

**FACILITY USE AND MAINTENANCE AGREEMENT  
BY AND BETWEEN  
BEDFORD EULESS SOCCER ASSOCIATION, INC.  
AND  
THE CITY OF EULESS, TEXAS**

STATE OF TEXAS                   §  
  §  
COUNTY OF TARRANT         §

This Facility Use Agreement (this "Agreement") is made by and between Bedford Eules Soccer Association, Inc. ("BESA") and the City of Eules, Texas ("City"). City and BESA are sometimes hereafter referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS**, City is the owner of those certain public parks known as the Parks at Texas Star, Villages of Bear Creek Park and Bob Eden Park, (the "Facilities"); and

**WHEREAS**, BESA is a Texas nonprofit organization organized to promote youth sports activities through the operation of its youth soccer program; and

**WHEREAS**, BESA desires to use portions of the Facilities (the "Soccer Facilities") for BESA's regular Spring and Fall season, league playoffs and make-up games, and other annual events; and

**WHEREAS**, BESA and City desire to enter into an agreement for the purpose of evidencing the agreement of the Parties with regard to the use of the Soccer Facilities by BESA and the respective obligations of the Parties regarding the use and maintenance of the Soccer Facilities;

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree as follows:

**ARTICLE I.  
TERM**

1.01 **Initial Term.** The initial term of this Agreement shall be for a period of one (1) year (the "Initial Term") commencing on January 1 and ending on December 31 of the year in which it is signed.

1.02 **Renewal Term.** Upon expiration of the Initial Term, this Agreement may be renewed at the option of the Parties for additional one-year term(s), conditioned upon the following:

- a) BESA, if not in violation of any obligation hereunder, shall have the option to renew this Agreement under the conditions set forth by City.
- b) If BESA should desire to renew this Agreement it shall do so by giving written notice to City prior to the expiration of the current term.

**ARTICLE II.  
USE OF SOCCER FACILITIES**

2.01 Time of Use. BESA will be the primary recreational youth soccer provider for City. Thus, during the period of February 15<sup>th</sup> to November 30<sup>th</sup> of the Agreement year, BESA shall have the right to use the Soccer Facilities, as assigned by City, during BESA's regular Spring and Fall season, league playoffs and make-up games. In addition, City will make the Soccer Facilities available for Spring Soccer Fest, Spring 4x4 tournament and Fall Turkey Shootout.

2.02 Inclement Weather. BESA understands and agrees that at times weather and/or field conditions may result in City denying the use of certain Soccer Facilities on dates for which approval has been granted. When this occurs, City shall make reasonable efforts to designate other dates and times to facilitate BESA's soccer program.

2.03 Right of Inspection. City shall at all times have the right to inspect its Facilities, and Soccer Facilities being used by BESA, and all BESA sponsored activities related to the use of such facilities.

2.04 Additional Time of Use. If BESA should desire to use the Soccer Facilities for additional tournaments, BESA shall make a request to City by October 1<sup>st</sup> of the year prior to the year in which the tournament is to be held. Any and all additional tournaments are not included in this Agreement, and shall require a separate written agreement between the Parties. All dates and conditions of the additional tournaments shall be finalized and furnished to City by January 15<sup>th</sup> of the year in which the additional tournament is to be held.

2.05 Facility Use Fee. BESA agrees and understands that City reserves the right to, upon written notice and prior to BESA's registration for the upcoming season, charge a fee, per participant, for use of the facilities.

**ARTICLE III.  
OBLIGATIONS OF CITY**

3.01 City shall provide the following maintenance and repairs in a manner generally equal to normal City maintenance and repair of similar City recreational facilities:

- a) Maintain and repair benches and bleachers;
- b) Maintain all turf areas on the fields to include mowing, weed control, fertilizing and herbicide spraying;

- c) Mark all foul and game lines on scheduled game days;
- d) Haul off trash that has been deposited in trash receptacles as warranted;
- e) Maintain all area and field lighting systems;
- f) Repair or replace lights, poles, wiring fuses, transformers and other equipment related to the lighting of certain fields to be used by BESA within a reasonable time depending on the severity of the repairs to be made;
- g) Maintain field irrigation systems and watering schedules of turf areas; and
- h) Maintain restroom facilities.

3.02 City shall provide a meeting place for BESA board meetings at no cost to BESA based upon availability of locations and provided that BESA makes reservations in advance.

3.03 City shall receive calls for information regarding the soccer seasons and activities and refer interested parties to BESA when necessary.

3.04 City shall assign the practice fields for the upcoming season at least two weeks prior to the first game of each season.

3.05 City shall not distribute player rosters or information obtained from player rosters received from BESA for any purpose without prior written consent from BESA.

3.06 It is understood and agreed that City's obligations under this Agreement are subject to and may be affected by City's budget. If City is unable to fulfill its obligations under this Agreement as a consequence of City's budget, City will not be liable to BESA for any monetary damages.

#### **ARTICLE IV. OBLIGATIONS OF BESA**

4.01 BESA shall provide the following maintenance, repair or services at no cost to City:

- a) Maintain soccer goals, nets, cables and net clips; and
- b) Be responsible for game day policing of all litter on BESA designated game and practice field(s) to include playing areas, dugouts, fences, backstops, bleachers, concession stands and adjacent grounds.

4.02 BESA shall maintain, at all times, a two hundred and fifty dollar (\$250) deposit with City to ensure game day policing of litter. City will draw upon this deposit to cover the actual cost incurred by City performing BESA's responsibility of policing of litter. When the deposit is

drawn upon, BESA shall promptly bring the balance back to two hundred and fifty dollars (\$250).

4.03 BESA shall seek written permission from City before performing any maintenance to turf or field areas of the Soccer Facilities.

4.04 BESA shall provide the following information to City prior to the start of each soccer season:

- a) current by-laws for organization;
- b) financial report of all expenditures and revenues from previous year;
- c) proposed budget for upcoming year;
- d) list of current officers and board members with addresses, phone numbers and e-mail (if applicable). City is to be notified of changes within two weeks of appointment;
- e) annual calendar including events.

4.05 BESA shall provide to City's Parks and Community Services Department rosters of all participants, including the participants' names and addresses. The rosters shall be submitted within four weeks after completion of registration.

4.06 BESA shall provide to City's Parks and Community Services Department for approval a complete game schedule for each season. The schedule shall be submitted at least one week prior to the first regular season game. All game schedules must be approved by City before being distributed to teams.

4.07 BESA shall schedule and meet with City's Athletic Supervisor prior to the beginning of the season to discuss schedule, field playability and department guidelines.

4.08 BESA shall coordinate with City's Athletic Supervisor in making determinations on soccer field closures due to weather and communicate these closures to coaches and players.

4.09 BESA shall have all of its coaches and assistant coaches certified for coaching youth by a national or state accredited coaching certification program that is recognized and/or approved by City. BESA shall provide City documentation showing that all coaches and assistant coaches have had a criminal background check completed before being assigned to coach a team.

4.10 BESA shall not engage in any business on the premises of the Facilities or Soccer Facilities, nor do anything in connection therewith which shall be in violation of any existing state or federal law or municipal ordinances, or use the same in such manner as to constitute a nuisance. City reserves the right to exclude any individual or group from its facilities based on conduct, which it determines in its discretion to be objectionable or contrary to City interests.

BESA hereby consents to the exercise of such authority by City over its members, officials, and agents.

4.11 BESA shall not use any of the Soccer Facilities for practices, except those designated as practice fields by City.

4.12 BESA shall provide sufficient notice of all scheduled make-up games to allow City to meet its obligations for those games. Notice of make-up games should be given to City one-week in advance, unless due to the circumstances one-week notice cannot be given.

4.13 BESA shall pay a fine equal to the cost incurred by City in the preparation of the Soccer Facilities when City prepares the Soccer Facilities for BESA's scheduled games, and BESA then does not use the Soccer Facilities as scheduled, except where BESA's failure to use the Soccer Facilities is the result of inclement weather.

4.14 BESA shall follow any and all rules that have been established by City and City staff concerning appropriate conduct at the Facilities and the Soccer Facilities. Examples of rules may include but are not limited to:

- a) Vehicles may only be parked on an improved surface within a designated parking space.
- b) No rollerblading, scooters, etc. are allowed inside the four-plex at the Parks at Texas Star.
- c) No outside food or drink is allowed in the four-plex at the Parks at Texas Star.
- d) Smoking is allowed in designated areas only.

4.15 BESA shall submit a request in writing for City's approval of any and all non-game activities, such as camps, clinics, and registrations, at least thirty (30) days before the activity. This request must be presented to City's Athletic Supervisor for approval.

4.16 BESA shall pay a fine equal to the cost incurred by City to repair any damage, as established by the Director of Parks & Community Services, caused by activities held on the Soccer Facilities at times when a particular part or all of the Soccer Facilities have been closed due to inclement weather.

4.17 BESA shall inspect the condition of the Soccer Facilities, in particular the soccer fields, before allowing the Soccer Facilities to be used by its participants, and BESA shall bring any problems or hazards to City's attention. BESA should not allow the Soccer Facilities to be used until any problems or hazards have been corrected.

**ARTICLE V.  
TERMINATION**

5.01 Termination.

- a) For Convenience. Either Party may terminate this Agreement at any time for any reason upon giving thirty (30) days written notice.
- b) For Cause. Notwithstanding subsection (a), if BESA fails to fulfill any obligation under this Agreement, BESA shall be considered to be in default. If BESA fails to cure such default within ten (10) days after written notice and request to cure from City, City may terminate this Agreement.
- c) Immediate Termination. Notwithstanding subsections (a) and (b), if BESA fails to timely provide the information required in Article IV, Section 4.04, of this Agreement, this Agreement and any extension thereof may be cancelled immediately by City.

**ARTICLE VI.  
ASSIGNABILITY AND EXCLUSIVITY**

6.01 Assignment. This Agreement is a privilege for the benefit of BESA only and may not be assigned in whole or in part by BESA to any other person or entity. Both Parties understand that BESA's use of the Soccer Facilities is nonexclusive.

**ARTICLE VII.  
INSURANCE**

7.01 BESA covenants and agrees that during the Initial Term and any Renewal Term of this Agreement, BESA will furnish to City, at BESA's sole cost and expense, a certificate of insurance as proof that it has secured and paid for policies providing general liability insurance covering all risks related to the BESA's activities on, and use and maintenance of, the Property. The amounts of such insurance shall not be less than \$1,000,000.00 for personal injury or death, each occurrence.

7.02 City shall be named as an additional insured under the above-described policies, and each such policy shall contain endorsements waiving subrogation rights against City and providing that such policies may not be cancelled unless City is provided with written notice of such intent to cancel at least thirty (30) days prior to any such cancellation. Each such insurance policy shall be procured from a company authorized to do business in the State of Texas and shall be satisfactory to City. BESA shall provide evidence satisfactory to City that such coverage has been procured and is being maintained at all times during the Initial Term and any Renewal Term.

**ARTICLE VIII.  
INDEMNIFICATION**

**8.01 BESA SHALL, AT ITS SOLE COST AND EXPENSE, INDEMNIFY AND HOLD HARMLESS CITY AND ANY OFFICER, AGENT, EMPLOYEE, OR OFFICIAL OF CITY (HEREINAFTER REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST ANY AND ALL LIABILITY, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY ACT OR OMISSION OF BESA, ITS PERSONNEL, EMPLOYEES, MEMBERS, PLAYERS, PARTICIPANTS, COACHES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, RESULTING IN PERSONAL INJURY, BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY PERSON OR DAMAGE TO, LOSS OF OR DESTRUCTION OF TANGIBLE OR INTANGIBLE PROPERTY, LIBEL, SLANDER, INVASION OF PRIVACY AND UNAUTHORIZED USE OF ANY TRADEMARK, TRADE NAME, COPYRIGHT, PATENT, SERVICE MARK OR ANY OTHER RIGHT OF ANY PERSON, FIRM OR CORPORATION, WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH BESA'S ACTIVITIES ON, OR USE OR MAINTENANCE OF, THE PROPERTY OR BESA'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR REGULATION.**

**ARTICLE IX.  
GENERAL PROVISIONS**

9.01 Notices.

- a) All notices required herein shall be sent to the respective Parties by certified mail, return receipt requested, at the following addresses:

To City: City of Euless  
Attention: Director of Parks and Community Services  
201 N. Ector Dr.  
Euless, Texas 76039

To BESA: Bedford Euless Soccer Association  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b) Any notice pursuant to this Agreement shall be deemed received on the date the green card is signed or three days after the day a Party places the notice in the mail, whichever is earlier.

9.02 Interpretation and Place of Performance. This Agreement shall be enforceable and construed under the substantive laws of the State of Texas, shall be performed in Tarrant County, Texas, and venue for any action brought to interpret or enforce this Agreement shall lie in Tarrant County, Texas.

9.03 Partial Invalidity. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

9.04 Force Majeure. In the event that either Party is delayed, hindered, or prevented from performing any action required herein, either Party shall not be liable or responsible if the delay is due to strike, riot, act of God, shortage of labor or materials, war, governmental laws, regulations, or other restrictions or any other causes of any kind which are beyond the reasonable control of either Party, and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

9.05 Amendment. This Agreement may not be altered, waived, or otherwise modified, except where done in writing, and signed by the Parties.

9.06 Registration and Registration Confirmation. In the event that City enters into a non-exclusive agreement(s) for the use of the Soccer Facilities with another entity, City and BESA will mutually agree upon a fee to be charged to said entity for registering their players. BESA agrees to reimburse the agreed upon portion of that registration fee back to City for each season said entity uses the Soccer Facilities.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2012.

**CITY:**

CITY OF EULESS, TEXAS

By:

\_\_\_\_\_  
Gary L. McKamie, City Manager

Attest:

\_\_\_\_\_  
City Secretary

**BESA:**

Bedford Euless Soccer Association, Inc.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_