

**CITY OF FORNEY
TOURNAMENT FACILITIES UTILIZATION AGREEMENT**

STATE OF TEXAS

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COUNTY OF KAUFMAN

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THIS AGREEMENT is entered into by and between the City of Forney, Texas, a home rule municipal corporation located in Kaufman County, Texas, acting by and through its duly authorized City Manager (hereinafter referred to as the "City"), and _____, (hereinafter referred to as "Tournament Provider").

WHEREAS, the City realizes the importance of weekend athletic tournaments. These events have a favorable impact on the local economy, as well as providing a revenue source for the youth sports associations and the City. The City's goal is to ensure that all scheduled tournaments are completed in satisfactory fashion;

WHEREAS, the Tournament Provider desires to utilize the City's athletic facilities for the purpose of offering such a tournament and the City is willing to allow such use;

WHEREAS, the Tournament Provider is an individual at least twenty-one (21) years of age and is interested in organizing and promoting a quality tournament;

NOW, THEREFORE, in consideration of the foregoing and in accordance with the terms and condition set forth below, the City and Tournament Provider do hereby covenant and agree as follows:

**SECTION 1
PREMISES**

The City agrees to provide _____ athletic facilities at _____, herein called the "Premises" in accordance with the terms of this Agreement.

The City shall maintain final approval over the Premises at all times. Under the terms of this Agreement, the City permits the Tournament Provider the use of the Premises for the tournament(s) dated _____, 2020 and _____, 2020.

The Tournament Provider shall not assign this lease, sublease or rent out any property of the City. Only the City may lease City property.

The Tournament Provider shall not engage in any business on the Premises or do anything in connection therewith which shall be in violation of any existing state or federal law or municipal ordinances, or use the same in such manner as to constitute a nuisance.

**SECTION 2
TOURNAMENT HOURS**

Tournaments and games cannot begin prior to 8:00 a.m. and should generally conclude by 10:00 p.m. on Sundays through Thursdays and 11:00 p.m. on Fridays and Saturdays. Access to the

fields will be allowed one (1) hour prior to start of tournament play.

**SECTION 3
TOURNAMENT FEES**

Tournament Provider shall pay the appropriate tournament fees as set out below:

DESCRIPTION	FEE
<input type="checkbox"/> Tournament – Baseball, Softball, Soccer or Kickball <ul style="list-style-type: none"> • Involves four or more teams, which did not play regularly scheduled games with any current sports associations in Forney • Consists of a 1-3 day tournament • Payment of tournament fee is due within ten (10) days after conclusion of each tournament • Deposit is due upon execution of the tournament agreement 	\$2,000 (includes use of up to 4 fields) \$400 for each additional field \$250 non-refundable deposit

Deposits will be applied to final payment at the conclusion of the tournament. In the event the Premises is damaged during tournament play, the cost for repairs will be deducted from the deposit. The remaining balance, if any, will then be applied to the final payment.

**SECTION 4
INSURANCE**

The Tournament Provider, at its own expense, shall obtain and keep in force during the term of this Agreement public liability insurance as will protect the Tournament Provider and the City from all claims for damages to property and persons, and such insurance policy shall name the City of Forney as an additional insured, in an amount of at least one million dollars (\$1,000,000) with such policy designed to cover the cost of defense and liability for injuries suffered by spectators and competitors in the organized athletic activity. The insurance shall protect the City from and against all liability for claims arising out of or in connection with the Tournament Provider's use and occupation of the Premises, and shall provide that such policy cannot be cancelled or terminated without thirty (30) days prior written notice to the City. All insurance shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in Texas, acceptable to the City.

The type and minimum limit of liability insurance is as follows:

<u>TYPE</u>	<u>MINIMUM LIMIT</u>
Comprehensive General	\$1,000,000 – Combined Single Limit
Public Liability	Coverage for Bodily Injury and Property Damage

\$1,000,000 – On a per occurrence basis, including medical coverage.

All insurance policies shall be subject to the examination and approval of the City Attorney for Forney for their adequacy as to content, protection and named insurance company. The Tournament Provider shall furnish to the City certificates of such insurance within ten (10) days

of the execution of this Agreement or prior to the commencement of any activities by the Tournament Provider at the City of Forney Park Facilities, whichever occurs first. The Tournament Provider understands and agrees that it has the sole responsibility to provide this information and that failure to timely comply with the requirements under the Article shall be cause for termination of this Agreement.

Insurance required by this Agreement for the City as additional named insured shall be primary insurance and not contributing with any other insurance available to the City under any third-party liability policy.

The Tournament Provider further agrees that with respect to the above required insurance, the City shall:

1. Be named as an additional insured or an insured, as its interest may appear.
2. Be provided with a waiver of subrogation, in its favor.

SECTION 5 INDEMNIFICATION

THE TOURNAMENT PROVIDER AGREES AND UNDERSTANDS THAT IT IS SPONSORING AN ATHLETIC ACTIVITY THAT HAS CERTAIN INHERENT DANGERS, AND THAT PERSONS PARTICIPATING IN ACTIVITIES DISCUSSED HEREIN MAY BE INJURED ON THE PREMISES. THE TOURNAMENT PROVIDER UNDERSTANDS THAT THE CITY WILL ATTEMPT TO PROVIDE SAFE PREMISES, BUT THAT CONDITIONS MAY CHANGE OR DEVELOP WHICH CREATE UNANTICIPATED DANGERS. THE TOURNAMENT PROVIDER AGREES AND REPRESENTS THAT IT SHALL INSPECT THE PREMISES AT THE BEGINNING OF EACH TOURNAMENT, INCLUDING BUT NOT LIMITED TO THE PLAYING FIELDS, AND THAT THE TOURNAMENT PROVIDER HAS DETERMINED THAT SUCH PREMISES ARE REASONABLY SAFE FOR THE ACTIVITIES CONTEMPLATED HEREUNDER. THE TOURNAMENT PROVIDER FURTHER AGREES THAT AT ANY TIME ITS REPRESENTATIVES OBSERVE AN UNSAFE CONDITION ON THE PREMISES USED BY THE TOURNAMENT PROVIDER, INCLUDING BUT NOT LIMITED TO THE PLAYING FIELDS, THE TOURNAMENT PROVIDER SHALL IMMEDIATELY REPORT SUCH DANGEROUS CONDITION TO THE DIRECTOR OF PARKS AND RECREATION FOR THE CITY OR DESIGNEE. IF THE DANGEROUS CONDITION POSES AN IMMINENT DANGER THE TOURNAMENT PROVIDER SHALL IMMEDIATELY DISCONTINUE THE ACTIVITY AND USE OF THAT PORTION OF THE FACILITY.

THE TOURNAMENT PROVIDER OFFICIALS, PLAYERS, MEMBERS, AND OFFICERS SHALL INDEMNIFY AND HOLD HARMLESS THE CITY OF FORNEY, ITS AGENTS, OFFICIALS AND EMPLOYEES FROM ANY AND ALL CLAIMS FOR BODILY INJURY, ILLNESS, DEATH, ECONOMIC LOSS, PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF THE ACTIVITIES OF THE TOURNAMENT PROVIDER CONTEMPLATED HEREUNDER, INCLUDING BUT NOT LIMITED TO ANY CLAIM ARISING OUT OF ANY NEGLIGENT ACT OR OMISSION COMMITTED BY TOURNAMENT PROVIDER OFFICIALS, PLAYERS, MEMBERS, OR OFFICERS.

NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO LIMIT OR WAIVE ANY GOVERNMENTAL OR SOVEREIGN IMMUNITY OF THE CITY OF FORNEY OR ANY IMMUNITY APPLICABLE TO ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES, NOR SHALL IT BE CONSTRUED TO LIMIT OR WAIVE ANY INSURANCE COVERAGE OR THE

CITY'S STATUS AS AN ADDITIONAL NAMED INSURED AS PROVIDED IN SECTION 4 OF THIS AGREEMENT. TO THE EXTENT THERE MAY BE A WAIVER OF IMMUNITY UNDER STATE LAW TO ENFORCE THIS AGREEMENT, THE REMEDIES AVAILABLE TO ENFORCE THIS AGREEMENT ARE LIMITED TO MANDAMUS, SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF. ALL OTHER REMEDIES, INCLUDING SUITS FOR DAMAGES AND RECOVERY OF ATTORNEY'S FEES ARE SPECIFICALLY WAIVED BY BOTH PARTIES.

SECTION 6 SITE DIRECTOR

The Tournament Provider shall provide a Site Director at each complex that is to be used for the event. The Site Director must be at least 21 years of age. The Site Director shall serve as the liaison with City staff on emergency needs, identification of general maintenance needs affecting future games, completion of accident/incident reports, decision making regarding hazardous conditions including weather conditions, as well as provide conflict resolutions between players, coaches, umpires and parents.

SECTION 7 DOCUMENTS AND OFFICERS

The Tournament Provider shall submit to the City a current copy of names, telephone numbers, and email addresses of all representatives. The Tournament Provider shall also submit the following information:

1. A copy of the general liability insurance policy, naming the City as additional insured, in an amount of at least one million dollars (\$1,000,000) with such policy designed to cover the cost of defense and of liability for injuries suffered by competitors in the organized athletic activity.
2. Names and contact numbers of designated Site Directors during the tournament.
3. Tournament schedule and field usage (due at least 48 hours prior to the tournament).

The City shall submit to the Tournament Provider the names and telephone numbers of appropriate staff for contact in the case of emergency, service requests or questions upon signing or renewing this Agreement.

SECTION 8 TERMINATION OF AGREEMENT

If either party, the City or the Tournament Provider, violates any term of this Agreement, either party may find the other in default and terminate the Agreement. Termination will be made with a thirty (30) day written notice and the right to cure within ten (10) days. Any termination made as a result of a default by the Tournament Provider will result in forfeiture of the deposit and possible loss of future dates at the City's sole discretion.

SECTION 9 SUCCESSORS AND ASSIGNS

The City and Tournament Provider each binds itself and its successors, executors, administrators and assigns to the other party of this Agreement and to the successor, executors, administrators and assigns of such other party in respect to all covenants of the Agreement. Neither the City nor

Tournament Provider shall assign or transfer its interest herein without the prior written consent of the other.

SECTION 10 APPLICABLE LAW

This Agreement is entered into subject to the Charter and ordinances of the City as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and Federal laws. The Tournament Provider will make any and all reports required per Federal, State or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Tournament Provider's income. Situs of this Agreement is agreed to be Kaufman County, Texas, for all purposes including performance and execution.

SECTION 11 SEVERABILITY

If any of the terms, provisions, covenants, conditions or any other part of this Agreement are held for any reason to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 12 REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder.

SECTION 13 ENTIRE AGREEMENT

This Agreement and the Exhibits embody the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein, cannot be modified without written agreement of the parties.

SECTION 14 NON-WAIVER

It is further agreed that one (1) or more instances of forbearance by the City in the exercise of its rights herein shall in no way constitute a waiver thereof. No covenant or condition of this Agreement may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

SECTION 15 HEADINGS

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**SECTION 16
VENUE**

The parties to this Agreement agree and covenant that this Agreement will be enforceable in the City of Forney, Texas; and that if legal action is necessary to enforce this Agreement, exclusive venue will lie in Kaufman County, Texas.

**SECTION 17
NO THIRD-PARTY BENEFICIARY**

For purposes of this Agreement, including its intended operation and effect, the parties (the City and Tournament Provider) specifically agree that: (1) the Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with the City or Tournament Provider or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either the City or Tournament Provider.

**SECTION 18
GOVERNMENTAL IMMUNITY**

The Tournament Provider understands and agrees that the City is a Texas home-rule municipality and that by entering into this Agreement, the City is performing a governmental function. No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the governmental or sovereign immunities, rights, benefits, or protections of the City.

This agreement is made and entered into on the _____ day of _____, 20____.

CITY OF FORNEY

TOURNAMENT PROVIDER

City Manager

Tournament Representative