

**FACILITIES USAGE  
AGREEMENT BETWEEN**

**CITY OF  
BURLESON AND**

**BURLESON YOUTH  
ASSOCIATION**

This AGREEMENT, made this 4<sup>th</sup> day of April, 2022 (the "effective date"), between the City of Burleson, Texas, a home rule municipal corporation (hereinafter called "City") and the BURLESON YOUTH ASSOCIATION, a Texas nonprofit corporation (hereinafter called "BYA").

WHEREAS, the City and BYA (the "Parties") have entered into that certain Facility Use Agreement (the "Agreement") on the 11<sup>th</sup> of May, 2015; and

WHEREAS, the City and BYA wish to revise the Agreement to simplify the relationship, address matters heretofore unaddressed, and to provide greater accountability and transparency in the provision of youth athletics at certain city parks and recreation facilities.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

**Article I  
Recreational Leagues**

1.1 APPOINTMENT: The City hereby designates, appoints and authorizes BYA as the primary provider of recreational youth baseball, softball, and football leagues during the term of this Agreement. BYA hereby accepts such appointment and authorization and agrees to use its best efforts to discharge its responsibilities as provided herein during the term of this Agreement. It is agreed and understood, however, the City remains the owner of the Park. This Agreement does not lease, grant, sell, or convey any right, title or interest in the real estate where the Park is located to BYA.

1.2 NON-EXCLUSIVITY: This Agreement is non-exclusive. Nothing in this Agreement shall be construed as granting BYA the right to be the exclusive association to organize, schedule or operate any youth baseball, softball, and football leagues within the property of the Park.

1.3 RIGHTS AND DUTIES OF BYA: BYA shall have control of, and assume full responsibility for, all matters related to the operation of youth baseball, softball, and football leagues, including but not limited to:

- a. The right to conduct youth baseball, softball, and football player registration.

b. The right to enter into sub-contract agreements necessary for officiating requirements for the proper operation of youth baseball, softball, and football leagues.

c. The right to enter into subcontract agreements with parent baseball, softball, and football sanctioning organizations (e.g. PONY, Little League, etc.) regarding recreation league play.

d. BYA agrees to incorporate into its bylaws the following provisions related to BYA's solicitation of goods and services:

(1) Opportunities for vendors / contractors to do business with BYA will be published on the organization's website at least 2 weeks prior to the deadline for accepting bids/quotes, and

(2) Board members must abstain from voting to award a contract or quote to a vendor if that Board member has a conflict of interest. For purposes of this section, a conflict of interest exists if a Board member, or member of the Board's immediate family, is in position to derive personal benefit from actions or decisions made by the Board member acting in their official capacity.

1.4 LEAGUE GAME SCHEDULING: BYA will develop the season's schedule for league play prior to the start of the season within the following parameters:

a. For weekday games: All games must conclude no later than 10:30 p.m.

b. For Weekend games: All games must conclude no later than 11:00 p.m.

c. No league games scheduled will be cancelled or rescheduled to allow for tournament play. League games should be scheduled for each weekend throughout the season except on city holidays or student holidays/ breaks (as identified by the Burlson ISO). No more than two (2) consecutive weekend(s) and a maximum of 3 weekends per league season may be left unscheduled to allow for tournament play.

d. BYA will not use the fields in the Park from November 15<sup>th</sup> through February 15<sup>th</sup> each year to allow for field maintenance and field rest. The City, however, may grant BYA permission to use a field or fields in the Park between November 15<sup>th</sup> and February 15<sup>th</sup> for special events or make up games if the City determines, in its sole and uncontrolled discretion, that the event or game would not affect the needs of the fields. To be effective, any permission granted by the City to BYA pursuant to this subsection must be in writing and signed by the City Manager or Director of Parks and Recreation.

e. BYA shall submit the recreation schedule to the City for approval prior to its publication and/or prior to the start of league play. The City, as owner of the Park, shall have final authority for approval of the schedule. Exceptions or

modifications to the schedule, one approved by the City, shall be approved by both parties.

- f. All approved scheduled play will be entered into City's reservation system software. Any rescheduling will need to be submitted in advance to be updated in the reservation system software.
- g. BYA shall give the City at least twenty-four (24 hours) notice prior to rescheduling any game or other event, and such rescheduled game or event shall not be effective and approved unless such rescheduled game or event does not conflict with any other reservation entered into the City's reservation system software.
- h. The City shall have the final decision on field playability and park closure resulting from but not limited to: field maintenance requirements, weather related delays and/or cancellations.

1.5 RIGHTS AND DUTIES OF THE CITY: City shall have complete control of all aspects of the management and operations of the Park including, but not limited to, the following:

- a. City shall have the right to open and close the Park in compliance with weather events, maintenance procedures or other necessary functions. All weather event closings shall be in compliance with the adopted Park Emergency Closing Plan, attached as Exhibit "A". City shall supply BYA with a copy of Park Emergency Closing Plan. City shall advise BYA in a timely manner regarding such closures.
- b. [This provision intentionally left blank.]
- c. City shall bear the full responsibility for payment of all maintenance and operational costs of the park.
- d. City shall be responsible for maintenance and repair of all park amenities, including but not limited to: fences, bleachers, parking areas, trees, sidewalks, lights, and concession stands.
- e. City shall support BYA events with necessary, maintenance including but not limited to: daily trash detail, restroom maintenance, and weekly turf maintenance.
- f. City shall have the sole authority to enter into vendor agreements for the sale of non-alcoholic beverages and to retain said proceeds.
- g. City shall have the sole authority to enter in park sponsorship agreements related to capital improvements or naming rights of the park.

- h. City shall have the sole and exclusive right to schedule tournaments. No other entity may schedule a tournament without the express written consent of the City.

## 1.6 COACHES

- a. BYA shall require that all coaches who will have direct contact with players receive proper training in the teaching of baseball, softball and football.
- b. BYA will conduct an annual Criminal Background Check on all coaches and officials who have direct contact with players. BYA will make Criminal Background Checks available to the City upon request.
- c. No person who has been indicted, charged with, under probation for, received deferred adjudication for, or has been convicted of any of the following shall be permitted to serve as a coach or official:
  - (1) a crime against persons within the last 5 years; or
  - (2) any sex crime.
- d. Any BYA Coach who receives two or more ejections by an umpire/official during any season will be suspended from coaching at the Park for a period of one calendar year.
- e. Should the Police be called to the Park due to the misconduct of any BYA Coach, the Coach will be suspended from Coaching and barred from the Park for a period of a one calendar year.

## 1.7 PRICE PER PLAYER FEE

- a. BYA is required to pay to the City a Price Per Player fee ("PPP") for each recreational league player. The PPP for every recreational league player beginning with the Spring 2022 season shall be \$3.00 until the Fall 2022 season. Beginning with the Fall 2022 season, the PPP for every recreational league player shall be \$6.00 for the remainder of the term of this Agreement.
- b. The PPP must be paid for all recreational league participants excepting no more than 20 participants who (1) pay a reduced registration fee; or (2) whose registration fee is considered a scholarship by BYA per season
- c. BYA shall keep complete and accurate records necessary to validate the amount of PPP fees paid to the City. BYA will be responsible for remittance of the PPP to the City within (30) days from the conclusion of the league registration period.

- d. BYA agrees the current League Registration Fee for baseball and softball will remain unchanged for a period of two (2) years from the date of execution of this contract, save and except for adjustments due to inflation as defined in paragraph a. of this section.

#### 1.8 NON-RESIDENT FEE

- a. In order to ensure the cost of providing access to and maintenance of athletic fields are not borne solely by the residents of Burleson, recreational league players living outside of the established city limits of Burleson shall be responsible for the payment of a nonresident fee ("NRF").
- b. In addition to the PPP fee provided herein, for a single member the NRF fee shall be two dollars (\$2.00) per non-resident member in addition to the PPP fee in 1.7a until the Fall 2022 season. Beginning the Fall 2022 season, the NRF fee shall be three dollars (\$3.00) for the remainder of the term of this Agreement. This fee shall be collected and remitted to the City no later than 30 days after the start of each recreation season.
- c. The City shall furnish BYA with an annual residency verification listing. BYA shall be responsible for including this information in the on-line registration process. BYA shall not be responsible for verifying accuracy of residential status. In the event that a player registered as a resident is discovered to be a non-resident, BYA agrees to collect current and past due non-resident registration fees at the next season signup and remit to City.

#### 1.9 CONCESSION OPERATION AND REVENUE

- a. BYA shall be responsible for the operation of the Park's Concession Stands during recreational league play. This responsibility includes but is not limited to: operating the stands during all periods when the Park is actively being used in the playing of games, scheduling of staffing, purchasing of food stuffs and other items for sale, repair of damages caused by BYA or its volunteers, and applying for and maintaining a valid food handling permit.
- b. BYA agrees to vend only approved nonalcoholic beverages at the concession stands within the Park. No alcoholic beverages shall be sold or consumed within the Park.
- c. BYA must operate all concessions in accordance with the sanitation requirements promulgated by the City of Burleson Code of Ordinances as well as state and federal law.
- d. After each use by BYA, BYA must clean the concession stands including, but

not limited to, floors, cooking equipment, utensils, sinks, and counter tops. All food should be stored in approved containers at all times. Waste must be properly disposed of.

- e. BYA shall be provide to the City 10% of net revenues from concession sales conducted during operation of the Park's Concession Stands.
- f. BYA shall assume all maintenance and replacement of equipment within Park's Concession Stands operated by BYA. All replacement equipment shall be reviewed and approved by the City. BYA shall submit all receipts and maintenance records for equipment. Equipment shall remain under ownership of the City and new equipment purchased shall become property of City.
- g. The City shall conduct an annual inventory of equipment to include assessment of useful remaining life and maintenance.

## **Article II**

### **Tournaments**

2.1 OVERVIEW: Tournament play at the Park is secondary to Recreational League play. The purpose of holding tournaments at the Park is to provide a local venue for Burleson youth seeking tournament opportunities, to showcase the Park as an amenity, and to create economic benefit for the City which reduces the amount of taxpayer funding required to pay for the Parks construction and maintenance.

#### 2.2 TOURNAMENT PLAY

- a. The City has the sole and exclusive right to schedule all tournaments played at any city Park on any date provided said date does not conflict with recreational league play.
- b. BYA may assist the City in marketing the Park for tournament play by referring potential tournament organizers (i.e. sanctioning bodies) to the City for scheduling of the tournament. Under no circumstances will BYA schedule a tournament nor enter into a contract with any sanctioning body for a tournament at any City Park.
- c. The City agrees make good faith effort to provide BYA three (3) weeks' but no less than one (1) weeks' notice prior to the start date of the Tournament in order for BYA to adequately staff the concession stand and order the appropriate amount of supplies. The City will send tournament schedule to the BYA President and BYA Concessions Manager.

#### 2.3 TOURNAMENT CONCESSIONS

a. The City agrees to make a good faith effort to offer BYA the option to operate the concession stands for any tournament held at the Park. In the event BYA does operate the concession stands, BYA's operation of the concession stands shall be in conformance with Section 1.9 of this Agreement and BYA shall retain all revenue from the operation of the concession stands during the Tournament.

b. If BYA chooses not to provide concessions for a tournament, BYA must provide the City no less than three (3) weeks' notice prior to the start date of the Tournament. In the event that a tournament is booked through the City on less than three (3) weeks' notice, BYA will have the option to choose not to provide concessions upon receiving notice.

#### 2.4 FINANCIAL REPORTING

a. BYA shall keep and maintain monthly, detailed reports on financials, registrants, and tournament. Financial reports must include beginning and ending inventory for concessions operations.

b. The City reserves the right to audit BYA's financial reports at any time.

### **Article III**

#### **Insurance**

3.1 BYA agrees to provide to City proof of liability insurance coverage thirty (30) days prior to the start of each season. The limits of coverage are:

Commercial General Liability \$1,000,000

Damage to Rented \$100,000

Medical \$1,000.00 Personal

Injury \$1,000,000

General Aggregate \$3,000,000

Excess Accident \$100,000 with a \$50.00 deductible No Automobile Liability

3.2 BYA insurance shall be underwritten by entities authorized to do business in the State of Texas. BYA insurance policy or policies shall name the City as an additional insured and cover all risks arising from BYA's use of the Park.

### **Article IV**

## Indemnification

BYA SHALL INDEMNIFY AND HOLD THE CITY AND ITS OFFICERS, EMPLOYEES AND VOLUNTEERS HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF DEFENSE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING PERSONAL OR BODILY INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT IS FOUND BY A COURT OF COMPETENT JURISDICTION TO BE CAUSED SOLELY BY THE NEGLIGENT ACT, ERROR, OR OMISSION OF BYA OR ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, AFFILIATE VOLUNTEER OR SUBCONTRACTOR OF BYA, OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS OR REPRESENTATIVES, WHILE OPERATING OR MANAGING THE BYA LEAGUES OR CITY SCHEDULED TOURNAMENTS AT THE PARK, OR THE CONCESSION STAND(S) AT SUCH LEAGUES OR TOURNAMENTS. THE INDEMNITY PROVIDED UNDER THIS SECTION DOES NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE CITY, ITS OFFICERS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS. IF BYA AND THE CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS SECTION 12 IS SOLELY FOR THE BENEFIT OF THE CITY AND THE BYA AND DOES NOT CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. BYA AND THE CITY SHALL PROMPTLY ADVISE EACH OTHER IN WRITING OF ANY KNOWN CLAIM OR DEMAND AGAINST BYA OR THE CITY RELATED TO OR ARISING OUT OF BYA'S ACTIVITIES ON THE PROPERTY.

## Article V

### Severability

If any provision of this Agreement is held to be invalid, illegal or unenforceable by a final order entered by a court of competent jurisdiction, the validity, legality and



enforceability of the remaining provisions shall not in any way be affected or impaired. For purposes of this Agreement, a court order shall be final only to the extent that all available legal rights and remedies pertaining to such order, including without limitation all available appeals, have been exhausted.

## **Article VI Term of Agreement**

- 6.1 Term of Agreement. The term of this Agreement shall be for a five (5) year period, beginning on the date of execution of this Agreement.
- 6.2 Renewal and Extension. This Agreement shall automatically renew and extend under the same terms and conditions contained in this Agreement for five (5) successive one (1) year terms after the initial five (5) year term, unless BYA or City provide written notice to the other party of their intention to not renew this Agreement, said notice to be delivered prior to expiration of the then current term. In no case shall the term of this Agreement extend beyond 10 years from the Effective Date of this Agreement.
- 6.3 BYA shall retain the rights to The Whitley Building (hereinafter referred to as the Facility) located at Bartlett Park to be used for a meeting area as needed by BYA. BYA agrees to maintain the Facility in keeping with all applicable City codes and to obtain and continue appropriate insurance coverages for the Facility in accordance with this Agreement. The City shall not contribute to the maintenance of the Facility. This includes vandalism to the Facility including, but not limited as graffiti. BYA shall not sublet the use of the Facility and shall coordinate with the City for any request to sublet.
- 6.4 Event of Default:
  - a. BYA shall discharge its duties under this agreement in an efficient and competent manner and shall provide high quality youth baseball, softball and football leagues which meet the needs of Burleson youth and their families. BYA acknowledges and understands that it is an event of default under this agreement when the City Council, in its sole and exclusive discretion, determines that BYA has failed to meet the standards of efficiency, competency and quality. Should the City Council make such a determination, the agreement shall be immediately terminated and all parties shall be released from their obligations under this agreement, except (1) an obligation to pay monies due on the date of termination, or (2) an obligation to indemnify under Article IV due to an occurrence prior to the date of termination which obligations shall survive the termination.
  - b. Should either party be found to be in default of their obligations under this agreement (other than a default under 6.4 a. above), the defaulting party shall be given written notification of the event of default and given 90 days

upon which to cure. If the defaulting party fails to cure within the 90 day cure period, this agreement shall be terminated and all parties shall be released from their obligations under this agreement, except (1) an obligation to pay monies due on the date of termination, or (2) an obligation to indemnify under Article IV due to an occurrence prior to the date of termination which obligations shall survive the termination.

## **Article VII**

### **Independent Contractor/Indemnity**

In executing this Agreement and in performing their respective obligations hereunder, the City and BYA are acting independently and not in any form of partnership or joint venture. The City assumes no responsibilities or liabilities to any third parties in connection with this Agreement.

## **Article VIII**

### **Force Majeure**

The Parties may be excused from performance under this agreement when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the Party has prudently and promptly acted to take any and all steps that are within the Party's control to ensure performance and to shorten the duration of the event of Force Majeure. If either Party suffers an event of Force Majeure, it shall provide notice of the event to the other Party immediately. Subject to this provision, such nonperformance shall not be deemed an event of default.

## **Article IX**

### **Notice**

All notices required or permitted by this Agreement will be delivered either (a) by certified mail, postage prepaid, effective five days after mailing, or (b) by hand delivery, effective upon delivery, in either case addressed as follows (or to such other address as a party may specify to the other party by notice delivered in accordance with the terms hereof):

**To BYA:** BYA President: [ashli@bya.org](mailto:ashli@bya.org) or [info@bya.org](mailto:info@bya.org)

**To City:** Deputy Director of Parks: [ParkRecAdmin@burlesontx.com](mailto:ParkRecAdmin@burlesontx.com)

## **Article X**

## Miscellaneous

- 10.1 This Agreement was approved by City Council at its meeting on April 4, 2022.
- 10.2 If any section, subsection, paragraph, sentence, phrase, or word of this Agreement is held invalid for any reason, the balance of this Agreement will remain in effect and will be read as if the parties intended at all times not to include the invalid section, subsection, paragraph, sentence, phrase, or word.
- 10.3 This Agreement will be construed under the laws of the State of Texas and the venue of any lawsuit arising hereunder shall be in district court in Johnson County, Texas.
- 10.4 If on account of any breach or default by a party of its obligations under the terms, conditions, or covenants of this Agreement, it shall be necessary for the other party to employ or engage an attorney or attorneys or use its own attorneys to enforce or defend any of the rights or remedies hereunder, and should the other party prevail, other party shall be entitled to any reasonable attorney's fees, costs, or expenses it incurs in connection herewith.
- 10.5 This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof.
- 10.6 No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 10.7 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
- 10.8 No waiver by a party in any event of default, or breach of any covenant, condition or stipulation herein contained shall be treated as waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.
- 10.9 This Agreement may be executed by the parties in multiple counterparts, all of which counterparts when taken together constituting one agreement.

## Article XI Definitions

11.1 **Recreational league:** A group of recreational youth sports teams from age 5 to age 18 that regularly play one another according to an established schedule. The regular season of play for each league is defined below:

- (a) **Baseball:** Three seasons consisting of (1) a spring season during the months of February through June, (2) a summer season consisting of mid-June- mid August, and (3) a fall season during the months of September through mid-November.
- (b) **Softball:** Three seasons consisting of (1) a spring season during the months of February through June, (2) a summer season consisting of mid-June- mid August, and (3) a fall season during the months of September through mid-November.
- (c) **Football:** A fall season during the months of August through December.

**Member:** A member is defined as participant who pays the annual membership fee to BYA and is allowed to vote for BYA board candidates.

**League Registration Fee:** The fee required to become a recreational league participant.

**Park** shall mean Chisenhall Fields but shall be extended to mean any other City facility used by BYA for purposes permitted by this Agreement.

**EXECUTED** on the respective dates of acknowledgement, to be effective as of the date first set forth above.

**CITY OF BURLISON**

By:  \_\_\_\_\_

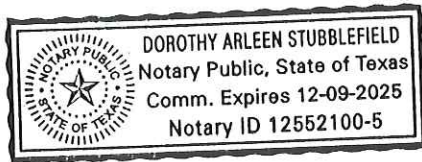
Name: Bryan Langley

Title: City Manager

Date: 4/14/22

STATE OF TEXAS                    §  
   §  
COUNTY OF JOHNSON           §

This instrument was acknowledged before me on April 14, 2022 by Bryan Langley, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.



[Notary Seal]

Dorothy Arleen Stubblefield  
Notary Public, State of Texas

APPROVED AS TO FORM AND LEGALITY:

[Signature]  
*DEPUTY*  
City Attorney

**Burleson Youth Association (BYA)**

By: Ashli Logan

Name: Ashli Logan

Title: President

Date: April 4, 2022

STATE OF TEXAS                    §

COUNTY OF Johnson §  
§

This instrument was acknowledged before me on April 4th, 2022 by Lindsey Durham, known personally by me to be the Ashli Logan of Burleson Youth Association, on behalf of said entity.

[Notary Seal]

Lindsey Durham

Notary Public, State of Texas

