

YOUTH SOCCER COMPLEX USE AGREEMENT

This AGREEMENT is made on this ____ day of _____, 20__ by and between the MADISON HEIGHTS YOUTH SOCCER ASSOCIATION, a non-profit (I.R.S. Section 501(c)(3)) organization affiliated with the Michigan State Youth Soccer Association whose address is 30943 Iroquois, Warren, Michigan 48088 (hereinafter "MHYSA") and the CITY OF MADISON HEIGHTS, a Michigan Municipal Corporation, whose address is 300 West Thirteen Mile Road, Madison Heights, Michigan 48071 (hereinafter "CITY"). In this Agreement, either the MHYSA and/or the City may also be referred to individually as a "Party" or jointly as "Parties."

RECITATIONS:

WHEREAS, the GEORGE W. KUHN DRAINAGE DISTRICT (DISTRICT) is the fee owner of certain real property located on west side of John R. Road, East of I-75 between 12 Mile Road and 13 Mile Road at 29601 John Road, in the CITY, and as set forth in the attached Exhibit "A" (soccer site plan) excluding the training facility; and,

WHEREAS, the CITY has entered into a License, Use and Maintenance Agreement to operate and maintain soccer fields, over and within the DISTRICT'S property as described; and,

WHEREAS, the CITY and MHYSA acknowledge and accept the paramount rights of the DISTRICT to permanently maintain and control usage of the DISTRICT'S property; and,

WHEREAS, the MHYSA desires to make use of the soccer complex for house and travel games, coordinate the scheduling of the fields, and use the park shelter building for storage, meetings, restrooms and concessions.

NOW, THEREFORE, in consideration of these premises and the mutual promises, representations, and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties mutually agree as follows:

1. **PREMISES.** The CITY and the MHYSA agree to operate and maintain the Premises as described herein and more fully set forth in "Exhibit A," with each party's responsibilities defined below and subject to all easements and other conditions set forth in this Agreement.
2. **TERM.** This Agreement shall commence on January 1, 2025 and terminate on December 31, 2028.
3. **"SOCCER COMPLEX".** The CITY and the MHYSA shall be responsible for the operation of the "Soccer Complex", and both parties shall be responsible for liability and maintenance of the "Soccer Complex" installed upon the PREMISES as provided in the table below:

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Responsibility	CITY	MHYSA
Building Maintenance, Painting, Plumbing, HVAC/Furnace Repair, Roof Repair	X	
Concessions	Off-Season Summer – June 16-July 31 Winter – November 2-March 31	In-Season (Spring & Fall)
Custodial – Grounds	X	
Custodial – Interior	Off-Season: Summer – June 16-July 31 Winter – November 2-March 31	In-Season: Spring – April 1-June 15 Fall – August 1-November 1
Fields – Aeration	X	
Fields – Lining	X	
Fields – Overseeding / Top Dressing	X	
Fields – Scheduling / Use	Off-Season: Summer – June 16-July 31 Winter – November 2-March 31	In-Season: Spring – April 1-June 15 Fall – August 1-November 1
Fields – Sod Repair and Replacement	X	
Goal Post and Net Maintenance/Repair		X
Grass Cutting	X	
Grass Fertilization	X	
Lock / Unlock Restroom Outside Doors	May 31-October 31	
Parking Lot Sweeping	X	
Resealing and Restriping of Parking Lot	X	
Non-OCPR Signage Repair and Replacement	X	
Sprinkler Repair and Annual Winterizing	X	
Trash – Emptying Individual Garbage Cans	Off Season: Summer – June 16-July 31 Winter – November 2-March 31	In Season: Spring – April 1-June 15 Fall – August 1-November 1
Trash – Collection & Disposal of 4-yard Front Load Dumpster	X	
Utilities – Electric	X	
Utilities – Gas/Heat	X	
Utilities – Watering (Water and Sewer)	X	

- a. For the purpose of offsetting the cost to operate the SOCCER COMPLEX, the CITY grants the MHYSA permission to rent usage of the soccer fields to other soccer organizations for the purpose of soccer games and practices only. The MHYSA shall assume full responsibility for scheduling field use by other organizations. No third-party building usage is permitted. The requirements of Section 4 (Liability and Insurance) below shall also apply to all renters. The MHYSA assumes full responsibility to obtain the required Certificate of Coverage from the renter and to provide the City with a copy of same at least fifteen (15) days prior to the rental.
- b. The City and the MHYSA shall keep the Premises in good repair, wear and tear from reasonable use and damage excepted.
- c. The MHYSA will designate an official to coordinate with the CITY on SOCCER COMPLEX maintenance.

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4. LIABILITY AND INSURANCE.

- a. Prior to the effective date of this Agreement and continuing for the duration of this Agreement, the MHYSA shall obtain and maintain General Liability Insurance with minimum limits of \$2,000,000 per occurrence and \$2,000,000 aggregate (solely for the use of this agreement with the City of Madison Heights) and add or name the CITY, as an additional insured on the policy. The insurance requirements identified herein may be reviewed periodically. If necessary, the City and the MHYSA agree to negotiate appropriate insurance limits increases.
- b. To the extent permitted by law the MHYSA shall indemnify and hold the CITY harmless from any and all Claims which are incurred by or asserted against the CITY by any person or entity, alleged to have been caused or found to arise, from the acts, performances, errors, or omissions of MHYSA or MHYSA'S officials, officers, employees and/or agents, including, without limitation, all Claims relating to the scheduling and use of fields, use of the park shelter building and maintenance of the Soccer Complex.
- c. To the extent permitted by law the CITY shall indemnify and hold the MHYSA harmless from any and all Claims which are incurred by or asserted against the MHYSA by any person or entity, alleged to have been caused or found to arise, from the acts, performances, errors, or omissions of CITY or CITY'S officials, officers, employees and/or agents, including, without limitation, all claims relating to the operation and maintenance of the Soccer Complex.
- d. Nothing contained herein, including the indemnity provisions stated above, shall constitute a waiver of governmental immunity or other defenses to claims or lawsuits alleged by any person or entity. All parties reserving their respective rights and immunities as provided by law. In this agreement, "Claim(s)" shall be defined to include any and all alleged losses, claims, complaints, demands for relief or damages, suits, causes of action, proceedings, judgments, deficiencies, liability, penalties, fines, litigation costs and expenses, including, but not limited to, any reimbursement for reasonable attorney fees, witness fees, court costs.

5. REVENUES. The MHYSA will be allowed to operate the park shelter building concession in-season, and the CITY will be allowed to operate the park shelter building concession off-season. Each party shall retain revenues from the sales of their respective activities.

6. CITY'S RESERVATION OF RIGHTS.

- a. MHYSA understands and agrees that the primary and paramount purpose of the Premises are for the drain, sewer, and pollution control facilities that are operated and maintained by DISTRICT. Accordingly, MHYSA agrees that the operations of the

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Soccer Complex shall not damage, impair or interfere with the operations of the drain, sewer and pollution control facilities that exist now or in the future. DISTRICT reserves the right to inspect the PREMISES from time to time.

- b. In the event that the operations of the " Soccer Complex" disrupt, interfere or cause damage to the drain, sewer or pollution control facilities or their operations, MHYSA agrees to immediately cease its Soccer operations and abate the interference or disruption to drain, sewer or the pollution control facilities. MHYSA further agrees to assume liability for any damages to the drain, sewer or pollution control facilities, or costs to the MHYSA directly resulting from MHYSA's soccer and related operations.
- c. ACCESS BY DISTRICT AND THE CITY: Subject to the DISTRICT and the CITY having access at all times to any part of the Premises, including any portions of the property occupied by the "Soccer Complex" the MHYSA will have first come, first-served priority to the park shelter building. The CITY will coordinate the scheduled use of the park shelter building including, but not limited to, the planned use of the building for DISTRICT sponsored training sessions. Planned use of the park shelter building should be booked by the start of each calendar quarter.
- d. In the event of an emergency, as determined by the Oakland County Water Resources Commissioner, the Water Resources Commissioner will deliver to CITY and the CITY to MHYSA a "Notice of Emergency" specifying which part of the "Soccer Complex" is disrupting, interfering, or damaging drain, sewer, or pollution control facilities operated by the DISTRICT. The CITY and MHYSA will discontinue use of all or that part of the "Soccer Complex" so identified by the Oakland County Water Resources Commissioner until the emergency is abated. If the MHYSA fails to comply with the "Notice of Emergency" delivered by the CITY, then the Water Resources Commissioner may cause the use to be discontinued of all or part of the "Soccer Complex" on the Premises identified in the "Notice of Emergency." In the event that that the Soccer Complex is disrupted due to an emergency, then the CITY and MHYSA shall not be required to operate and maintain that part of the Soccer Complex that is disrupted. In the event of a disruption due to an emergency that results in the destruction of part or all of the soccer fields, the DISTRICT will restore such fields on the premises. The DISTRICT shall determine in its sole discretion, whether or not to replace, repair fixtures, such as concession stands, pavilions or restroom facilities at District's expense. In addition, the DISTRICT shall not be liable to the CITY or the MHYSA for lost revenue or other damages resulting from emergency repairs to the drain, sewer or pollution control facilities.

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- e. In the event that DISTRICT is required to comply with any administrative permit, rule and/or regulation issued or promulgated by the United States Government or State of Michigan, or agency thereof, or any court order, to improve, repair, or construct additional drain or sewer facilities within the Premises; or conduct any other activities related to its operations and maintenance of the drain, sewer or pollution control facilities, water main and storm sewers, and where such action results in the removal or destruction of all or a portion of the "Soccer Complex", the DISTRICT has agreed to restore the "Soccer Complex" on the PREMISES to its pre-existing condition.
 - f. If the DISTRICT, in order to comply with any rule or regulation issued or promulgated by the United States Government or the State of Michigan, or agency thereof, or any court order, is required to take all or a portion of the PREMISES for drain, sewer, or pollution control facilities, which taking would effectively terminate the ability of the CITY and the MHYSA to operate the "Soccer Complex", then this agreement will terminate at the end of ninety (90) day notice served upon the CITY by DISTRICT and upon MHYSA by the CITY. During the ninety (90) day period, the CITY and the MHYSA will remove its equipment and fixtures from the PREMISES. The CITY will not be required to remove structures from the PREMISES if the structures will be destroyed as a result of the work to be done by DISTRICT to comply with governmental mandates. However, the DISTRICT may remove if the CITY and/or the MHYSA fail to remove structures as required. Under no circumstances shall the DISTRICT or the CITY be liable to the MHYSA for lost revenue or other damages resulting from compliance with the governmental mandates envisioned by this paragraph.
 - g. In the event the MHYSA is unable to use the Soccer Complex due to the DISTRICT'S need to address an emergency or compliance direction from the State or United States Government, the CITY will provide the MHYSA available alternative field locations.
 - h. This agreement does not and is not intended to impair, divest, delegate or contravene any constitutional, statutory and/or legal right, privilege, power, obligation, duty, capacity or immunity of the CITY.
7. **ASSIGNMENT.** This agreement may not be assigned by MHYSA without prior written consent of the CITY.
8. **UTILITIES.** The CITY agrees to pay the utilities for the Soccer Complex as contained above under Section 3.
9. **GOVERNING LAW.** This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this Agreement is intended to and, in all cases, shall be

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construed as a whole according to its fair meaning, and not construed strictly for or against any party.

10. CAPTIONS. The section headings or titles and/or all section numbers contained in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement. Any use of the singular or plural number, any reference to the male, female or neuter genders, and any possessive or non-possessive use in the contract shall be deemed the appropriate plurality, gender or possess as the context requires.
11. ENTIRE CONTRACT; SEVERABILITY; WAIVER.
 - a. This Agreement sets forth the entire agreement between the CITY and MHYSA regarding the Soccer Complex and fully supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof.
 - b. It is further understood and agreed that the terms and conditions herein are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the CITY and MHYSA in any way related to the subject matter hereof, except as expressly stated herein.
 - c. This Agreement shall not be changed or supplemented orally and may be amended only as otherwise provided herein. If any provision(s) of the Agreement or application thereof to any extent found to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent of the law. This Agreement may be modified or amended only by written agreement of the CITY and MHYSA.
 - d. The terms and conditions of this Agreement shall be binding and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.
 - e. WAIVER: No waiver of any term, provision or condition in this agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a further continuing waiver of a term, provision or condition of this agreement. No remedy available to a party to this agreement for the other party's breach of this agreement is intended to an exclusive remedy. A party's exercise of any remedy for breach of this agreement shall not be deemed or construed to waiver of its right to pursue another remedy.

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FOR AND IN CONSIDERATION of the mutual assurances, promises, acknowledgments, warrants, representations, and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned hereby execute this Agreement on behalf of the Parties, and by doing so legally obligate and bind the Parties to the terms and conditions of this Agreement.

MADISON HEIGHTS YOUTH SOCCER ASSOCIATION ("MHYSA")

By: _____

Tammy Crook
President

Witness

STATE OF MICHIGAN }
COUNTY OF OAKLAND

On this ____ day of _____, 20____, before me, a notary public in and for said County and State, personally appeared the above named _____, President of Madison Heights Youth Soccer Association to me personally known, who being by me duly sworn, did say that she has read the foregoing Field Use And Indemnification, Defend And Hold Harmless Agreement, that the same was explained to her by their representatives, and that she fully understands the contents thereof, and that she has signed said Field Use And Indemnification, Defend And Hold Harmless Agreement as her own free act and deed and on behalf of the aforesaid organization.

_____, Notary Public

County, Michigan

acting in the County of _____
My Commission expires: _____

CITY OF MADISON HEIGHTS ("CITY")

By: _____
Roslyn Grafstein
Mayor

Witness

By: _____
Cheryl Rottmann

Witness