

Calhoun County Sports Complex Use and License Agreement

This AGREEMENT is made and entered into this the ____ day of _____, 2016, by and between the Calhoun County, Alabama through its governing body the Calhoun County Commission, (collectively referred to as "County"), and _____. (hereinafter referred to as "Licensee"):

COUNTY HEREBY GRANTS to Licensee a license to use the Calhoun County Sports Complex, under the terms and conditions of this Agreement, which are:

1. **TERM.** Licensee shall be entitled to use the following described facilities at the Calhoun County Sports Complex (hereinafter referred to as "Site").
Fields 1 2 3 4 5, and Licensee shall have access to all of its amenities to include, but are not limited to, scoring equipment, restrooms and press box on the dates listed on Exhibit A, attached and incorporated by reference as if set forth herein in full, (the "Term"). The Term of this lease shall end after the last Event listed on the attached Exhibit A.
2. **LIMITED USE OF SITE.** Licensee shall use the Site for the exclusive purposes of: softball/baseball/soccer tournaments for both youth and adults (the "Event").

AVAILABILITY OF COMPLEX. The Site is not available for rental to the Licensee on _____. Completed Use and License Agreement must be submitted to the County prior to the start of the first Event for the Term of this Agreement. The County reserves the right to reject any future Agreement due to unpaid fees from prior Events, cancellation of prior Events, or excessive damage caused by prior Events.

- a. Notwithstanding anything herein, the County reserves the ultimate right of refusal to operate the facility if the County deems it unsafe or impractical to continue the Event.
3. **COSTS.** The Cost of the License is _____ (\$_____.00) Dollars per field per day. Costs shall be paid to the County prior to the start of each Event. Additionally, the Licensee shall pay _____ (\$_____.00) Dollars per field per hour per day for use of the lights.
 - a. Licensee shall pay a deposit of _____ (\$_____.00) Dollars for the Event dates listed on the attached Exhibit A. If at any time the Licensee shall cancel an Event, the Licensee shall pay an additional _____ (\$_____.00) Dollars for the remaining dates listed on Exhibit A. Licensee shall pay the deposit to secure the dates requested Event scheduled.
 - b. Costs include: the use of the fields, and a custodial person/crew to clean restrooms and field areas. County shall drag and line the fields at the beginning of each Event day and once each day thereafter for the remaining days of the Event. Licensee shall maintain fields after the start of the first game on each day of each Event.
 - c. Any and all additional Costs/fees as stated herein will be assessed at the end of the Event, and Licensees shall pay these additional Costs immediately after the completion of the Event, unless otherwise provided for herein.

4. **SOUVENIRS.** The Licensee shall not sell souvenir items, or contract with another to sell such items, without prior approval from the County. Licensee shall contact the County seven (7) days prior to the Event in order to receive approval. A fee may be assessed to the Licensee in order to sell items on County property and facilities. The fee, if assessed, shall be paid no later than five (5) days after each Event.
5. **CONCESSIONS.** The County shall contract concession rights to licensed, independent vendors. The Licensee is prohibited from the sale of food or drink items. The Licensee and shall **not** sell food or drink items or contract with another to sell such items.
6. **SPECIAL PROVISIONS.**
 - A. County, or its designee, shall be responsible for determining if the fields at the Site are in a condition such that a tournament can be held. The County or its designee reserves the ultimate right of refusal to operate the facility if the County deems it unsafe or impractical to hold an Event, or continue an Event.
 - B. Licensee shall guarantee each tournament is sanctioned. Licensee shall ensure that all applicable sanctioning rules and regulations are followed. All Events shall use only sanctioned umpires.
 - C. Licensee shall follow the Calhoun County Sports Complex Operational Policies, Exhibit B, attached hereto and incorporated by reference as if set forth herein in full.
7. **ACCEPTANCE OF SITE.** Licensee represents and warrants that it has inspected the Site, including all facilities, utilities and improvements thereon, and that they are all acceptable as is and appropriate for the Event. In the event of a material change in the condition of the Site adversely affecting the ability of the Licensee to produce the Event, the sole remedy available to the Licensee is to terminate this Agreement and receive a refund of the Costs.
8. **UTILITIES.** The County shall pay the cost of utilities consumed during the Term, including water, sewer, gas, and telephone.
9. **ALTERATIONS, ADDITIONS, IMPROVEMENTS.** Licensee shall not make any permanent alteration, addition or improvement to the Site. The Licensee shall remove any alteration, addition or improvement and restore the Site to its original condition at its own expense. Licensee need not obtain the County's consent for temporary improvements made by Licensee on the Site necessary to produce the Event, including by way of example and not limited to, portable toilets, temporary electrical cords and junction boxes, water hoses, temporary lighting, temporary fencing, equipment, generators, trailers, tents, temporary vendor facilities, trash receptacles, portable gazebos, and all other improvements of a similar nature. Licensee shall remove all such temporary improvements existing on the Site or Parking Lots at the conclusion of the Event. If the Licensee fails to remove any permanent or temporary additions to the Site, the County or its designee may seize, impound, remove and destroy the same at the expense of the Licensee.
10. **REPAIRS, MAINTENANCE, AND CLEANUP.** Licensee shall at its expense keep and maintain the Site in good repair during the Term of this Agreement. Licensee agrees to repair, replace or compensate the County for any damage or excessive cleanup costs at the Site sustained by the County during the Term of this Agreement, as determined by the County in its sole discretion.

11. **CONDITION AND VACATION OF SITE.** Licensee shall neither commit nor permit waste of the Site. By midnight on the final day of the Event, Licensee shall vacate and return the Site to the County in the same or better condition as received, failing which the County or its designee may take any necessary steps to repair the Site and return the Site to at least the same condition as it was prior to the Event, at the expense of the Licensee.

12. **COMPLIANCE WITH LAWS.** Licensee shall comply, and cause its employees, agents and subcontractors to comply, with all laws, ordinances and regulations applicable to the occupation, use or maintenance of the Site, and shall promptly comply and cause the same to comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon or associated with the Site.

13. **RIGHT OF ENTRANCE.** The County shall have the right to enter the Site at all times during the Term of this Agreement and shall have free access at all times to all spaces occupied by the Licensee, its employees, agents, and subcontractors.

14. **INSURANCE AND INDEMNIFICATION.**

a. Licensee shall purchase a comprehensive public liability policy that covers the entire Term and that insures Licensee against liability arising from Licensee's occupation, use or maintenance of the Site. Licensee's coverage shall be in the amount of the following:

Minimum limits:

Aggregated – \$2,000,000;

Products - \$1,000,000;

Personal and Advertising Injury - \$1,000,000; and

Each Occurrence - \$1,000,000

All such insurance shall name Calhoun County, Alabama, and the Calhoun County Commission, and each of their officers, agents, employees, and servants as additional insureds.

b. All coverage maintained by Licensee pursuant to 14. Subparagraph (a) shall be provided by companies registered and licensed to sell insurance in the state of Alabama and which may legally provide the coverage set forth herein, and shall be provided by companies reasonably satisfactory to the County, and shall provide that coverage will not be subject to cancellation, termination, revocation or material change except after thirty (30) days prior written notice to the County.

c. Upon execution of this Agreement, and in no event less than seventy-two (72) hours prior to the Term, and thereafter upon the written request of the County, Licensee shall furnish to the County such certificates of coverage and certified copies of policies pursuant to 14. Subparagraph (a). In order to satisfy this provision, the documentation required by this part must be sent to the County, 1702 Noble Street, Ste. 103, Anniston, Alabama 36201.

d. Licensee shall indemnify and hold harmless and defend the County and its officers, agents, employees, servants and representatives from and against any and all damages, injuries, death, dismemberment, lawsuits, liabilities, claims, costs, and expenses including reasonable attorney fees (hereinafter "Damages") arising in whole or part from: (i) the occupation, use or maintenance of the Site by Licensee or anyone claiming by, through or under Licensee; (ii) acts of third parties; or (iii) the breach of any of Licensee's representations, warranties, covenants or agreements, hereunder, including Damages arising from the combined fault of Licensee and County, but excluding any

Damages arising solely from the negligence or willful misconduct of the County. The covenants contained in this paragraph shall survive the termination of this Agreement.

- e. If any third party claim is made against the County that, if sustained, would give rise to indemnification liability of the Licensee under this Agreement, the County shall promptly cause notice of the claim to be delivered to the Licensee and shall afford the Licensee and its counsel, at the Licensee's sole expense, the opportunity to join in defending or compromising the claim. The covenants contained in this paragraph shall survive the termination of this Agreement.
15. **ATTORNEY FEES.** In the event of any litigation hereunder, each party shall be responsible for its own attorney fees and court costs at all trial and appellate levels and at any mediation or arbitration.
16. **TIME.** Time is of the essence in this Agreement.
17. **FORCE MAJEURE.** The County's failure or inability to provide any facility for public use at any time as a result of circumstances beyond its control, such as, but not limited to, war, terrorism, strikes, fires, floods, hurricanes, acts of God, power failures, or damage or destruction of any facility related thereto, shall not be deemed a breach of this Agreement.
18. **REMEDIES.** Failure to cure a breach of a material term hereunder within four (4) hours of Licensee's receipt of notice thereof shall entitle the County to terminate this Agreement. All rights and remedies conferred upon the parties in this Agreement shall be cumulative and in addition to those available under the laws of the State of Alabama.
19. **CHOICE OF LAW.** Except to the extent governed by Federal law, regulations or rules, this Agreement shall be interpreted, construed and enforced in accordance with and governed by the laws of the State of Alabama and any litigation regarding this Agreement shall be maintained in the courts of Alabama.
20. **ASSIGNMENT.** This Agreement is not assignable, without the prior approval of the non-assigning party.
21. **SEVERABILITY.** In the event any court of competent jurisdiction shall hold any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.
22. **MODIFICATIONS.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the County and Licensee.
23. **WAIVER.** Failure by the County to enforce any provision of this Agreement shall not be deemed a waiver of the provision or modification of this Agreement. A waiver by the County of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understanding, negotiations and discussion of the parties, whether oral or written, and there are no representations, warranties, covenants or other agreements among them. This Agreement may be

executed in counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute but one Agreement. Signatures exchanged by facsimile or electronic transmission shall be deemed original signatures.

24. **INDEPENDENT CONTRACTOR.** The parties to this Agreement mutually understand and agree that Licensee is an independent entity, and that the relationship created by this Agreement is that of a contractor being an independent contractor, and not an employee, agent or servant of County or of the Commission for any purpose. This Agreement does not create an employee/employer relationship between the parties. It is the parties' intention that Licensee will be and is an independent contractor and not County's or the Commission's employee, and that Licensee's officers, employees, servants, and agents are neither County nor Commission employees for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, state revenue and taxation laws, local revenue and taxation laws, state workers' compensation laws, and state unemployment insurance laws. Licensee acknowledges and accepts all tax responsibilities imposed by federal tax laws, state tax laws, and any applicable local tax laws. Except insofar as necessary to monitor and assure compliance with the terms and provisions of this Agreement, Licensee will retain and does retain sole and absolute discretion in its judgment of the manner and means of carrying out Licensee's activities and responsibilities hereunder, and the Events as herein stated. Licensee agrees that Licensee is a separate and independent enterprise from County and from the Commission. This Agreement shall not be construed as creating any joint employment relationship between Licensee and County or between Licensee and the Commission, nor shall it be construed as creating any joint employment relationship of any person by Licensee and County or by Licensee and the Commission, and neither County nor the Commission will be liable for any obligation incurred by Licensee or any obligation incurred by Licensee's officers, employees, servants, and/or agents, including, but not limited to unpaid minimum wages and/or overtime premiums. Licensee is an independent contractor and, notwithstanding any other provisions of this Agreement, it is agreed that neither County nor the Commission is a partner of or joint venturer with Licensee, and that neither County nor the Commission shall be deemed or construed to be a partner of or joint venturer with Licensee in conducting or providing for the Events as herein stated. In the performance of the services, work, duties, and obligations under this Agreement, it is mutually understood and agreed that Licensee is at all times serving as an independent contractor providing services and/or work as an independent contractor. Further, Licensee shall not at any time or times use the name or credit of County or the Commission in purchasing or attempting to purchase any advertising, equipment, supplies, property, services, or other thing or things whatsoever.
25. By signing this Agreement, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
26. Headings, and letter and number designations, if any, of parts of this Agreement are for convenient reference only, and shall not be used to interpret or construe the provisions of this Agreement.
27. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.
28. The parties acknowledge and agree that because each party, and each party's respective counsel, or each party with and after the opportunity to consult counsel, participated in negotiating and drafting this Agreement or entered into this Agreement after the opportunity to participate in

negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement which construes any language, whether ambiguous, unclear or otherwise, in favor of or against any party by reason of that party's role in drafting this Agreement.

IN WITNESS WHEREOF, Calhoun County, Alabama, and _____, have caused this agreement to be executed in their respective names, have caused their respective seals to be hereunto affixed, and have caused this agreement to be attested to, all by their duly authorized officers, in two counterparts, each of which shall be deemed an original, and the parties hereto have caused this agreement to be dated the ____ day of _____, 2016.

Attest:

County - Calhoun County, Alabama

Its: _____

By: _____
_____, as Chairman of the
Calhoun County Commission

(SEAL)

Attest:

Licensee - _____

(Name Printed or Typed)

By: _____

(Name Printed or Typed)

Its: _____
(Title Printed or Typed)

Its: _____
(Title Printed or Typed)

(SEAL)