

**ABILENE PARKS AND RECREATION DEPARTMENT
FACILITY USE AGREEMENT**

The following is an agreement between the City of Abilene, Taylor County, Texas, a municipal corporation chartered under the laws of the State of Texas, hereafter referred to as "City", and Wylie Fastpitch Softball Association, a League engaged in amateur athletic competition, hereafter referred to as "League", for the purpose of making available facilities owned by the City, for use by said League. Collectively, the City and League may be referred to as the "Parties".

WHEREAS, the League provides a form of recreation for the residents of the City and nearby counties; and

WHEREAS, the City desires to assist in providing such form of recreation to area residents;

NOW, THEREFORE, in consideration of the hereafter-mentioned covenants, the parties agree as follows:

**ARTICLE I
DEFINITIONS**

- 1.01** The term "League" shall mean an entity organized under the laws of the State of Texas whose main purpose is to participate in athletic league games against athletic teams in the same athletic league at City Facilities. A League may be a Youth League or an Adult League. Leagues must be open to anyone wishing to participate and shall not be based on skill level or other factor other than age. League all-star teams are exempt from this definition while travel or select teams are not considered as part of a "League".
- 1.02** The term "Youth League" shall mean scheduled competitive games played by participants under the age of nineteen that have paid their applicable fees and are drafted onto teams or where all participants are grouped by school districts whereas all participants from one district are on one team.
- 1.03** The term "Adult League" shall mean scheduled competitive games where teams of participants are not limited by a maximum age and are evaluated by skill level and placed in divisions of similar skill level. The term "City Facilities" shall mean any athletic fields and associated structures and improvements within one or more City parks owned and operated by the City of Abilene to be used by the League in accordance with this Agreement.
- 1.04** The Term "Participant" shall mean any person whether individually or as part of a team that takes part in the League's activities.
- 1.05** The term "Participant Fee" shall mean any consideration paid on the basis of individual registration, residents or non- resident.
- 1.06** The term "Season" shall mean the portion of one year in which regulated games are in

session.

1.07 The term “Select” shall mean a recruited or individually selected person participating in a non-league/privately formed competitive team.

1.08 The term “Tournament” shall mean a sports competition or series of contests that involves many players or teams and that usually continues for at least several days until just one person or team is left.

1.09 The term “Resident” shall mean a person residing inside of the City of Abilene city limits.

1.10 The term “Non Resident” shall mean a person residing outside of the City of Abilene city limits.

ARTICLE II GENERAL TERMS

2.01 The premises included under this Agreement shall consist of 4 Softball Fields facilities located in Lake Kirby Park, hereinafter referred to collectively as the “Facility”. Facility includes the playing fields, concession stand, restroom buildings, parking lots, storage buildings and park area surrounding the facilities per the attached map.

2.02 This Agreement shall be in effect beginning on February 1, 2025 and ending on December 1, 2025. The City will grant the League the use of the City facility or facilities as listed on the season schedule (attached hereto as Exhibit “A”) for the purpose of organizing and implementing athletic leagues for games to be played on City Facilities.

2.03 This document must be signed by an authorized representative of the League and returned to the Parks and Recreation Department, along with valid insurance documentation, a copy of Board minutes approving this contract and contact information for all League officials **before any activity** occurs at the Facility.

2.04 The schedule of facilities use, dates and times are designated in **Exhibit “A”**. Both parties will review the requested facilities schedule at least 48 hours before each individual season begins. The schedule shall be subject to change at the discretion of the City. The City reserves the right to schedule the Facility for other persons or other uses when calendar openings in League play occur with notice and consultation with the League.

2.05 In exchange for the above-referenced use of the Facility, the League shall pay to the City the amounts described below for each individual Season of play:

(a) League Resident Participant: Twenty and 00/100 Dollars (\$20.00) per player;

League Non-Resident Participant: Twenty Five and 00/100 Dollars (\$25.00) per player;

(b) Select Resident and Non-Resident Participants: Twenty-Five and 00/100 Dollars (\$25.00) per player.

Participant fees as defined are to be paid within thirty (30) days of registration.

In addition to the Participant fees, the League shall pay to the City a Tournament fee in the amount of Twenty Five and 00/100 Dollars(\$25) per team/per tournament. Tournament fees are to be paid no later than ten (5) days after completion of the Tournament.

2.06 League agrees, during the term of this Agreement, not to exclude anyone from participation in, deny anyone the benefits of, or otherwise subject anyone to discrimination on the basis of race, creed, color, national origin, sex, age or disability.

2.07 League agrees that all revenue generated by League through the use of City's Facility must be used for League-related or Facility improvement expenditures. All concession revenue must also be used for Facility or park improvements.

2.08 League agrees the responsible party for mowing facilities will be B (Select Option A or B).

Option A:

League shall mow, weed eat, edge and clean with a blower the **inside** of the perimeter fence of the facility, including but not limited to ball fields and entryways. An exclusively designated mower and equipment shall only be used on the fields and facility grounds, restricting the use of mowers or equipment used in other locations outside of the athletic complex to prevent the transfer of unwanted pests/weeds/seeds.

Option B:

City shall mow, weed eat, edge and clean with a blower the **inside** of the perimeter fence of the facility, including but not limited to ball fields and entryways.

2.09 The League assumes the following responsibilities and duties regarding the use, care, and maintenance of the Facility:

- (a) No alterations or additions of any kind may be made to any Facility including the field without the written approval of the Director of Parks and Recreation and, if applicable, the Parks and Recreation Board. All plans for alterations or additions shall be submitted for review a minimum of **45 days in advance**. League will acquire all required permits.
- (b) Materials and labor required for daily playing surface preparation and maintenance such as litter control around the fields and parking lots (map attached), daily restroom cleaning, watering of infields, setting bases, infield grading and dragging, marking and other appropriate maintenance activities. **If League fails to perform said cleaning, League will reimburse City \$20 per man hour for cleanup.**

- (c) League will not apply fertilizer or pesticides without written approval from the Parks Division Licensed Chemical Applicator.
- (d) Ensure all facility ballfield lighting is not left unused, left on overnight or used for other purposes besides schedule league play and practices. The League will reimburse the City at the rate of \$20 per hour per field, if any of the aforementioned occurrences take place.
- (e) Fill in holes and remove unintentional bumps on fields of the Facility, including but not limited to the Baseball, Softball and Football fields, in and around the goals, baseball/softball home plate areas, the pitcher's mound, and in and around the bases after each use of the Facility.
- (f) League is also responsible for daily inspection of all fencing, buildings, and structures as well as routine janitorial maintenance to ensure a clean safe operation at the above stated Facility. If additional facility maintenance repairs are necessary, League shall notify the City upon notice of needed maintenance as soon as issues are discovered.
- (g) **League shall not allow any other organizations, including select teams, to use the Facility.** All such permission will be given from the City of Abilene Director of Parks and Recreation or his/her designee and a Request to Use Parks Facilities agreement must be on file.
- (h) Any League official or tournament director on premises shall be responsible for requesting police assistance, if necessary for enforcement of **all City ordinances** including those regarding safety, parking, camping, RVs, smoking and alcoholic beverages. League shall assist the City in assuring that League participants and visitors to the field do not drive or park vehicles on the park grass or inside field complexes.
- (i) If disbarment from the Facility of any participant or spectator occurs, the Director of Parks and Recreation shall be notified, if action will exceed two games.
- (j) The League will be responsible for the collection and payment to the City of all player use fees from its participants. Should a participant fail to pay to the League the player use fee, the League shall pay the fee to the City on behalf of the participant. Fees, along with a final roster of players, shall be forwarded to the City of Abilene, Director of Parks and Recreation or designee, before play is allowed.
- (k) All Facility locks will be City owned and maintained. Access to keys will be given on an individual basis with appropriate deposit.
- (l) Locking all doors and securing all access points into buildings and structures (i.e concessions, restrooms, roll up doors, etc.) before leaving after each use of the Facility.
- (m) League board members may have access to the facility outside of this contract period for maintenance purposes only. Facility use for league practices, games and tournaments outside of contract period, must be authorized by the city's Director of Parks and Recreation or designee.
- (n) Vending of any type, inside the park or facilities, requires a permit through the City's Parks and Recreation Department.
- (o) The charging of **admission fees** must have prior approval from the Parks and Recreation Board and the Director of Parks and Recreation. Requests to charge must

be submitted to the Parks and Recreation Department 45 days in advance of collection of the admission fees.

- (p) League will maintain all concession stands in accordance with the requirements of City's Parks and Recreation Department and Environmental Health offices. **The annual pre-season inspection of and maintenance of the fire suppression system; reimbursement of fees for grease trap cleaning to the City; remedy of any sewer line stoppage; cleaning the concession and all appliances and unplugging all appliances at season's end. All vendors selling goods, edible or non-edible, or renting items or services within City of Abilene parks must obtain a vending permit from the City. Vendors under independent contact with the City of Abilene, such as league concession stands, will be exempt. In addition, any group or individual desiring to use or have available for use any inflatable bounce house or similar apparatus within the boundaries of a City of Abilene park, must obtain a Bounce House permit from the Parks and Recreation office.**

2.10 That the City of Abilene, through its Parks and Recreation Department, shall assume the following duties regarding the use, maintenance, and operation of the Facility.

- (a) City shall mow, weed eat, edge and blow the **outside** of the perimeter fence of the above said facility including but not limited to backstops and structures.
- (b) City shall repair or adjust any sprinkler system leaks located on the above said Facility as soon as reasonably possible after notification by League.
- (c) Upon notice by the League of needed repairs, the City, through its Parks and Recreation Department, shall perform needed maintenance and repairs of all fencing, buildings, scoreboards and structures located at the above stated Facility within a reasonable time.
- (d) City, through its Parks and Recreation Department, shall repair or replace light fixtures upon notice by the League within a reasonable time.
- (e) City shall fertilize turf 4 times/year provided irrigation is available, and shall apply weed control when necessary. Additional requests for weed control will need assessment by Parks Division Licensed Chemical Applicator before an application is approved.
- (f) City shall perform 3 Fire Ant applications in May, June and July. Any additional treatments for ants shall be performed by the League with prior authorization from the Director of Parks and Recreation.
- (g) City does not perform any spray applications for mosquito control.
- (h) Determining whether the Facility will be open or closed for the League's use because of inclement weather, damage to the Facilities, and other unforeseen acts of God.
- (i) City shall schedule and coordinate the cleaning of grease traps within City of Abilene parks.
- (j) Signs stating City ownership of the Facility must be visible to patrons and will be provided by the City of Abilene Parks and Recreation Department.

- (k) City shall pay all water and electrical fees for League games, League tournaments and approved League team practices.
- (l) The City may cancel this agreement at any time if the City determines, in its sole discretion, that it is in its best interest to do so.

ARTICLE IV

INSURANCE REQUIREMENTS

3.01 During the term of this Agreement, the League shall procure and maintain, at its sole cost and expense, a Commercial General Liability insurance policy for injuries to persons or damages to property that may arise from or in connection with the use of the Facility and the activities associated with the use of the Facility by the League, its agents, representatives, participants, attendees, employees, and volunteers. The League's insurance coverage shall be primary insurance with respect to the City, its officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, agents, employees or volunteers shall be considered in excess of the League's insurance.

3.02 The City's insurance requirements are as set forth below. A certificate of insurance evidencing all policies and required endorsements issued on the most current State of Texas department of Insurance approved form, shall be furnished to the City at the time of execution of this Agreement and approved by the City *before* any use of the Facility commences. Updated certificates of insurance shall also be provided by the League to the City at the start of each season. The City shall not issue or re-issue a Facility Permit if updated certificates of insurance are not on file with the City.

Unless an exception applies, during the term of this Agreement, League's insurance policies shall meet the requirements of this section:

3.03 Types. League shall have the following types of insurance:

- (a) Commercial General Liability
- (b) Business Automobile Liability
- (c) Workers' Compensation

3.04 General Requirements Applicable to All Policies. The following General requirements applicable to all policies shall apply:

- a) Only licensed Insurance Carriers authorized to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the Certificate of Insurance.
- (c) "Claims Made" policies are not accepted.
- (d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits of liability except after thirty (30) days prior written notice has been given to the City.

3.05 Commercial General Liability. The following Commercial General Liability requirements shall apply:

- (a) Commercial General Liability insurance shall be written by a carrier rated “A: VIII” or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Limits of liability no less than \$500,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$1,000,000.
- (c) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for the City’s review and acceptance.
- (d) The coverage shall not exclude the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability, and Hired and Non-owned Autos.

3.06 Business Automobile Liability. The following Business Automobile Liability requirements shall apply:

- (a) Business Automobile Liability insurance shall be written by a carrier rated “A: VIII” or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (c) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos. If the League does not own any vehicles titled in the League’s name, coverage for hired and non-owned vehicles under the Commercial General Liability policy will be acceptable.

3.07 Certificates of Insurance. The policies set forth in Paragraphs 3.05 and 3.06 shall contain an endorsement listing the City, its officials, agents, employees and volunteers as Additional Insureds and further providing that the League’s policies are primary to any self-insurance or insurance policies procured by the City. Waiver of subrogation shall be provided in favor of the City on all policies obtained by the League in compliance with the terms of this Agreement. League shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All Certificates of Insurance and endorsements shall be furnished on the most current State of Texas Department of Insurance approved forms to the City’s Representative at the time of execution of this Agreement, and approved by the City before use begins.

3.08 Workers’ Compensation Insurance/Employer’s Liability Insurance. Workers’ compensation/Employer’s liability insurance shall include the following terms:

- (a) Employer’s Liability minimum limits of \$500,000.00 for each accident/each disease/each employee are required.
- (b) “Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04” shall be included in this policy.
- (c) Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

ARTICLE IV
NON-DISCRIMINATION CLAUSE

4.01 The League hereby agrees to refrain from any activity in relation to use of the Facility that discriminates against any person or persons based upon race, color, creed, national origin, disability, religion, age or sex, and in accordance with present federal and state laws.

ARTICLE V
USE OF FACILITY

5.01 Keys. The City may issue key(s) to the League for and during the use of the Facility. The keys may not be reproduced or duplicated by the League. The League agrees to return all keys to the City within five (5) working days after the conclusion of the term of this Agreement unless mutually agreed upon in writing by the parties. Upon failure to return any of the keys issued by the City to the League, the League shall reimburse City for all costs associated with making new keys and installing new locks.

5.02 Scope of Use. Scope of use of the Facility by the League shall be as set forth in this Agreement as **Exhibit "B"** and must include any and all affiliated Leagues or individuals that will be using the Facility pursuant to this Agreement. **Subleasing or otherwise permitting use by others not a party to this Agreement is strictly prohibited.** The Scope of Use must include the dates, times, league games, league practices and other purposes expressly set forth in the permit, and for no other use unless said permit is duly amended.

5.03 Sponsorship. Sponsorship involving use of the City Facility or City property is strictly at the discretion of the City and requires written approval prior to awarding of sponsorship. **This includes a prohibition of placement of signage on the City Facility or City property without prior written approval from the City.**

5.04 Naming. No Park or Parks Facility name may be sold, altered or removed.

5.05 Improvements, alterations, etc. Temporary or permanent alteration of the City Facility or nearby City property is strictly prohibited unless expressly authorized by the Director of Parks and Recreation in advance in writing.

5.06 Comply with Laws. The League shall comply with all state and federal laws, municipal ordinances, regulations and codes during the term of this Agreement.

ARTICLE VI
REPAIRS AND DAMAGES TO FACILITIES

6.01 The League agrees to be solely responsible for any and all costs of repairs for damages related to and arising out of the use of the Facility during the term of this Agreement. The City will furnish the League with a cost estimate for the required repairs. The League shall remit payment within thirty (30) days of the completion of the required repair(s).

ARTICLE VII
OFFICERS' NAMES AND SCHEDULE OF ACTIVITIES

7.01 League agrees to provide a list of all its officers and other persons who will be in charge of the activities engaged in by the League during the use of the Facility. The League also agrees to provide addresses and phone numbers for the above-referenced persons. This list of names, addresses, and phone numbers must be provided to the City before the beginning of the term of the Agreement and updated as necessary, included at the beginning of each new Season of play.

7.02 The League must deliver a schedule of activities (Exhibit "A") to the City before the beginning of the initial term of the Agreement and updated before the start of each new Season. A Facility Agreement will not be issued until all requested information is timely received by the City. This schedule of activities must include the following information:

- (a) Dates and times of scheduled games and practices.
- (b) Identification of field(s) to be used.
- (c) Any other pertinent information as reasonably requested by the City to assist it in carrying out its obligations herein and in serving the general public.
- (d) Any requested changes to the facility usage schedules submitted to the City shall be forwarded and approved before taking effect.

7.03 The League shall provide the City, as requested, access to the rosters of all participants, listing where the participants reside, within thirty (30) days of registration for each playing Season (Exhibit "B"). Any additions or changes to any rosters shall be made available if requested by the City within two (2) weeks of those changes having been made.

ARTICLE VIII
RESIDENT POLICY

8.01 All City of Abilene recreation programs and facilities are designed to benefit the Abilene community first. Non-residents may be charged more and/or have lower priority for access to certain activities or for use of certain facilities.

**ARTICLE IX
SAFETY PROCEDURES**

9.01 The League hereby agrees to abide by generally recognized standards of safety, regulations and procedures for the nature of the proposed use of the Facility. The League, including its players, attendees, league officials, employees and volunteers, are also required to abide by City of Abilene park rules and ordinances.

**ARTICLE X
CRIMINAL BACKGROUND CHECKS**

10.01 League shall conduct criminal background checks on all persons acting as head coaches, assistant coaches, board members, and any other person acting in an official capacity with any organization involved in the League's youth activities. These criminal background checks shall be conducted before the beginning of the season for which the individual is first involved and shall be valid for no more than one (1) calendar year. The League shall employ a reputable company licensed by the State of Texas to conduct such checks unless these checks are conducted by the League's state or national sanctioning body. Should an individual be disqualified as a result of the check, the League shall prohibit that individual from serving in any official capacity with the League's activities. Additionally, the League shall provide to the City, upon request, a listing of all individuals who have undergone a criminal background check.

**ARTICLE XI
INDEMNIFICATION**

11.01 The League shall indemnify, hold harmless, and defend the City, its officers, agents, employees and volunteers from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the use of the Facility by the League. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City, any other party indemnified hereunder, the League, or any third party. It is the intent of the parties that this provision shall extend to, and include, any and all claims, causes of action or liability caused by the concurrent, joint and/or contributory negligence of the City, an alleged breach of an express or implied warranty by the City or which arises out of any theory of strict or products liability. There shall be no additional indemnification other than set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

ARTICLE XII
RELEASE

12.01 The League hereby releases, relinquishes and discharges the City, its officers, agents, employees and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property that is caused by or alleged to be caused by, arising out of, or in connection with the League's use of the Facility whether or not said claims, demands, or causes of action are covered in whole or in part by insurance. There shall be no additional release other than set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

ARTICLE XIII
FINANCIAL RECORDS

13.01 League shall employ financial management systems that reasonably safeguard its financial resources and ensure that public facilities are not being used to generate profits for individuals or groups. Financial records should be developed and maintained in a way that is accessible and understandable to program participants.

13.02 The City shall have the right to review all financial records relating to the operation of the League and its activities and operations that take place on City facilities. Such records should be maintained in accordance with generally acceptable accounting principles and be submitted to the City within ten (10) days of request. The League will provide a copy of the previous contract year financial statement to the Parks and Recreation department annually.

13.03 Nonprofit corporations are subject to strict rules in order to maintain their non-profit status. In the state of Texas, there is no state law requiring a mandatory independent audit of non-profits. However, Texas Business & Organization Code indicates that if a charity accepts contributions of \$10,000 or more each year, it must maintain accurate records in accordance with generally accepted accounting principles. Based on the records, you must produce a financial report in compliance with AICPA standards. Releasing this to the public is also required. The City also requires a copy.

ARTICLE XIV
MISCELLANEOUS TERMS

14.01 This Agreement has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Taylor County, Texas.

14.02 This Agreement and the rights and obligations contained herein may not be assigned or sublet by the League without the prior written approval of the City.

14.03 This Agreement contains the entire agreement between the parties. There are no other written or oral agreements, contracts, or understandings between the parties.

14.04 No waiver or deferral by either party of any term or condition of this Agreement shall be deemed or construed to be a waiver or deferral of any other term or condition or to be a permit subsequent waiver or deferral of the same term or condition.

14.05 This Agreement may only be amended by a written instrument approved and executed by both parties.


14.06 The parties hereby state that they have read the terms of this Agreement and hereby agree to the terms and conditions contained herein.


Entered into this the 25th day of January, 20225.

City of Abilene

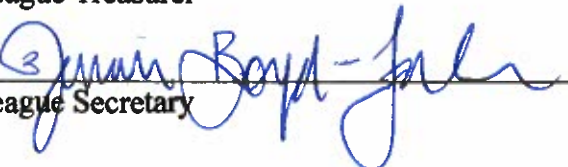
By _____
Director of Parks and Recreation

League

By  _____
League President

By  _____
League Vice President

By  _____
League Treasurer

By  _____
League Secretary

To All:

We estimate as much as \$750,000 of the parks budget goes to the subsidy of our facilities used by leagues through electricity, water and maintenance costs. Over \$500,000 just for water and electricity. The player use fee will not generate anywhere close to that amount. We have discussed for years, as usage for leagues has gone from a 3 month season to basically year round play, that a fee was inevitable.

Player Use League Fee

On December 17, 2020, Abilene City Council approved a \$25 fee per participant registered in league sports activities, regardless of age, in/on City of Abilene facilities. The fee includes a \$5 per participant discount for valid City of Abilene residents.

Therefore, the following fees will be in effect for each league season (Spring, Summer, Fall, etc.) beginning February 1, 2021: \$25 per Abilene non-resident participant or \$20 per valid Abilene resident participant. This is per participant per league season so some participants will be paying multiple fees for various leagues and teams.

Scholarships will be awarded on an individual basis and only to players that are signing up for league play.

Select team participants (teams with players selected in a manner not within league contract guidelines) will be assessed an annual fee of \$25 per participant. The fee will be in effect for all select teams utilizing City facilities for practice beginning February 1, 2021. Select participants participating on league teams will be assessed the fee for that usage as well. The annual effective date for select teams will begin each calendar year on January 1st with a term end date effective on December 31st of that calendar year.

Non-Scholarship participants

Organizations contracting with the Parks and Recreation Department for use of facilities will be required to collect this fee directly from participants and submit payment along with roster to the City prior to the beginning of play. Organizations will be required to secure a contract and