

AGREEMENT BETWEEN THE CITY OF SEGUIN, A MUNICIPAL CORPORATION, AND TRIPLE CROWN SPORTS, INC. A COLORADO CORPORATION

This Agreement is made and entered into by and between Triple Crown Sports, Inc. (“TCS”) and the CITY OF SEGUIN, a Texas municipal corporation (“CITY”).

WHEREAS, Triple Crown Sports, Inc. considered Seguin, Texas as the site of a TCS Shootout at Huber Ranch event and a division of the Triple Crown Sports Girls Fast Pitch Softball and,

WHEREAS, the events are estimated to attract 50-100 total teams, consisting of ages 10 and under through 18 and under, with 12-16 players per team, in addition to family members, tournament officials and umpires, many of whom will need lodging, food and other services during their stay in Seguin, TX; and

WHEREAS, the CITY recognizes the positive tourism impacts and economic benefits of hosting the TCS tournament and providing fields for tournament play; and

WHEREAS, CITY operates, maintains and schedules for recreation purposes those certain athletic fields identified herein (the “CITY FIELDS”);

NOW THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, TCS and CITY do agree as follows:

A. STATEMENT OF INTENT

1. The purpose of this Agreement is to provide an arrangement between TCS and the CITY for the scheduled use, maintenance, and compensation of the CITY FIELDS.

B. TERM OF CONTRACT

The Agreement is for a *period of three years beginning in April of 2014 upon execution of the Agreement*. The Agreement will be reviewed in January of each year and may include written addendums or modifications to existing document, which must be agreed to by TCS and CITY. This Agreement can be terminated by either party by giving a thirty (30) day written notice to the other party.

C. CONTRACT ADMINISTRATOR

1. TCS and the CITY each hereby appoint a Contract Administrator who will be responsible for administering this Agreement: TCS hereby designates Craig Karus, Triple Crown CFO or designee, as the TCS Contract Administrator. The CITY hereby designates Jack Jones, Director of Parks and Recreation or designee,

as its Contract Administrator. At the direction of the parties, the Contract Administrators shall take such action as is necessary to ensure that this Agreement is implemented in accordance with its terms.

2. Written communications regarding the tournament's daily administrative needs shall be directed to:

Jack Jones
Director of Parks and Recreation
City of Seguin
205 North River Street
Seguin, Texas 78155
830-401-2480
jjones@seguintexas.gov

D. LIMITATIONS OF TCS FIELD USE

1. TCS shall have exclusive use of the ball fields ("CITY FIELDS") as set out in Exhibit A.
2. TCS shall not use or permit the use of the fields in violation of any federal, state, county or municipal law, rule regulation or ordinance. No tobacco or alcohol use shall be allowed anywhere on the CITY FIELDS sites at any time.
3. TCS is not authorized to use other fields at any site for warm-up play.
4. TCS is authorized to use the parking spaces at the field sites in conjunction with, and only during, its actual tournament play use of the fields.
5. TCS is not authorized to make any alterations, additions or improvements to the fields unless approved in writing by the CITY Contract Administrator. TCS shall be responsible for any and all damages to the fields or facilities due to TCS usage.
6. Use of any type of vehicle on the site, motorized or non-motorized, is specifically prohibited, provided however that maintenance and emergency vehicles shall be allowed to access the site, but only for such time as is necessary to complete the maintenance or deal with an emergency.
7. Except as specifically set forth in this Agreement, TCS accepts the CITY FIELDS in an "as is" condition as being suitable for TCS's purposes. TCS may make temporary fencing modifications, approved by the CITY prior to installation.
8. CITY shall retain the right to access the CITY FIELDS at any and all times for CITY purposes.

E. TCS OBLIGATIONS

Triple Crown Sports, Inc. shall:

1. Be responsible for inspecting named sites prior to the tournament and assuring that the sites are safe before any and all games are played. TCS shall notify CITY of any concerns or hazards at named sites prior to any games being played.
2. Be responsible for determining safe field conditions and safe game play for players and spectators before and during the tournament, and be responsible for deciding to stop play before or during the tournament for any reason.
3. Be responsible for crowd control and spectator safety before, during, and after tournament play.
4. Contact the Seguin Police and Fire Department at least thirty (30) days in advance of the tournament. TCS shall be responsible for any required security and for any required emergency personnel response for the tournament.
5. Agree to pay for all damages to CITY owned properties and facilities resulting from TCS tournament use and agree to return properties in the same or better condition at the conclusion of the tournament. Photographic documentation and field determinations shall be used to establish before and after conditions.
6. Provide a site director and site umpire in chief at named sites who shall have the requisite training, skill, and experience necessary to manage the tournament and sites. Provide all other personnel necessary for TCS to carry out its obligations under this Agreement.
7. Provide personnel and souvenir merchandise for sale, and retain all proceeds from souvenir sales, less sales tax on merchandise sold (if applicable).
8. Provide field maintenance specifications for CITY Parks Maintenance staff at least one (1) month in advance of the tournament.
9. Include provided CITY tourism and promotion materials in coach's packets and/or website links.
10. Install tournament and sponsor banners on outfield fences in accordance with any applicable sign ordinance referenced in CITY Municipal Code.
11. During the tournament, TCS shall monitor dugouts, bleacher areas, and ensure that litter is deposited in CITY-provided trash receptacles.

12. The CITY provides two public restrooms at CITY FIELDS in an “as is” condition. TCS shall provide any additional restroom facilities (self-contained) during its use of the site in an appropriate number to be in compliance with all applicable regulations of the CITY or County Health Department. TCS shall be solely responsible for the cost of providing such facilities. The self-contained restroom facilities shall be maintained in a clean, safe, and sanitary condition and in a condition that minimizes any odor associated with public use.

F. The CITY shall:

1. Use its best efforts to provide field preparation prior to tournament play each day.
2. Use its best efforts to empty trash receptacles as needed before or after each day of the tournament. During the tournament, TCS shall monitor dugouts, bleacher areas, and ensure that litter is deposited in CITY-provided trash receptacles. CITY will provide additional trash receptacles as needed.
3. Use its best efforts to provide contracted concessions at site with proceeds to be retained by contractor per terms of contract with CITY. Communicate with concession contractor to provide that concession stands will be open daily one hour prior to first game and stay open through the end of the final game.
4. Provide only the existing bleachers located at each site. Additional bleachers for spectators will not be provided.
5. Provide local tourism and promotion materials to TCS to include in the tournament coaches packets and/or website links.
6. Approve installation of tournament banners prior to start of tournament in accordance with CITY Municipal code.
7. Install field dimensions for bases and pitching rubbers per TCS’s specifications at all fields.

G. CONSIDERATION

1. CITY agrees to waive field rental fees based on the Facility Improvement Plan approved by the CITY and TCS. See Exhibit B.
2. The Facility Improvement Plan will be reviewed and adjusted as necessary in January of each Agreement year.

H. INDEMNIFICATION AND INSURANCE

1. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, TCS SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES AND VOLUNTEERS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, OR LIABILITIES FOR INJURY OR DEATH OF ANY PERSON, OR FOR LOSS OR DAMAGE TO PROPERTY, WHICH ARISES OUT OF THE USE OF THE CITY'S PREMISES OR FROM ANY ACTIVITY, WORK OR THING DONE, PERMITTED, OR SUFFERED IN OR ABOUT THE PREMISES ARISING DIRECTLY OUT OF, IN CONNECTION WITH, OR INCIDENTAL TO THE TCS TOURNAMENTS OR THIS AGREEMENT, EXCEPT THAT TCS SHALL NOT BE REQUIRED TO INDEMNIFY THE CITY AGAINST ANY LIABILITY FOR DAMAGES ARISING OUT OF THE SOLE NEGLIGENCE OF THE CITY. TCS'S OBLIGATIONS UNDER THIS PARAGRAPH ALSO INCLUDE, BUT ARE NOT LIMITED TO:**
 - a. **INDEMNIFICATION OF CITY FOR THE SOLE NEGLIGENCE OF TCS, THE CONCURRENT NEGLIGENCE OF TCS, AND/OR THE NEGLIGENCE OF ONE OR MORE THIRD PARTIES WHO ARE INVITEES OR LICENSEES OR AGENTS OF TCS;**
 - b. **THE DUTY TO PROMPTLY ACCEPT TENDER OF DEFENSE, AND TO PROVIDE DEFENSE TO CITY AT TCS'S SOLE COST AND EXPENSE;**
 - c. **INDEMNIFICATION OF CITY FOR CLAIMS MADE BY TCS'S OWN EMPLOYEES OR AGENTS; AND**
 - d. **REIMBURSEMENT OF CITY FOR ANY NECESSARY EXPENSE, ATTORNEY'S FEES, OR COSTS INCURRED IN THE ENFORCEMENT OF ANY PART OF THIS AGREEMENT WITHIN 30 DAYS UPON RECEIPT OF WRITTEN NOTICE THAT CITY HAS INCURRED THEM.**
2. TCS shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the use of the CITY'S premises.

TCS shall provide a certificate of insurance evidencing:

General Liability insurance covering premises, , athletic participant, and contractual liability. The City shall be named as an insured on TCS's General Liability insurance policy. The General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

The insurance policy shall contain, or be endorsed to contain that TCS's insurance coverage shall be primary insurance as respect the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be excess of the TCS insurance and shall not contribute with it.

TCS shall provide a certificate of insurance and additional insured endorsement evidencing the required insurance before using the CITY'S premises.

I. ANTI-DISCRIMINATION

In all services or activities, and all hiring or employment made possible by or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, age (except minimum age and retirement provisions), race, color, creed, religion, national origin, marital status, sexual orientation, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to, but not be limited to, the following: employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. TCS shall not violate any of the terms of RCW 49.60, Title VII of the Civil Rights Act of 1964, or any other applicable federal, state, or local law or regulations regarding nondiscrimination. Any violation of this provision shall be considered a violation of material provision of this Agreement, and shall be grounds for cancellation, termination, or suspension, in whole or part, of the Agreement by CITY and may result in ineligibility for further CITY Agreements. TCS will also comply with other anti-discrimination laws or requirements of any and all jurisdictions having authority. TCS shall be responsible for all reasonable accommodations and all necessary compliance with the Americans with Disabilities Act (ADA) in TCS's use and conduct of activities on the Site.

J. NO THIRD PARTY RIGHTS

Nothing contained herein is intended to or shall be construed to create any rights in any third party or to form the basis for any liability to any third party on the part of CITY or TCS or their officials, officers, employees, agents, or representatives.

K. ASSIGNMENT

TCS shall not assign its interest in this agreement, or any portion thereof, without the express written consent of CITY.

L. ATTORNEY'S FEES

In the event that either party commences litigation against the other in order to require performance of this agreement, or to redress any breach thereof, the prevailing party in any such litigation shall be required to recover its costs and reasonable attorney's fees. The jurisdiction and venue for such disputes shall lie in the District Courts of Guadalupe County, Texas.

M. DISPUTE RESOLUTION

In the event that any dispute regarding this Agreement cannot be resolved by informal methods, each party shall, prior to commencing litigation, and before any termination becomes final, notify the other in writing of the particulars of the notifying party's position in the dispute, and the other party shall respond in writing within 10 working days, setting forth its position and what, if any, action it will take with respect to the dispute. The notifying party shall reply in writing, indicating its satisfaction or dissatisfaction, as the case may be. In the event the notifying party remains dissatisfied, the parties shall then meet in person and confer in good faith to resolve their differences before litigation is commenced, or any termination becomes final.

N. ENTIRE AGREEMENT

This instrument constitutes the entire agreement between the parties regarding the use of the site and no other or prior agreements, oral or otherwise, shall be binding upon the parties regarding the said subject matter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

CITY:

Triple Crown Sports, Inc.:

Doug Faseler, City of Seguin

Jonathan Lampl, TCS Representative

Printed Name

Printed Name

Date

Date

Attest By:

Thalia Patlán Stautzenberger, City Secretary

Date

Approved as to form:

Andy Quittner, City Attorney

EXHIBIT “A”

VENUE DATES & LOCATION

MEMORIAL DAY SHOOTOUT AT HUBER RANCH

1. Shootout Dates

2014 – May 23-25

2015 – May 22-24

2016 – May 27-29

2. Venues

a. Four ball fields at CITY Fields.

b. Note: Games will not start before 7:30 a.m.

EXHIBIT "B"

SPECIAL EVENT FACILITY IMPROVEMENT PLAN

1. TCS agrees to invest \$3,300.00 prior to the May 23-25, 2014 Shootout to improve the men's and women's restrooms at the Seguin Softball 4-Plex per agreement between the City of Seguin and TCS. Receipt's for the work to be done will be provided to the CITY by TCS after the completion of the improvements noted below:
 - a. Add 2-3 urinals in the men's restroom as space allows replacing the one long urinal.
 - b. Rework restroom plumbing for the urinals as needed (men's).
 - c. Remove concrete step at current urinal (men's restroom).
 - d. Raise the walls on the stalls in men's and women's restroom up to 6 feet high using rebar inserted in the existing wall and adding cinder concrete blocks to match the existing wall.
 - e. Replace current doors to all stalls with new doors with sliding latch locks (men's & women's).
 - f. Paint both the men's and women's restrooms with a color approved by the CITY.
 - g. Install new exhaust fans in the men's and women's restrooms. The fans will be rated to handle the square footage of each restroom.

2. CITY agrees to waive all field rental fees (approximately \$2,000) based on the above Facility Improvement Plan approved by the CITY and TCS. Any modifications to the Facility Improvement Plan must be agreed to by TCS and CITY in writing.