

## **KNOW ALL MEN BY THESE PRESENTS**

WHEREAS, the City of Wolfforth, Texas, (hereinafter "City") desires to enter into an operating agreement for the baseball facilities situated at Patterson Park, Wolfforth, Texas, (hereinafter "Facility") with Frenship Baseball, Inc. a.k.a. Frenship Youth Baseball, a non-profit Corporation (hereinafter "League") as follows, to-wit:

### **RENTAL PAYMENT:**

#### **I.**

1.1 LEAGUE agrees to pay to the CITY the sum of \$10,000.00 for the use of the baseball complex, including Fields 1, 2, 3, 4 and 5. The \$10,000.00 may be paid in two installments, with \$5,000.00 payable on or before April 15 of each year during the term of this Agreement and the remaining \$5,000.00 payable on or before July 15 of each year during the term of this Agreement. The CITY shall be responsible for paying the utility bills for the facility. In the event the utility bills during any calendar year during the term of this Agreement exceed \$10,000.00, the LEAGUE shall pay any additional utility charges within thirty (30) days after the CITY invoices the LEAGUE. In the event the utility bills during any calendar year during the term of this Agreement are less than \$10,000.00, the CITY shall retain the balance. The CITY will provide the LEAGUE with the amounts of the utility bills as requested by the LEAGUE.

1.2 The President of LEAGUE agrees to communicate with City Officials on a regular, monthly basis, informing them of the financial condition of the league.

### **SCHEDULING**

#### **II.**

2.1 The LEAGUE shall have first right of access to the Facility from February 1 through September 30 during each year during the Term of this Agreement. The LEAGUE shall submit its practice schedules to the City Secretary by February 1 of each year during the term of this Agreement. The LEAGUE shall submit its game schedules to the City Secretary by March 1 of

each year during the term of this Agreement. The City Secretary shall keep a calendar of all events which he/she shall make available to any person upon request.

2.2 CITY reserves the right to schedule events at the Facility as long as such events do not conflict with the schedules provided to the City Secretary by the LEAGUE by March 1 of each year of this Agreement. CITY will contact the LEAGUE by electronic mail at President@FyWUSSA.org prior to scheduling any event at the Facility from February 1 to September 30 during the term of this Agreement. If the LEAGUE does not respond within three business days of the date the CITY sends the email regarding the scheduling of an event, the CITY may schedule that event. The LEAGUE will not be able to use the Facility or reserved fields once an event is scheduled by the City Secretary in accordance with this paragraph.

2.3 The LEAGUE shall not schedule any games, tournaments or other events from October 1 to January 30 under this Agreement. If the LEAGUE desires to use the Facility for any purpose from October 1 to January 30, it must contact the City and make specific arrangements for that use. If the utility bills for that calendar year have not exceeded \$10,000.00, the LEAGUE will not owe the CITY any amount of the addition utility usage. If the utility bills have exceeded \$10,000.00 for that calendar year or the scheduled event causes the utility bills for that calendar year to exceed \$10,000.00, the LEAGUE will be responsible for those charges as set forth in paragraph 1.1 above.

2.4 If the LEAGUE uses the Facility, facilitates the use of the Facility or allows the use of the Facility outside of the scheduling procedure set forth in paragraphs 2.1 and 2.3 above, the LEAGUE agrees to pay the CITY an addition \$1,000.00 for each day the LEAGUE uses the Facility, facilitates the use of the Facility or allows the use of the Facility outside of the scheduling procedure set forth above. The LEAGUE will make such payment to the City within thirty (30) days of receipt of an invoice from the CITY.

2.5 The parties agree that the CITY shall have the prior right to use the facilities in connection with the annual Wolfforth Harvest Festival, Fourth of July celebration, BBQ Cook-

off, National Night Out, and Balloon Roundup. LEAGUE may not schedule any activities during Harvest Festival, Fourth of July, BBQ Cook-off, National Night Out, or Balloon Roundup without the City Council's written consent.

**OPERATION OF THE CONCESSION STAND:  
III.**

3.1 LEAGUE agrees to operate the concession stand in a prudent, good and workmanlike manner. LEAGUE shall utilize only those electrical appliances and equipment presently in use, and no other appliances and/or equipment shall be installed without the consent of CITY. LEAGUE shall deposit with the CITY, in an interest bearing account, upon execution hereof, an amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) (hereinafter, "the deposit"). The deposit is to ensure that the Facility, together with all appliances and equipment owned by the City shall be returned in good operating condition, and thoroughly cleaned. LEAGUE shall be entitled to a return of some or all of the deposit if:

- a. An inspection is conducted by the City Manager, within ten (10) days after the last regularly scheduled baseball game is concluded; and
- b. The City Manager determines that no cleaning, repairs, or replacements are necessitated.

**TERM:  
IV.**

4.1 The Initial Term of this Agreement shall commence on the 1<sup>st</sup> day of January, 2016 and expire on the 31<sup>st</sup> day of December, 2020. (Initial Term). The Agreement shall renew at the end of the Initial Term and each Subsequent Term for a period of one year (Subsequent Term) unless a party provides written notice of termination at least sixty (60) days before the end of the then current term.

**USAGE:  
V.**

5.1 LEAGUE shall be permitted to utilize the Facility only for the purpose of Frenship Youth Baseball and activities directly related thereto.

**SUBJECT TO:  
VI.**

6.1 This Agreement is subject to all existing and future applicable State and Federal acts and regulations.

**UTILITIES:  
VII.**

7.1 LEAGUE is forbidden to alter existing electrical wiring systems, water lines or any other utilities, without prior approval from the City.

**MAINTENANCE:  
VIII.**

8.1 LEAGUE shall clean up trash each day the fields are utilized by the LEAGUE, and shall prevent garbage, refuse, junk, discarded or unused material from accumulating on the Facility. Additionally, LEAGUE shall remove from the Facility all debris and trash immediately after any activity. Further, all bathrooms shall be kept clean and shall be properly furnished with paper goods at all times. The concession stand and press box shall be maintained in a clean and orderly manner. IN THE EVENT THE CITY MANAGER DETERMINES THAT THE FACILITIES ARE NOT BEING MAINTAINED AS REQUIRED, THE CITY MANAGER SHALL GIVE LEAGUE AT LEAST THREE (3) DAYS WRITTEN NOTICE PRIOR TO A HEARING TO BE HELD BEFORE THE CITY COUNCIL. IF AT THE HEARING IT IS DETERMINED THAT THE FACILITIES ARE NOT BEING PROPERLY MAINTAINED, THE CITY COUNCIL SHALL HAVE THE OPTION OF TERMINATING THIS LEASE UPON TEN (10) DAYS WRITTEN NOTICE TO LEAGUE.

8.2 All motor driven equipment shall be kept secured within an enclosure except when in actual use. At no time will persons under the age of seventeen (17) be allowed to operate any motor driven equipment in the park area.

8.3 LEAGUE shall maintain the fields during the contract period, including mowing and irrigation. The LEAGUE shall abide by all City of Wolfforth irrigation restrictions, including limitations imposed by Ordinance No. 359, Landscaping Irrigation Systems, and Ordinance No. 435, Drought Contingency Plan. Fields may be irrigated on Tuesdays and Saturdays, between the hours of 8:00 p.m. and 10:00 a.m. The CITY shall retain the right to approve and control field maintenance as it alone shall deem proper. If the City is required to water, irrigation shall be scheduled for Wednesdays, so as not to interfere with Frenship Youth Baseball league play.

**AUTOMOBILE PARKING:**

**IX.**

9.1 Parking shall be in designated areas with marked no parking enforced in accordance with appropriate City Ordinance(s). No signs or appurtenances shall be placed upon structures on leased Facility without prior approval of the CITY. Locks at the park facilities may not be changed unless the LEAGUE has obtained the written consent of the City Manager. The CITY shall at all times be provided with current copies of all keys to all facilities located at the park.

9.2 Automobile parking shall be allowed inside the baseball complex for deliveries only. Parking shall be limited to a reasonable period of time to permit loading and unloading.

**SIGNS:**

**X.**

10.1 All advertising shall meet CITY'S approval, front and back, which approval shall not be unreasonably withheld. All advertising signs shall be removed two (2) weeks after the last regularly scheduled activity, but no later than the 15th day of November during each year during the term of this Agreement.

**GARBAGE:**

**XI.**

11.1 The CITY shall provide a minimum basic dumpster and service thereof during the term hereof. The CITY will maintain dumpsters in the complex adequate to meet the needs of the

LEAGUE.

**SUBLEASING PROHIBITED:  
XII.**

12.1 LEAGUE shall not sublease the Facility without prior written consent of the CITY.

**ASSIGNMENT:  
XIII.**

13.1 LEAGUE shall not assign, transfer or convey any of its rights, responsibilities or duties to any person, firm or corporation without the expressed consent of the Lessor.

**INSURANCE COVERAGE:  
XIV.**

14.1 During the term of the lease, LEAGUE shall maintain in full force and effect insurance not less than the amounts hereinafter specified, insuring the CITY against public liability, products liability, property damage, and general liability. LEAGUE shall, prior to taking possession of the leased Facility, furnish CITY a duplicate copy of insurance covering the foregoing in an amount not less than FIFTY THOUSAND DOLLARS AND NO/100 (\$50,000.00) for property damage, and not less than ONE MILLION DOLLARS AND NO/100 (\$1,000,000.00) for personal injuries, death, or general liability arising out of any one accident or other cause.

**INDEMNITY:  
XV.**

15.1 LEAGUE shall indemnify, defend and hold harmless the CITY, its officers, agents and employees from any and all liabilities, claims, demands, actions, losses, damages and costs, including all cost of defense thereof causing by or arising out of, or in any way relating to LEAGUE'S use of the leased Facility or occurring on the leased Facility during the terms of this lease, including claims, liabilities and actions based upon nuisance. Upon demand, LEAGUE shall, at its own expense, defend the CITY, its officers, agents and employees against any and all

such liabilities, claims, demands, actions, losses, damages and costs.

**AS IS CONDITION:  
XVI.**

16.1 The Facility are leased in an "as is" condition without warrant of its fitness for the use set forth in this Agreement. Prior to the execution of this Agreement, the Facility shall be inspected jointly by the parties hereto and execution hereof conclusively evidences inspection and acceptance of the Facility by LEAGUE.

**TERMINATION PRIOR TO EXPIRATION DATE:  
XVII.**

17.1 In addition for the right to terminate for lack of maintenance, the CITY shall have a right to terminate this lease in whole or in part upon the breach of this Agreement by the LEAGUE for failure to perform and/or keep or observe any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this lease, after the expiration of a fifteen (15) day period following a request for compliance given by the City Manager to the LEAGUE; addressed to, or hand delivered to the League President. In the event the LEAGUE holds or allows an event to take place at the Facility in violation of Section II of this Agreement, allows another entity to use the Facility or subleases the Facility, the CITY may immediately terminate this Agreement by providing written notice to the LEAGUE that this Agreement is terminated.

**RIGHTS AFTER TERMINATION:  
XVIII.**

18.1 If termination occurs prior to expiration date, the CITY shall have the right (unless otherwise specified in the Termination Notice), at once and without further notice to the LEAGUE, to enter and to take possession of the Facility and expel, oust or remove any and all parties who occupy any portion of the Facility covered by this lease; the CITY may take into its possession any and all goods and chattels belonging to the LEAGUE which may be in or upon same without liability for prosecution or any claim for damages. Upon termination by the CITY,

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all rights, powers and privileges of the LEAGUE shall cease and the LEAGUE shall immediately vacate any and all space occupied by it under this lease. LEAGUE shall be permitted to reclaim merchandise and other of its personal property which it placed upon the Facility and which is not affixed thereto, all in a manner and at a time mutually agreed upon by the parties hereto.

**BREACH:  
XIX.**

19.1 Without waiving the foregoing, any breach of this lease by LEAGUE shall entitle the City to all rights, remedies, and privileges allowed by law.

**SURRENDER:  
XX.**

20.1 At the expiration of the term of this lease, LEAGUE shall peaceably deliver possession of the "leased Facility" to Lessor in as good condition as at the commencement of the lease, normal wear and tear excepted.

**CO-PARTNERSHIP DISCLAIMER:  
XXI.**

21.1 Nothing in the Agreement is intended or shall be construed to create or establish the relationship of a joint-venture, partnership or co-partners between the parties hereto, or as constituting the LEAGUE as an agent or representative of the CITY for any purpose or in any manner whatsoever.

**NOTICES:  
XXII.**

22.1 Any notice to the CITY shall be sufficient if sent by certified mail, postage prepaid, addressed to the City Manager, City of Wolfforth, P.O. Box 36, Wolfforth, TX 79382, or hand delivered and receipted for by the City Manager. Any notices to the LEAGUE shall be sufficient if sent by certified mail, postage prepaid, addressed to Frenship Youth Baseball, Attn: Eric Knight, P.O. Box 655, Wolfforth, TX 79382, or any officer of Frenship Youth Baseball, and



properly receipted.

**TIME OF ESSENCE:  
XXIII.**

23.1 Time is of the essence and all of the terms and provisions of this agreement shall extend to, be binding upon, and inure to the benefit of the respective parties hereto.

**NON-DISCRIMINATION:  
XXIV.**

24.1 No person, on the grounds of race, color, sex, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of such facilities. However, it is understood by CITY and LEAGUE that the park was developed for residents of the City of Wofforth. In no event may the LEAGUE implement any program or policy which would or might favor the participation of participants from outside of the City of Wofforth or limit the ability of residents of the City of Wofforth to participate.

**MISCELLANEOUS:  
XXV.**

25.1 This lease and the covenants shall be binding upon both parties hereto.

**NUISANCE:  
XXVI.**

26.1 No utilization will be made of the Facility that shall create a nuisance.

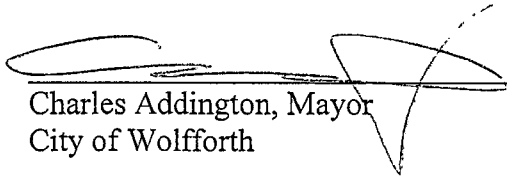
**ALCOHOLIC BEVERAGES:  
XXVII.**

27.1 No alcoholic beverages shall be allowed in Patterson Park, of which the baseball complex is a part. Wofforth City Ordinance No. 190 will be strictly enforced.

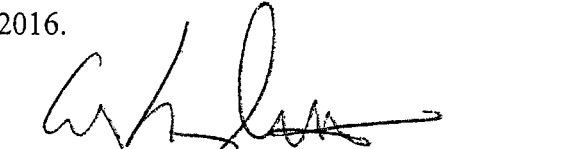
**INVENTORY:  
XXVIII.**

28.1 An inventory of all property, fixtures and appliances at the baseball facility shall be made prior to the inception of this lease, with a copy thereof being attached hereto, initialed for identification by the CITY and LEAGUE and incorporated here as though copied at this point verbatim.

EXECUTED this 29<sup>th</sup> day of January, 2016.



Charles Addington, Mayor  
City of Wolfforth



Eric Knight, President  
Frenship Baseball, Inc.  
a.k.a. Frenship Youth Baseball