to the calendar of events shall be provided to the CITY within 30 days of the change.
 - 10. Notify CITY's Risk Management Department ((423) 229-9464) within 24 hours of any accident or injury which occurs at facility.
 - 11. Sign a usage agreement annually with CITY.
 - 12. Report any facility maintenance problems to CITY within 10 days of TBCK's discovery of the problem.
 - 13. Comply with any pouring or exclusivity rights the 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 85% city residents or Kingsport property owner and Kingsport City School (KCS) students as registered participants. Verification of residency percentages shall be made annually to CITY in the form of addresses. CITY and TBCK will utilize annual data to determine future percentage goals. If this percentage is not met TBCK must furnish the CITY with a plan to achieve the target near season. If the goal is not met the following season TBCK will be assessed \$50 fee per child over 15% non-resident or KCS student.
 - 15. Provide a responsible 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 TBCK sanctioned and organized events and activities under the terms of this usage agreement. Personal use of the facility by TBCK members is outside the scope of this Agreement.
21. Indemnify and hold CITY harmless from any damage or loss to TBCK equipment located at the facility.
22. Work in good faith with the CITY and KCS:
 - a. To address concerns of CITY and or Kingsport City Schools 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 Dobyons-Bennett coaches on how to improve player performance and coaching to better athletes feeding into Dobyons-Bennett.
23. Work in good faith with the City of Kingsport to promote the Tribe Sports initiative and provide and relevant data, resources, and support.
24. Shall have the Dobyons-Bennett Baseball head coach or designee as a voting member of the TBCK board within 30 days of the execution of this agreement. TBCK 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 TBCK business.
26. Shall reimburse the CITY for any costs related to facility cleanliness if not done by TBCK in a satisfactory manner. Shall reimburse the CITY for any damage to CITY facilities.

VI. Assignment and Exclusivity

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

VII. Insurance and Indemnification

TBCK shall at all times during the term of this Agreement maintain in effect Commercial General Liability insurance on a Special Risk Form covering TBCK 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 the 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. TBCK 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.

TBCK 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 in any way related to the acts or the failure to act of TBCK or its agents, volunteers, or employees in the use of the Facilities arising out of obligations of TBCK as set forth in this Agreement.

VIII. 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 TBCK 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 on the day and year set forth below:

[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 set out herein 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 7th day of February, 2023.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY