

EXCLUSIVE TOURNAMENT PROVIDER AGREEMENT FOR USE OF THE SEGUIN SOFTBALL 4-PLEX

I.

The City of Seguin, Texas hereinafter referred to as "City" and The Fields at Huber Ranch, LLC, hereinafter referred to as "Provider" enter into this Agreement governing the use of athletic fields and facilities, lights, and associated supportive items of public property owned by the City.

II.

- A. The City does hereby grant to the Provider the right and privilege to use the Seguin Softball 4-Plex located at 833 Nelda Street to host tournaments from June 1, 2023, through February 28, 2024, or until cancelled by the City, whichever should first occur. The nine (9) month term shall automatically renew for up to three (3) additional nine (9) month terms (June – February) unless either party provides a minimum of thirty (30) days' notice to the other party prior to the renewal date indicating that they decline to renew.
- B. The City may terminate this Agreement for Provider's non-compliance with the terms herein upon providing at least 30 days' written notice of termination to Provider.

III.

In consideration for such privilege herein granted by the City, the Provider shall:

- A. Schedule and play a minimum of 20 softball/baseball tournaments at the 4-Plex during the agreement period.
- B. Perform daily maintenance before, during, and after Provider tournaments including dragging and chalking/painting ballfields, cleaning and stocking restrooms, and collecting and disposing trash in nearby dumpsters.
- C. Perform minor facility maintenance to the restrooms and concession stand if things are broken due to use during tournaments.
- D. Remove any temporary fencing erected after the tournament is complete for City use and maintenance beginning on Monday. Any temporary fencing must be removed entirely from the field of play including foul territory.
- E. Employ, pay, and supervise all personnel deemed necessary for the operations and maintenance of the 4-Plex before, during, and after scheduled tournaments.
- F. Submit a tournament game schedule of 4-Plex usage to the City in writing at least two (2) days in advance of a scheduled tournament.
- G. Have use of the concession building at no additional charge and will be permitted to sell concessions. Provider shall obtain and maintain at its sole expense all permits and/or licenses required by the City and State for its concession operations. Provider is required to charge sales tax as required by Texas law.
- H. Not be allowed to hold tournaments on the dates/days noted below due to City community obligations and existing partnerships for the following dates/days:

- a. Mondays – Thursdays
 - b. October 13-15, 2023, during the annual Guadalupe County Fair
 - c. December 1-3, 2023, during the annual Blue Santa Adult Softball Tournament
 - d. Date/days in 2024 and beyond not to hold tournaments will be sent to the Provider in writing by February 1.
- I. Subject to advance written approval of the Director of the City's Parks and Recreation Department, Provider may install and/or construct additional facilities and improvements within the 4-Plex. Any permanent improvements to the 4-Plex shall be owned by the City when completed and accepted by the City. During any period of construction or installation, the Provider, its members, employees, agents, and affiliates shall ensure that the performance of the construction or installation does not cause or result in damage to City property or adjoining property. All costs for design and construction and related activities such as any and all plans, approvals, necessary permits, and clearances relative to its improvements from appropriate Local, State, and Federal regulatory agencies shall be borne solely by Provider. A licensed and legally bonded General Contractor with the City is required to make 4-Plex improvements. Temporary structures, if present, shall be removed from the 4-Plex at the sole expense of the Provider at the termination of the Agreement without payment being made by City. In connection with any such improvements, no liens may be placed on the 4-Plex property.
- J. Provider to be responsible and liable for the sublease of the 4-Plex for outside/other organized tournaments similar to hosting Provider organized tournaments at the 4-Plex. The fees charged by the Provider for any tournament sublease must be reasonable to recoup Provider expenses related to subleasing such as field maintenance, site supervision, security, etc. The goal for any sublease is for it to be mutually beneficial to the tournament sublessee, Provider, and City.
- K. Covenant and agree that the City will not be held responsible for damages and theft to Provider equipment left or stored on City property.
- L. Covenant and agree that the sports facility lights will be turned off within 30 minutes of the completion of the last tournament game on each of the four ballfields, but no later than 12:00 a.m. (midnight) Friday – Sunday. Exceptions may be made with approval of the Director of Parks and Recreation or designee. Requests for exceptions must be written.
- M. If requested by City, provide an accounting of its revenue and expenditures related to the 4-Plex for one or more of its fiscal years in a form acceptable to City. Such accounting to be provided within fifteen (15) days after receipt of a written request from the City.
- N. Reserve room blocks at Seguin hotels and lodging facilities for all tournaments. The Provider will work with the Seguin Convention and Visitors Bureau (CVB) on securing hotel room blocks. After each tournament, Provider and the Seguin CVB shall work together on gathering Room Pick Up reports from the hotels.
- O. Provider must provide quarterly reporting to City as follows:
- a. Number of participants in tournaments, including participant count by ages or participant count by two (2) year age range.
 - b. Number of teams in each tournament.
 - c. Home location of teams in each tournament.
 - d. Number of hotel rooms booked by participants as well as the number of nights booked for each tournament as verified with hotel Room Pick Up reports.

- P. During the term of this agreement, the Provider undertakes and agrees to carry at its own expense and with a company acceptable to City, general liability insurance that is an admitted carrier with a Best Rating of "A" or better, to protect City, City's officials, employees, and agents, and any third party or parties from any liability or damages whatsoever, including those referred to herein. The limits of liability shall not be less than \$1,000,000 combined single limits per occurrence, or equivalent. Provider shall name the City, City's officials, employees, and agents, as additional insured on all such insurance and shall furnish proof of said coverage to City prior to use of the facilities. In addition, automobile (combined single limit for bodily injury and property damage of \$500,000 per occurrence) and workers compensation (statutory) insurance is required.

IV.

- A. There will be no facility rental fees charged by the City for use of the 4-Plex for Provider scheduled tournaments.
- B. The City will be responsible for the cost of all utilities including electricity, water, and sewer.
- C. The City will provide storage space for maintenance equipment at the Horse Barn in designated horse stalls at no charge to the Provider.
- D. The City will have ultimate authority regarding the playability of ballfields after a rain event. The City's decision will be final regarding field closures. Any and all efforts by the Provider to make the ballfields playable after a rain event, including adding field drying agents, must be approved in advance by the Director of Parks and Recreation or designee. Any field drying agents approved by the City in advance to be applied must be removed entirely by the Provider once the tournament is completed for City use and maintenance beginning on Monday. If not completed to the City's satisfaction, the City retains the right to not allow Provider access to the 4-Plex until the situation has been remedied.
- E. The City shall retain the right to rent the 4-Plex when not in use by the Provider for tournaments, special events, practices, etc.
- F. In addition to the foregoing, the Request for Proposals upon which this Agreement is based, is incorporated herein and, where applicable, any obligations of Provider specified or processes and requirements therein shall be binding on Provider unless waived by the City in writing.

V.

- A. THE PROVIDER UNDERTAKES AND AGREES TO INDEMNIFY AND HOLD HARMLESS CITY, CITY'S OFFICIALS, EMPLOYEES, AND AGENTS, FROM ANY LIABILITY, COSTS OR DAMAGES (INCLUDING ATTORNEY'S FEES) THAT MAY BE INCURRED BY CITY, CITY'S OFFICIALS, EMPLOYEES, OR AGENTS AS A RESULT OF ANY CLAIMS, DEMANDS, COSTS, SUITS, ACTIONS, OR JUDGMENTS ARISING OUT OF THE USE OF SAID FIELDS, FACILITIES, AND OTHER PROPERTY PURSUANT TO THIS AGREEMENT.**

VI.

- A. If applicable, Provider must comply with Texas Government Code, Sections 2252.908 which requires a business entity to submit a Form 1295 disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the

governmental entity following the guidelines prescribed by the Texas Ethics Commission at www.ethics.state.tx.us. The law applies to contracts that require an action or vote by the governing body of the governmental entity before the contract is signed. Non-compliance, if applicable, renders this Agreement null and void.

- B. If applicable to this Agreement, Provider hereby certifies that it: (1) does not boycott energy companies; (2) will not boycott energy companies during the term of this Agreement; (3) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- C. This Agreement is governed by and will be construed under the laws of the State of Texas. All obligations of both parties are performable and exclusive venue for any dispute arising under this Agreement shall be in a state court in Guadalupe County, Texas of competent jurisdiction or, if in federal court, the United States District Court for the Western District of Texas, San Antonio Division.
- D. Provider will not use funds received by it directly or indirectly under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.
- E. Provider hereby affirms that it has not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of a firm to provide the services under this Agreement. A campaign contribution, as defined by the Texas Election Code or the Seguin City Code will not be considered as a valuable gift for the purposes of this Agreement.
- F. In performing the services required under this Agreement, Provider will not discriminate against any person on the basis of race, color, religion, sex, national origin, age, disability or ancestry. Provider agrees not to engage in employment practices which have the purpose or effect of discriminating against employees or prospective employees because of race, color, sex, religion, national origin, age, disability or ancestry.
- G. Except as specifically waived by law, the City's execution of and performance under this Agreement will not act as a waiver by the City of any immunity from suit or limitations on liability to which it is entitled under applicable law.
- H. Provider will comply with all federal, state and local laws in performing any activities under this Agreement.
- I. By entering this agreement, the parties do not create any obligation, express or implied, other than those set forth herein and this agreement shall not create any rights in third parties.
- J. This Agreement may not be assigned by Provider without the written consent of the City.

EXECUTED to be effective as of the date stated below.

SIGNED this _____ day of _____, 2023.

PROVIDER:

By: _____

Name: _____

Title: _____

CITY: _____

By: _____

Steve Parker, City Manager