

MURFREESBORO PARKS AND RECREATION COMMISSION AGENDA  
WEDNESDAY, MAY 1, 2019 12:00 NOON

Call to Order

Prayer and Pledge

Consider for Approval the Minutes of the March 6, 2019, Murfreesboro Parks and Recreation Commission meeting.

New Business

- I. North Greenway Connector
- II. Consider for Approval Boro Beach Discount Fee Proposal for Yearly Facility Passholders (Individual and Family)
- III. Consider for Approval Indoor Tennis Court Cancellation Policy for Lessons and Clinics
- IV. Consider for Approval Healthy Contributions Program
- V. TSSA Update
- VI. City Park Tour
- VII. MPRD Program/Activity Updates

Other Business

MURFREESBORO PARKS AND RECREATION COMMISSION MINUTES  
WEDNESDAY, MARCH 6, 2019 12:00 NOON

MPRC Members Present: Mr. D. Edwin Jernigan, Chair  
Dr. Charlie Apigian, Dr. Gloria Bonner, Dr. Linda Gilbert,  
Mr. Rick LaLance, Mr. Eddie Miller, Mr. Eddie Smotherman,  
Mr. Ricky Turner, and Mr. Don Turner (ex officio)

MPRC Member Absent: Mr. Tim Roediger

MPRD Staff Present: Mr. Nate Williams, Director  
Mr. Thomas Laird and Ms. Rachel Singer, Asst. Directors  
Mr. Jim Davis, Mr. Bart Fite, Mr. Kyle Goss,  
Ms. Susan Hicks, Ms. Kristin Hopkins, Ms. Mitzi Hughes,  
Ms. Hailey Moss, Mr. Mark Owens, and Ms. Melinda Tate

Others Present: Ms. Angela Jackson, Executive Director of Community Services  
Ms. Kelley Baker, Assistant City Attorney  
Mr. Mike Browning, Public Information Director  
Mr. Bill Allen and Mrs. Ida Lee Allen  
Ms. Janice E. Lewis, Quilts of Valor Foundation

After the meeting was called to order, Mr. Rick LaLance led the commission in a prayer and in the Pledge of Allegiance. Next, the minutes of the December 5, 2018, Murfreesboro Parks and Recreation Commission meeting were presented for approval. Dr. Bonner made a motion to approve the minutes as read. Mr. LaLance seconded, and motion passed by unanimous vote.

Mr. Williams announced that Mr. Bill Allen recently stepped down from the Golf Commission where he had been the Chair for many years. Mr. Allen served on the MPRC for 22 years as an ex officio member representing the Golf Commission. Ms. Angela Jackson presented Mr. Allen with a Certificate of Appreciation for his dedicated service to the commission. Mr. Allen was next given a Quilt of Valor for his service in the U.S. Navy from 1943-1948, which included his presence at the Battle of Normandy during World War II. Ms. Janice E. Lewis of the Quilts of Valor Foundation presented the quilt to Mr. Allen.

Mr. Allen said that it was a great day and that he appreciated the honors, which mean more to him than anyone could know. He also stated that Murfreesboro has offered him so much his whole life, starting with his father who worked in Murfreesboro to support his family. Mr. Allen added that he received his education and employment in Murfreesboro, met his wife of 63 years in Murfreesboro, and he and his wife enjoyed raising their children in this wonderful city. He thanked MPRD staff for the certificate and Ms. Lewis for the quilt. Mr. Allen further said that he is indebted to Murfreesboro and very thankful to be here. He closed with a Bob Hope quote, "Thanks for the memories."

Mr. Williams asked Ms. Rachel Singer and Mr. Thomas Laird to introduce their new employees. Ms. Singer introduced Ms. Kristin Hopkins, Greenway and Natural Resources Coordinator, who started with MPRD in November (2018) and oversees the Wilderness Station, greenway, backcountry trails, mountain bike trails, wetlands, and all other department natural areas. Ms. Singer next introduced Ms. Susan Hicks, who has worked as a part-time Cultural Arts Coordinator for several years and helped the Perform Murfreesboro program grow tremendously. Ms. Hicks is now the full-time Cultural Arts Coordinator.

Mr. Laird stated that MPRD added the St. Clair Street Senior Center to its departmental facilities in the fall. He said that hiring the best superintendent for the senior center was very important to staff so that opportunities for seniors could be maximized. Mr. Mark Owens, who has been an MPRD part-time employee since 2011, fits that need. Mr. Laird added that Mr. Owens is an MTSU graduate who worked a long time for Campus Recreation. In addition, he was most recently a case manager for a facility that assists adults with disabilities. Mr. Laird said that Mr. Owens easily shows his compassion for mankind with his big heart and has a strong discipline to get things done. Mr. Owens thanked Mr. Laird for the introduction and mentioned that he held a meet and greet with the patrons of the senior center when he began his employment there and believes he successfully answered all 30 questions presented to him by the seniors on that occasion. He further said that the senior center staff intends to incorporate the patrons' wishes into the workings of the facility, as much as possible. Mr. Smotherman mentioned that the center is more receptive and fun with the recent and ongoing changes. He added that he's heard many positive comments from the patrons.

Ms. Hailey Moss, Outdoor Murfreesboro Assistant Program Coordinator, requested the commission's approval for the outdoor summer camps associated with the Wilderness Station to add pre-care and post-care options for the participants. The requested fees for the pre-care and post-care are \$50.00/week for the 9:00 a.m.-4:00 p.m. camps, and \$25.00 for the one 9:00 a.m.-2:00 p.m. camp, with only the pre-care option available. Mr. Miller made a motion to approve the additional care options for the outdoor summer camps, with the fees requested. Dr. Bonner seconded. Motion passed by unanimous vote.

Ms. Moss next requested the commission's approval for staff to offer Nature Rangers Camp, with a \$50 fee, for children 4-5 years old during the week of May 20-24, 2019, from 9:00-11:30 a.m. each day, where they'll sing, do crafts, hear stories, and participate in outdoor activities. A parent or guardian will need to assist their child/children throughout the camp each day. Ms. Moss explained that the camp was developed due to requests from parents whose children have attended Wild Things (for ages 1-4) regularly over the years. Mr. LaLance made a motion to approve the new camp and its associated fee, and Dr. Bonner seconded. Motion passed by unanimous vote.

Mr. Kyle Goss, MPRD Aquatic Coordinator, requested a change in the rental rates for swim lanes. He explained that the current rates are \$4/lane for a short course (25 yards) and \$7/lane for a long course (50 meters). The requested new rates would be \$8/lane/hour for the short course and \$16/lane/hour for the long course. Dr. Charlie Apigian pointed out that the rates

requested were double (on one fee) and more than double on another fee. Mr. Goss agreed. Mr. Laird explained that the rates requested are still lower than those of other comparable aquatic facilities in Middle Tennessee. He additionally mentioned that the swim lane rental rates have been the same since Sports Com opened in 1987, with no rate changes requested until now. Dr. Apigian also asked if the groups currently using the lanes are aware of the pending rate changes. Mr. Goss said that he discussed the possibility with the team that rents lanes most frequently. Their coach indicated they would remain at the facility. Dr. Bonner made a motion to approve the new swim lane rental rates. Mr. LaLance seconded. Motion passed by unanimous vote.

Mr. Laird announced that it was time to renew the annual partner athletic organization use agreements. He asked for approval of agreements between the City and each of the following groups: Murfreesboro Soccer Club, Murfreesboro Lacrosse Club, Murfreesboro Baseball Association, Murfreesboro Little League, Murfreesboro Kiwanis, Middle Tennessee Disc Golf Association, Harpeth Youth Soccer Association, Latino American Adult Soccer, Central Magnet School (Baseball and Softball Teams), and Providence Christian Academy Baseball Team. Mr. Laird said that the agreements are standard with the player use fee added this time. Mr. LaLance made a motion to approve the use agreements as presented. Mr. Miller seconded. Motion passed by unanimous vote.

Mr. Laird requested the addition of an Industrial (Employee) Adult Volleyball League to be held at Sports Com on Friday nights. He mentioned that several business representatives have expressed interest in such a league. Staff would like to charge \$300.00 per team, which will cover an 8-week season, single elimination tournament, and t-shirts for the championship winners. Dr. Apigian made a motion to approve the new adult volleyball league with the fee requested. Mr. Turner seconded, and motion passed by unanimous vote.

Mr. Bart Fite, McKnight Park Superintendent, informed the commission that the Buy One, Get One (BOGO) sale at Sports Com and Patterson for Individual Yearly and Monthly passes from December 10, 2018, through January 12, 2019, went well. He said that Sports Com's pass sales went up \$27,488.79 from last year, while Patterson's BOGO sales were down \$10,091.64. He explained that sales can fluctuate due to an off-year for patrons who had a free pass from the year before. Mr. Fite added that summer camp registrations started last week (on March 1<sup>st</sup>), with a lot of registrations taking place at Sports Com and Patterson. He mentioned that staff believes the credit and debit cards have greatly boosted department sales, and he thanked the commission for their support of the cards. Mr. Fite further said staff was pleased that the military discounts for facility passes at Sports Com and Patterson started on March 1<sup>st</sup> as well.

Ms. Melinda Tate, MPRD Marketing Coordinator, announced MPRD's upcoming programs/activities, including a reminder that summer camp registration had begun. She mentioned that several camps were already full but that parents could still sign their children up for the open camps in person at Sports Com, Patterson or at the main MPRD office, or online. Ms. Tate mentioned that the St. Patrick's Day Getaway was set for March 15 at

Patterson Park's Pool from 6:00-9:00 p.m. for children ages 7-13 (preregistration, \$5.00, day of registration, \$7.00). Then, Patterson will host the annual Underwater Egg Hunt on April 13 beginning at 11:00 a.m. for ages 2-9 at \$3.00/participant (egg hunt age group times on website). April 13 is also the date for the Boro Adventure Fest from 12:00-4:00 p.m. at the Walter Hill Recreation Area, \$10.00 preregistration/\$20.00 day of event. Additionally, two free MPRD Easter Egg events will include the Happy Easter Children's Eggstavaganza on April 18 at Patterson from 10:00 a.m.-12:00 noon for kids ages 3-5, followed by the Citywide Easter Egg Hunt on April 20<sup>th</sup> at Richard Siegel Park beginning at 1:00 p.m. for all ages.

Ms. Tate announced that the new Guardians of the Greenway cleanup program for all ages would be held on Tuesdays in April and May at 10:00 a.m. at a designated greenway trailhead (sites listed in the *Rec Connection* and on the Parks and Recreation link of the City's website). A naturalist will lead the cleanups, and those who help with at least four cleanups, out of nine, will receive a free Guardians of the Greenway t-shirt. Cleanup gloves, bags, and trash grabbers will be provided to participants.

Ms. Tate further stated that various Spring Break programs will be offered through the Wilderness Station March 25-29, as well as a First Shot Skills Academy at Patterson that week.

Also, there will be organized MPRD hikes all spring and summer. Two new free programs to be offered at the Gateway Island will be Yoga on the Island at 9:00 a.m. on March 9, April 13, and May 11 and Tai Chi, also at 9:00 a.m., on April 3, 10, 17, and 24. Several running/marathon events are going on throughout the spring and summer as well.

Ms. Tate invited all to attend Winnie the Pooh Kids, a Perform Murfreesboro production, March 7-9 at 7:00 p.m. or March 10 at 2:00 p.m. at Patterson's Washington Theatre. She mentioned that the shows are almost sold out.

Additionally, Ms. Tate announced that multiple youth and adult athletic programs/leagues are being offered this spring and summer, including Youth Volleyball Class and League, Adult Recreational and Power Coed Volleyball Leagues, Start Smart Summer Baseball (ages 3-4), Sports Com and McFadden Adult Basketball Leagues, a Summer Basketball League for 15-17-year olds, and Murfreesboro Track and Field for ages 7-14. Additionally, there's an Adams Tennis Complex Classic scheduled for May 10-12.

Further, there are many interesting and fun classes/programs coming up at the St. Clair Street Senior Center, including Easy Home Repairs, Decades Day, Senior Prom, and a Smart Driver Course. Ms. Tate said that specifics for any of the mentioned activities/programs and other programming may be found in MPRD's *Rec Connection*, on the Parks and Recreation link of the City's website, and on various Facebook pages. Mr. LaLance suggested that staff reach out to groups who generally help with cleanups and possibly get them to work with the Guardians of the Greenway program. Ms. Hopkins said that some MTSU student groups have already been contacted, as well as several other local groups/organizations.

Mr. Williams recapped that the first day of Summer Camp signups went very well with \$21,000 coming in just from the online registrations. He thanked the commission for their support of the technology upgrades that are helping to better serve the public.

Mr. Jernigan thanked Mr. Allen for his service to this country and for the contributions that he and his wife make in this community. He also again welcomed Mr. Turner to the commission. Mr. Turner said he was glad to be a part of the MPRC.

Meeting adjourned: 12:32 p.m.

Approved:

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D. Edwin Jernigan, Jr., MPRC Chair

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Nate Williams, MPRD Director



April 25, 2019

Murfreesboro Parks and Recreation Commission:

**RE: Boro Beach Discount for Yearly Facility Individual or Facility Family Passholders**

**Background**

The admission to Boro Beach changed in 2018, creating seasonal summer passes to Boro Beach for individuals and families. In addition to daily admission, customers are now able to purchase individual and family passes to Boro Beach. Customers with yearly passes to SportsCom recreation facility are now offered a discount on daily admission to Boro Beach but have requested the ability to upgrade their current SportsCom passes to include Boro Beach.

**Impact**

In an attempt to provide excellent customer service and increase passholder benefits, staff would like to offer a discounted Boro Beach summer pass to current SportsCom passholders. Increasing passholder benefits will lead to customer retention throughout the summer months.

**Recommendation**

It is recommended that the commission approve a discount on Boro Beach seasonal passes for customers who have a yearly SportsCom facility individual or family pass which is valid through the summer.

**Attachment**

Boro Beach New Discount Fee Proposal

Bart Fite  
SportsCom Superintendent



# Boro Beach Discount Fee Proposal

<b>Pass Type</b>	<b>Non Resident</b>	<b>Non Resident</b>	<b>City Resident Price</b>	<b>City Resident Price</b>
	<b>Boro Beach Pass</b>	<b>*Facility Year Pass Discount</b>	<b>Boro Beach Pass</b>	<b>*Facility Year Pass Discount</b>
<b>Seasonal Pass Adult</b>	<b>\$120.00</b>	<b>\$60.00</b>	<b>\$100.00</b>	<b>\$50.00</b>
<b>Seasonal Pass Youth</b>	<b>\$100.00</b>	<b>\$50.00</b>	<b>\$80.00</b>	<b>\$40.00</b>
<b>Seasonal Pass Senior</b>	<b>\$100.00</b>	<b>\$50.00</b>	<b>\$80.00</b>	<b>\$40.00</b>
<b>Seasonal Pass Family</b>	<b>\$275.00</b>	<b>\$175.00</b>	<b>\$250.00</b>	<b>\$150.00</b>

**\*A customer with a Facility Year Pass or Family Year Pass that is current through Labor Day will be able to purchase a Boro Beach Pass at a discounted price.**

**The Boro Beach Passes highlighted in the gray are the current price for customers with or without a Facility Year Pass or Family Year Pass.**





May 1, 2019

Murfreesboro Parks and Recreation Commission:

**RE:** Indoor Court Lessons and Clinics Cancellation Policy

## **Background**

We have experienced over the past year lesson or clinic participants canceling at the last minute, which is tying up courts that could be used. In addition, there has not been a penalty for that. Listed below is the new policy we would like to put in place:

**Indoor courts that are reserved by teaching pros for lessons or clinics must be cancelled 24 hours prior to the actual start time of the lesson or clinic. If court reservation is not cancelled 24 hours prior to the actual start time of the lesson or clinic, a court fee of \$12.00 per hour per court will be assessed to whomever was not able to honor the reservation.**

## **Fiscal Impact**

Staff would like to assess a \$12 per hour per court fee associated with last-minute lesson or clinic cancellations as indicated in the proposed cancellation policy.

## **Recommendation**

It is recommended that the commission approve the Indoor Court Lessons and Clinics Cancellation Policy.

## **Attachment**

Indoor Court Lessons and Clinics Cancellation Policy

Thomas Laird  
Assistant Director



## **Indoor Court Lessons and Clinics Cancellation Policy**

Indoor courts that are reserved by teaching pros for lessons or clinics must be cancelled 24 hours prior to the actual start time of the lesson or clinic. If court reservation is not cancelled 24 hours prior to the actual start time of the lesson or clinic, a court fee of \$12.00 per hour per court will be assessed to whomever was not able to honor the reservation.



April 29, 2019

## **RE: Healthy Contributions: Renew Active by United Healthcare**

As an item for the agenda of May 1, 2019, it is recommended that the Commission approve the implementation of the Healthy Contributions Renew Active by United Healthcare program to be run at Sports\*Com and Patterson Park.

### **Background**

In 2015 we partnered with Tivity Health to run SilverSneakers, a fitness and wellness program to offer low to no cost access to fitness facilities for certain policy plan holders of Medicare Advantage plans. In 2019, we added Silver&Fit, a similar program run by American Specialty Health. Under these programs, we issue the participants' facility passes at no or little cost to them. We report to each company the number of visits for each of their members and are reimbursed a certain amount for each visit, according to the contract with each company. Currently, the SilverSneakers and Silver&Fit programs combined generate over \$7,000 each month. We have been informed that in 2020, United Health will be leaving the SilverSneakers program for a new program, Renew Active, run by Optum's Healthy Contributions. We want those who will be affected by this change to still be able to use our facilities and to be able to make use of this part of their insurance plan. We would like to add this program, along with the two existing ones, so we are able to offer our services to as many seniors as we are able.

### **Fiscal Impact**

Under the Renew Active program, Healthy Contributions will reimburse the City a flat rate of \$20 a month for each member who visits our facilities at least once during that month. This price is equal to our monthly senior pass.

### **Recommendation**

It is recommended that the commission approve our implementation of this program in our facilities.

### **Attachment**

Fitness Passport Service Agreement

Allison Davidson  
Wellness/Fitness Coordinator

## **FITNESS PASSPORT SERVICE AGREEMENT**

**This Fitness Passport Service Agreement** (this “Agreement”) is entered into on July 1, 2019 (the “Effective Date”), by and between OptumHealth Care Solutions, LLC, including its affiliates (“Optum”) and Murfreesboro Parks and Recreation, including its Participating Facilities (“Network”). For purposes of this Agreement, Network and Optum shall collectively be referred to herein as the “Parties” and individually as a “Party”.

**WHEREAS**, Network wishes to become part of the Optum Fitness Passport network comprised of facilities that provide services to support the Fitness Passport Program to Optum’s clients; and

**WHEREAS**, Optum provides its client’s Members access to the Fitness Passport Program (as further described in Appendix A); and

**WHEREAS**, Optum desires to include Network as part of its Fitness Passport Program offering so that Optum’s client’s Members may access the Fitness Passport Program.

**NOW THEREFORE**, the Parties agree as follows:

### **ARTICLE 1 DEFINITIONS**

Except as otherwise specifically indicated, the following terms shall have the following meanings in this Agreement (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

**Activation ID:** A unique system-generated number assigned by Optum and used by both Parties to identify a Member who enrolls in the Fitness Passport Program.

**Activation Letter:** A letter, which displays the Activation ID that Members print off and present to a Participating Facility to enroll in the Fitness Passport Program.

**Fitness Passport Program:** A program sponsored by Optum as described in Appendix A herein.

**Eligible Member:** A benefit holder enrolled in a qualifying health plan that may or may not be a member of a Participating Facility and is not enrolled in the Fitness Passport Program.

**Member:** A benefit holder enrolled in a qualifying health plan that is enrolled in the Fitness Passport Program and is a member of a Participating Facility.

**Participating Facility:** Each Network facility location, unless otherwise excluded as expressly stated in Appendix A herein that is obligated by this Agreement to participate in the Fitness Passport Program.

**Network Facility Reimbursement:** The amount of reimbursement Optum has agreed to remit to Network toward a Member’s monthly membership rate that Network represents has met the established Fitness Passport Program visit criteria as defined by Optum in Appendix A.

### **ARTICLE 2 TERM AND TERMINATION**

**2.1 Term.** The initial term of this Agreement shall begin on the Effective Date and shall continue for a period of twelve (12) months ("Initial Term"). Thereafter, this Agreement shall automatically renew for successive twelve (12) month terms (each a "Renewal Term"), unless sooner terminated in accordance with Section 2.2 of this Agreement.

**2.2 Termination.** This Agreement may be terminated by any of the following:

- a) After the Initial Term, during any Renewal Term thereafter, either Party may terminate this Agreement at any time by giving a minimum one hundred twenty (120) days' written notice to the other Party;
- b) By either Party upon mutual written agreement; or
- c) If either Party breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after written notice is given by the non-breaching Party, the Agreement shall terminate at the end of the thirty (30) day period.

Notwithstanding the above, this Agreement shall terminate immediately upon delivery to the other Party of written notice of termination on the occurrence of one of the following:

- a) Bankruptcy, insolvency or the dissolution of either Party;
- b) Assignment of this Agreement by either Party without the permission of the other Party; or
- c) The loss of any license, qualification, authorization, accreditation or certification required for a Party to perform its duties under this Agreement.

Each Party agrees to notify the other Party in writing not later than five (5) business days after the occurrence of any of the events referred to immediately above.

**2.3 Effect of Termination:** Upon termination of this Agreement, each Party shall immediately cease using the other Party's name, symbol or logo ("Mark"), including but not limited to uses of the Mark authorized by this Agreement. Notwithstanding, the obligation to pay Network Facility Reimbursement to Network by Optum shall survive Termination for 120 days after the termination date.

**2.4 Ongoing Obligations.** Termination shall not affect either Party's liability for any obligations incurred by such Party prior to the effective date of termination.

### **ARTICLE 3 OBLIGATIONS OF NETWORK**

**3.1 Access to, Fulfillment of, and Membership Fees for the Fitness Passport Program.** Each Participating Facility shall provide all Members with unlimited visits to the Participating Facility and all standard Network services, during the hours of operation as advertised by the Participating Facility to include, if applicable, an initial orientation to Participating Facility and the equipment. In connection with participating in the Fitness Passport Program, each Participating Facility will provide Members with unlimited visits to Participating Facility at the rate set forth in Appendix A.

**3.2 Acknowledgement.** Network acknowledges that Optum is not a payer of services nor an insurer with respect to any services provided by the Network as part of this Agreement.

**3.3 Compliance with Applicable Laws.** Both Parties shall comply with all applicable local, state and

federal laws. Network shall also obtain and maintain any and all licenses required to fulfill its duties and obligations under this Agreement.

**3.4 Cooperation with Optum.** Both Parties agree Network shall be the first point of contact for Members and Eligible Members and shall assume all service responsibility with respect to Member participation in the Fitness Passport Program, unless the Member contacts Optum first, in which case that Member will be re- directed to the Network. In the event of an escalated issue whereby Optum's assistance is required for resolution, Optum agrees to cooperate with Network in handling any complaints or inquiries from Members or Eligible Members regarding the Fitness Passport Program.

**3.5 Account Management.** Network will assign an account management individual or team to support Optum with implementation of the Fitness Passport Program.

## **ARTICLE 4 OBLIGATIONS OF OPTUM**

**4.1 Payment to Network.** Optum shall pay Network the Network Facility Reimbursement set forth in Appendix A for each eligible Member that meets the Fitness Passport Program's monthly visit requirement. Payment details for the Network Facility Reimbursement are set forth in Appendix A.

**4.2 Hold Harmless.** Network agrees that the only payment Optum is responsible for is in accordance with its obligation described in Section 4.1. The Member is responsible for all other costs, fees and charges related to services not included in the Network standard membership services. Network will not seek and will hold Optum harmless for any charges, fees, costs or expenses a Member may incur that are not part of the obligation of Optum under Section 4.1.

**4.3 Promotion of Services.** Optum shall promote the Fitness Passport Program to Eligible Members through the Optum Web site, marketing and sales brochures, and other distribution channels designated by Optum, including but not limited to telephone and email communications. Optum shall be responsible for the design and production of any such materials and the design and maintenance of the Optum Web site.

## **ARTICLE 5 CONFIDENTIALITY**

**5.1 Information.** Each Party acknowledges that in the course of performing under this Agreement, it may learn confidential, trade secret, or proprietary information concerning the other Party or third parties to whom the other Party has an obligation of confidentiality. Each Party shall protect and shall not disclose the other's proprietary information, including but not limited to, trade secrets, lists of Activation IDs and Participating Facilities, Member information, reimbursement amounts, and patented, trademarked, trade-named, service-marked, and copyrighted material or other property belonging to it or to a third party to whom it has an obligation of confidentiality ("Confidential Information").

**5.2 Protection of Confidential Information.** Each Party agrees that during the term of this Agreement: (a) it will use such Confidential Information only as permitted by this Agreement or as otherwise permitted in writing, (b) it will not disclose such Confidential Information orally or in writing to any third party without the prior written consent of the other Party, (c) it will take at least those precautions to protect the other's Confidential Information as it takes to protect its own similar information, and (d) it will not otherwise use such Confidential Information for its own purposes or that of any other person or entity. A Party may disclose Confidential Information if required by law, legal process, or court order, in which case the disclosing Party shall notify the other Party sufficiently in advance of the disclosure, as allowed

by law, to permit intervention at its option. The obligations stated in this Section shall survive termination of this Agreement for so long either Party has access to the other's Confidential Information.

**5.3 Privacy.** Each Party agrees to be bound by any applicable state and federal rules and regulations concerning the privacy and security of Member information.

#### **5.4 Trademarks, Logos and Copyrighted Materials.**

Network hereby acknowledges that Optum and its affiliates may, from time to time during the term of this Agreement, provide Network with marketing, promotional or other advertising materials intended for use in connection with the promotion of the Program (such materials together with all content, trademarks, trade names, and/or logos of Optum and its affiliates, the "Optum Marketing Materials"). Optum hereby grants to Network a revocable, nonexclusive, non-assignable and non-transferable right and license to use and display the Optum Marketing Materials during the term of this Agreement without modification solely in connection with the promotion of the Program. Upon expiration or the earlier termination of this Agreement, the foregoing license shall automatically terminate and be of no further force and effect and Network shall immediately cease its use and display of the Optum Marketing Materials. All uses of the Optum Marketing Materials shall be subject to Optum's prior approval. Optum hereby represents and warrants to Network that it has the right to grant the license as set forth in this paragraph. Except as expressly set forth in this Agreement, Network obtains no other rights in or to the Optum Marketing Materials and Optum and its respective affiliates reserve all rights

Network hereby grants to Optum and its affiliates a revocable, nonexclusive, non-assignable and non-transferable right and license to use and display all names, trademarks, trade names, service marks and logos of Network and its affiliates (collectively, the "Network Marks") during the term of this Agreement solely in connection with the administration and promotion of the Program. Upon expiration or the earlier termination of this Agreement, the foregoing license shall automatically terminate and be of no further force and effect. Network hereby represents and warrants to Optum that it has the right to grant the license as set forth in this paragraph.

### **ARTICLE 6 DISPUTE RESOLUTION**

In the event that any dispute, claim, or controversy of any kind or nature relating to this Agreement arises between the Parties, the Parties agree to meet and make a good faith effort to resolve the dispute. If the dispute is not resolved within thirty (30) days after the Parties first met to discuss it, and either Party wishes to further pursue resolution of the dispute, that Party shall refer the dispute to non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA"). In no event may the mediation be initiated more than one (1) year after the date one Party first gave written notice of the dispute to the other Party. A single mediator engaged in the practice of law, who is knowledgeable as to the subject matter relevant to the dispute, shall conduct the mediation under the then current rules of the AAA. The mediation shall be held in a mutually agreeable site. Nothing herein is included to prevent either Party from seeking any other remedy available at law including seeking redress in a court of competent jurisdiction.

### **ARTICLE 7 RESPONSIBILITY FOR DAMAGES AND INDEMNIFICATION**

**7.1 Responsibility for Damages.** Each Party shall be responsible for any and all damages, claims,



liabilities, or judgments it incurs that arise as a result of its own acts or omissions. Any costs for damages, claims, liabilities, or judgments incurred at any time by one Party as a result of the other Party's negligence or intentional wrongdoing shall be paid for or reimbursed by the other Party.

Except for claims indemnified hereunder, or breaches of provisions related to confidentiality of information provided, in no event shall either Party be liable to the other for incidental, consequential, economic, special, or lost profit damages, even if such Party has been advised of the possibility of such damages. Consequential damages include, but are not limited to, lost profits, lost revenues, and lost business opportunities, whether or not the other Party was or should have been aware of the possibility of these damages.

**7.2 Indemnification.** The Parties shall each indemnify and hold the other harmless against any and all losses, liabilities, penalties, fines, costs, damages, and expenses the other incurs, including reasonable attorneys' fees ("Damages"), which arise out of the indemnifying Party's: (i) breach of this Agreement; (ii), negligence or willful misconduct. Network shall also indemnify Optum for (a) any damages arising from a claim by a third party as a result of services performed by a Participating Facility; (b) any damages incurred by Optum that result from Network's failure to comply with requirements of Section 3.3 Compliance with Applicable Laws; and (c) for any claim brought by a Member for the failure to deliver services by Participating Facility, or membership dues and/or associated fee disputes.

**7.3 Indemnification Procedures.** Promptly, upon becoming aware of any matter which is subject to the provisions of Article 7 (a "Claim"), the Party seeking indemnification (the "Indemnified Party") must give notice of the Claim to the other Party (the "Indemnifying Party"), accompanied by a copy of any written documentation regarding the Claim received by the Indemnified Party.

The Indemnifying Party will, at its option, settle or defend, at its own expense and with its own counsel, the Claim. The Indemnified Party will have the right, at its option, to participate in the settlement or defense of the Claim, with its own counsel and at its own expense; but the Indemnifying Party will have the right to control the settlement or defense. The Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party's prior written consent. The Parties will cooperate in the settlement or defense and give each other full access to all relevant information.

If the Indemnifying Party: (i) fails to notify the Indemnified Party of the Indemnifying Party's intent to take any action within 30 days after receipt of a notice of a Claim; or (ii) fails to proceed in good faith with the prompt resolution of the Claim, the Indemnified Party, with prior written notice to the Indemnifying Party and without waiving any rights to indemnification, including reimbursement of reasonable attorney's fees and legal costs, may defend or settle the Claim without the prior written consent of the Indemnifying Party. The Indemnifying Party will reimburse the Indemnified Party on demand for all Damages incurred by the Indemnified Party in defending or settling the Claim.

## **ARTICLE 8 MISCELLANEOUS**

**8.1 Entire Agreement.** This Agreement, exhibits and attachments constitute the entire understanding between the Parties and supersedes all proposals, communications and agreements between the Parties relating to its subject matter.

**8.2 Independent Contractors.** The Parties' relationship to each other is that of independent contractors. No Party shall be deemed to be, or hold itself out as, a partner, agent, employee or joint venture partner of any other Party. No Party will represent that it has any authority to assume or create any obligation,

express or implied, on behalf of the other Party, or to represent any other Party as an agent, employee or in any other capacity.

**8.3 Insurance.** Each Party, at its sole cost and expense, shall procure and maintain in full force and effect for the term of this Agreement and after its termination for so long as the services are provided to Members pursuant to this Agreement, adequate commercial general liability insurance coverage, including but not limited to contractual liability insurance coverage, with limits that are reasonable and customary for its business to cover liabilities and claims which may arise in relation to or in connection with providing such Party's respective services under this Agreement, but in no event less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

**8.4 Certificate of Insurance.** Network and Optum agree to 1) provide the other, within ten (10) business days of a written request, with a Certificate of Insurance with respect to all liability insurance required under this Agreement, and 2) maintain the foregoing policy or policies of insurance without material change or cancellation except upon thirty (30) days written notice to the other Party.

**8.5 Right to Audit.** Optum shall have the right to review or to appoint an independent third party auditor to review the files and materials used by Network for the purpose of auditing compliance by Network related to Network's obligations under this Agreement. Optum may exercise such right of audit during normal business hours upon five (5) business days prior written notice to Network. Network shall cooperate with Optum's auditor in the performance of any audit. Optum shall be solely responsible for the cost of the audit, providing however, if such audit reveals reporting discrepancies to Optum, Network shall bear the costs of such audit.

**8.6 Assignment.** Except as provided in this Section, neither party may assign any of its rights and responsibilities under this Agreement to any person or entity without the prior written consent of the other party, which shall not be unreasonably withheld. Network and Optum acknowledge that persons and entities under contract with or affiliated with them may perform certain services under this Agreement. Network acknowledges that assignment by Optum of all or any of its rights and responsibilities under this Agreement to any affiliate shall not require Network's prior written consent.

**8.7 Successors.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heir(s), personal representatives, executors, administrators, successors, and assigns.

**8.8 Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota.

**8.9 Amendments.** No amendments, modifications, or additions to this Agreement shall be valid unless made in writing and signed by both the Network and Optum.

**8.10 Invalidity of Sections of Agreement.** If any portions of this Agreement shall, for any reason, be invalid or unenforceable such portions shall be ineffective only to the extent of such invalidity or unenforceability and the remaining portion or portions shall nevertheless be valid, enforceable and of full force and effect.

**8.11 Survival.** The terms and conditions of this Agreement, which by their express or implied terms, survive the termination of this Agreement, shall survive the termination of this Agreement.

**8.12 Notices.** Any notice, demand, or communication required under this Agreement shall be hand delivered or sent by commercial overnight delivery service, or if mailed, by pre-paid, first class mail to the

addresses below. The addresses to which notices are sent may be changed by proper notice.

Notice to Optum:  
OptumHealth Care Solutions, LLC  
Attn: Contracts Administration  
11000 Optum Circle  
Eden Prairie, MN55344

Notice to Network:  
Murfreesboro Parks and  
Recreation  
521 Mercury Blvd.  
Murfreesboro, TN 37130

**8.13 Counterparts.** This Agreement may be executed by electronic signatures or in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one agreement.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, this Agreement is executed by the parties' authorized officers or representatives and shall be effective as of the Effective Date.

**OptumHealth Care Solutions, LLC**  
11000 Optum Circle  
Eden Prairie, MN 55344

**Murfreesboro Parks and Recreation**  
521 Mercury Blvd.  
Murfreesboro, TN 37130

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Internal Control No.: 00569272.0

## Appendix A

### Fitness Passport Program Fees and Description of Services

- I. **Fitness Passport Program Description:** The Optum Fitness Passport Program provides eligible Members with pre- determined monthly membership rates to Participating Networks when they enroll in the Fitness Passport Program. The Optum Fitness Passport Program also reimburses Participating Networks a pre-determined amount when Members meet the established program criteria as defined by Optum.
- II. **Network Reimbursement Fees:** In connection with participating in the Fitness Passport Program, Optum will reimburse Network a pre-determined amount each calendar month for each participating Member, following Network's validation and representation that the Member has met the program criteria as defined by Optum below. The Network Facility Reimbursement payment is associated with a Member's cumulative number of visits to any Participating Facility. For the avoidance of doubt, the Network Facility Reimbursement payment is not applicable to each Participating Facility individually.

Member Participation Requirement	Network Reimbursement amount paid by Optum
Member visits any Participating Facility during calendar month	\$20.00 per Member per month

III. **Description of Services:**

1. **Network Responsibilities.**

Network shall be responsible for:

- a) Participating Facility Membership Fees: In connection with participating in the Fitness Passport Program, Network shall waive any and all enrollment and membership fees for those Members that enroll in the Fitness Passport Program. Network will need to enroll the eligible Member in the Fitness Passport Program in order to be eligible for reimbursement.
- b) Network will reasonably cooperate with Optum to create Fitness Passport Program communication and promotional materials for Optum to send to Optum's clients, Members or Eligible Members.
- c) Maintaining a Web site that provides Participating Facilities locations including Network branches by zip code as well as a list of amenities and services, hours of operation and other information for each Participating Facility. Network shall allow Optum to link to this site for purposes of providing information to Eligible Members and Members.

- d) By the seventh day of each month or the next business day if the seventh day of the month falls on a weekend or holiday, the Network or Optum's designated third party will deliver to Optum, in a file format specified by Optum, a file containing the usage data for the prior month for every Member in the Fitness Passport Program, regardless of how many times they visited the Network each month (from zero visits to 12 or more visits per month). Network will report a Member's cumulative number of visits to any Participating Facility in the file containing usage data. Network is responsible for ensuring the submitted usage data is accurate. A maximum of one (1) visit per calendar day can be counted towards a Member's monthly visit total to Network. Network will be responsible for accurate reporting monthly and correct any errors in reporting and will hold Optum harmless from any such errors. For purposes of this Agreement, Optum will only be responsible for those records that have been reported within two (2) months from the end of the reported month will be evaluated for possible Network Facility Reimbursement. For example, at the conclusion of the month of April, the Network has two calendar months to report a Member's April visit count for purposes of calculating a possible Network Facility Reimbursement. Upon identifying any processing errors Network will promptly notify Optum of these errors and the errors will be corrected in the next month's payment cycle.
- e) Assisting to resolve questions, complaints or grievances related to a Member's participation in the Fitness Passport Program and to notify Optum via e-mail correspondence of all unresolved Member disputes and/or grievances that require the involvement of Optum.
- f) Additional administrative and support services as described herein.

## 2. Optum Responsibilities.

Optum shall be responsible for:

- a) Communicating program overview to Members pursuant to Section 4.3 of the Agreement.
- b) Making reasonable efforts to notify Optum's Eligible Members of Fitness Passport Program enrollment guidelines and processes.
- c) Posting updated facilities as a Participating Facility directory on the Optum Web site pursuant to Section 4.3 of the Agreement when available.
- d) Upon receipt of Member Fitness Passport Program utilization information on a monthly basis from Network or Optum's designated third party, Optum will verify the eligibility of Members listed on the monthly Member usage file and indicate which Activation IDs meet eligibility requirements for Network Facility Reimbursement to Network. Optum will designate with an error code any records which are ineligible for any such payments.
- e) By the twenty-third day of each month or the next business day if the twenty-third day of the month falls on a weekend or holiday, Optum will provide the eligibility verification file containing the payment amount of Network Facility Reimbursement to be reimbursed to Network. In addition, by the twenty-third day of the month Optum will send a payment via electronic funds transfer ("EFT") to Optum's designated third party equal to the total amount of Network Facility Reimbursement to Network for the prior month.
- f) Additional administrative and support services as described herein.

3. Additional Fitness Passport Program Guidelines.

- a) The Network Facility Reimbursement period for Network is calculated based on each calendar month only, regardless of the date of enrollment by the Member. A Member who signs up for the Fitness Passport Program will enable Network to be eligible to earn an Network Facility Reimbursement payment from Optum commencing as of the month the Member enrolls. For example, if the Member enrolls in the Fitness Passport Program on January 5, Network may earn the Network Facility Reimbursement if the Member meets their monthly attendance requirement at a Network on or after January 1 through the end of January.



## Appendix B

### Fitness Passport Program Performance Standards

Network and Optum accept the minimum performance standards set forth below.

#### Section 1 Minimum Standards

**1.1 Customer Service:** Participating Facilities and Optum shall work together to resolve all Member complaints and grievances in a timely manner. Network will make best efforts to achieve the Customer Service Deliverables listed in Table 1 below:

TABLE 1 - Customer Service	
Service Level Deliverables	Timeframe
E-mails and written inquiries to and from Participating Facilities and Optum	Response within two (2) business days
Member complaint and/or grievance resolution	Network must notify Optum in a timely manner of any disputes or other grievances involving Members and work to resolve ninety-five percent (95%) of such disputes within seven (7) business days.

**1.2 Data and Payment Processing Schedule:** Network, Optum and Optum's designated third parties, if applicable will use the following schedule set forth in Table 2 below for processing data and sending payment:

TABLE 2 - Data and Payment Processing (per Appendix		
Network to provide Member usage file to Optum or Optum's designated third party*	Optum to provide eligibility verification file to Optum's third party	Optum or Optum's designated third party to transmit the Network Facility Reimbursement to Network's designated account
By the seventh day of the month or the next business day if the seventh day of the month falls on a weekend or holiday, following the month of usage	By the twenty-third day of the month or the next business day if the twenty-third day of the month falls on a weekend or holiday, following the month of usage**	By the first day of the month or the next business day if the first day of the month falls on a weekend or holiday, following the exchange of data**
Example: February 7 for January usage	Example: February 23 for January usage	Example: March 1 for January usage received in February

\* If Optum notifies Network that Optum utilizes a third party to collect Member usage from Network, Network will provide Member's monthly usage reports to Optum's designated third party no later than by the fifth day of the month.

\*\* Subject to timely receipt of usage data received by Network

## COOPERATIVE-USE AGREEMENT

THIS COOPERATIVE AGREEMENT (“**Agreement**”) is made as of this \_\_\_ day of \_\_\_\_\_ 2019, by and among the CITY OF MURFREESBORO, a municipal corporation of the State of Tennessee (hereinafter referred to as the “**City**”), and the TENNESSEE STATE SOCCER ASSOCIATION, a nonprofit corporation of the State of Tennessee registered as such under section 501(c)(3) of the Internal Revenue Code (hereinafter referred to as the “**TSSA**”).

### Recitals

A. WHEREAS, the City currently owns, operates, and maintains a soccer complex known as the Richard Siegel Soccer Complex (“**RSSC**”) and has developed plans to make improvements to RSSC with the goal of creating a marquee, statewide soccer park and training facility (the “**Facility**”);

B. WHEREAS, the City has presented these plans to TSSA and TSSA desires to utilize the Facility for purposes of soccer and other activities approved by the City ;

C. WHEREAS, the City intends to make improvements to RSSC, which include installation of nine turf fields, increasing the stands and improving the drainage on the Championship Field, constructing an indoor soccer facility, and constructing additional office and training space for use by the City and TSSA; and to improve the Jordan Farm Soccer Fields by installing lighting, bathroom, and concession facilities.

D. WHEREAS, the City and TSSA believe the Facility will have a significant, positive impact to the City by increasing facilities available to the growing sport of soccer, by increasing youth and adult soccer development and programs, and by bringing an increased number of visitors and tourism to the City; and

E. WHEREAS, the City and TSSA now desire to enter into this Agreement to delineate the parties’ respective rights and obligations relating to use, operation, maintenance, and repair of the Facility.

### Agreement

NOW THEREFORE, in consideration of the foregoing Recitals (which are hereby incorporated into this Agreement) and the mutual promises, covenants, conditions, warranties and representations made by the parties herein and set forth below, IT IS AGREED AS FOLLOWS:

**1. Definitions.** The following terms shall have the following meanings:

Affiliate of any Person (the “**Subject Person**”) means any other Person who (a) is Directly or Indirectly Controlled by, or under common Control with, the Subject Person; or (b) is an officer, director, member, employee, or agent of the Subject Person or of any Person described in clause (a) or (b) above.

Capital Repairs means any work that is reasonably required to be performed in and about the Facility to repair, restore or replace any Component of the Facility that has a useful life greater than one year and that may require such work because of any damage, destruction, ordinary wear and tear, defects in construction or design, or any other cause; provided that Capital Repairs shall not include any of the foregoing if such results from TSSA’s Misuse. If the cost of any Capital Repairs is paid out of the Capital Repairs Account (as defined below) and the parties are subsequently reimbursed for such cost under any applicable warranty or insurance, then the total amount of the reimbursement shall be deposited into the Capital Repairs Account.

Championship Field means the Facility’s marquee field to be designed and constructed at the Facility. The Championship Field shall include, without limitation, fixed seating for at least 1,800 spectators.

Component means any item which is incorporated into the Facility, including, but not limited to, all structural members, seats, fasteners (such as nails, nuts, bolts and screws), parts, pieces, concrete, electronic parts, shrubs, ramps, steps, systems, scoreboards, trees, steel bars and any other item, no matter how small or inconsequential, which is incorporated therein.

Emergency Capital Repairs means work that constitutes Capital Repairs and either (i) is necessary to protect public health or safety (e.g., to avoid injury to Persons attending events or working at the Facility) or (ii) if performed promptly can, in TSSA's reasonable judgment, avoid material cost to the City or TSSA or substantial damage to the Facility.

Expedited ADR means the Expedited Alternative Dispute Resolution procedures attached hereto as Exhibit B.

FF&E means furniture, fixtures and equipment, including, without limitation, Facility Equipment.

Facility means Richard Seigel Soccer Complex ("**RSSC**") located on Cherry Lane at Memorial Blvd (TN231), as shown on Exhibit A. Diagram of the Facility.

Facility Equipment means any equipment that the City provides to furnish the Facility for use by TSSA during the Term.

Facility Playing Fields means any and all playing fields located within the Facility, including, without limitation, the Championship Field, nine lighted synthetic fields, four lighted grass fields, and two unlighted grass fields.

Flex Fields (or Jordan Farm Fields) means the six additional soccer fields that the City has constructed less than a mile from the Facility on the Jordan Farm Property.

Hazardous Materials means any containment, chemical, waste, irritant petroleum product, waste product, radioactive material, flammable or corrosive substance, explosive, poly-chlorinated biphenyls, asbestos, hazardous toxic substance, material or waste of any kind, or any other substance that any environmental law regulates. Hazardous Materials shall include, but not be limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 39 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; all applicable state and local laws; and in the regulations adopted and publications promulgated pursuant to said laws or any amendments or addenda thereto.

Improvements means all Buildings, the Championship Field, Playing Fields, Buildings, Parking Lots, all landscaped areas and all other improvements at the Facility, including those improvements listed on in the Recitals hereto.

Legal Requirement(s) means all federal, state, county, city and other governmental laws (including applicable constitutions), ordinances, codes, rules, regulations, statutes and orders (including court and administrative agency orders), all covenants and restrictions of record, and the requirements of all insurance underwriters or rating bureaus, applicable to the Facility.

Life Safety Issue means a situation that, as determined by the City in accordance with its police powers, imposes an immediate threat of bodily harm or death to any users or occupants of the Facility or to those in the surrounding area.

Local TSSA-Member Clubs means any local club that is a member of TSSA and that is located in or serves citizens of Murfreesboro, including Murfreesboro Soccer Club and Murfreesboro FC, as demonstrated by membership that is composed of not less than 70% of Murfreesboro residents.

Parking Lots means the outdoor areas specifically designed for vehicle parking that now existing or to be constructed on the Facility and which shall include, without limitation, parking areas and all of the driveways, fences and lighting incidental to the use thereof.

Routine Maintenance means the labor and materials required to keep the Facility and its components, including without limitation the Championship Field and other Playing Fields, in good order and repair and keep the Facility in a clean, sanitary, and safe condition

Person means any individual, trust, estate, partnership, joint venture, limited liability company, corporation, association, or any other legal entity or business or investment enterprise.

TSSA Misuse means any event which causes damage to the Facility or any component thereof and arises out of uses by TSSA, its members, or any agent, employee, member, invitee, permittee, licensee, or guest of either TSSA or its members, that are not permitted under the Agreement or as the result of the negligence or willful misconduct of TSSA, its members, or any agent, employee, member, invitee, permittee, licensee, or guest of either TSSA or its members.

2. **Term.** This Agreement commences on May 1, 2019 (the “Effective Date”) and expires on April 30, 2039, unless this Agreement is terminated earlier pursuant to the provisions hereof (“**Term**”).

3. **TSSA’s Use of The Facility**

- 3.1. Priority Use of Facility Playing Fields, Indoor Training Facility, and Flex Fields. The City hereby grants to TSSA the right to use the Facility Playing Fields, Indoor Training Facility and Flex Fields in accordance with the terms and purposes of this Agreement. While TSSA’s right to use the Facility Playing Fields and Flex Fields is non-exclusive, TSSA’s use of the fields for tournaments, clinics, and other programs and events shall take precedence over all other uses of the fields except as may be otherwise provided in this Agreement.
- 3.2. Fees for Use of Facility Playing Fields and Flex Fields; Discount. As reflected in a tournament agreement executed for each major event, the City will charge TSSA the City’s standard rental fee for each Playing Field or Flex Field and for the Indoor Training Facility utilized by TSSA in connection with a TSSA tournament, clinic, program, or event, less a 15% discount. TSSA acknowledges that the City has the right to change the standard usage fee on an annual basis.
- 3.3. Tournament Agreements. The City and TSSA will execute separate tournament agreements establishing the parties’ responsibilities for each TSSA-organized tournament held at the Facility and/or Flex Fields. The field rental fees for tournaments shall be as set forth in Section 3.2.
- 3.4. Lease of Office Space. The City hereby agrees to construct and lease to TSSA office space at the Facility to be used by TSSA as its headquarters. The annual rent for the office space shall not exceed \$50,000.00 in the first year. Each year thereafter the annual rent will increase by 2% over the previous year’s rent. The terms and conditions of this lease shall be set forth in a separate agreement to be executed by the Parties.

#### 4. TSSA's Other Rights and Obligations

- 4.1. Revenues. During the Term and subject to Sections 5.2 and 6.2, TSSA shall control, collect, receive, and retain all revenues generated by any means at the Facility during a TSSA event, including, but not limited to, all revenues from ticket sales, merchandise sales, advertising, promotional and signage rights at the Facility.
- 4.2. Waste to Facility, Fixtures, Facility Equipment. TSSA shall not cause, permit, or suffer any waste or damage, disfigurement, or injury to the Facility or the fixtures or Facility Equipment thereon, with the exception of reasonable wear and tear, loss or damage by fire, natural catastrophe, or other casualty, or condemnation.
- 4.3. Waste of Utility Services. TSSA shall not waste the utility services provided by the City. Except when lighting of the fields is required due to weather conditions, TSSA shall not turn any field lighting on more than 30 minutes before sunset and shall make sure lights are kept off for fields not in use. TSSA hereby agrees to pay the City a \$100.00 fee in the event lights are left on over night after a TSSA event.
- 4.4. Taxes. TSSA shall be responsible for and shall pay all taxes associated with its use of the Facility, including, but not limited to, sales taxes and personal property taxes, except upon proof that TSSA is exempt under Tennessee law with respect to the collection and/or payment of any such tax.
- 4.5. Facility Equipment. During the Term, TSSA shall not remove any Facility Equipment from the Facility except for temporary relocation of equipment to the Flex Fields as needed.
- 4.6. Security, Event, and Crowd-Control Staff. TSSA shall provide and pay for all security, event, crowd-control personnel, and traffic control necessary for the proper operation of the Facility. The City will continue to provide public safety services to the Facility in the normal course.
- 4.7. Insurance. TSSA shall obtain and maintain commercial general liability insurance and other insurance as set forth in Section 13 as necessary or appropriate to insure the liability of TSSA with respect to the Facility and of the City as an additional insured party. Except as otherwise provided in Section 13, the City shall be endorsed as an additional insured under the terms of such policies. Further provisions concerning insurance are set forth in Section 13 below. A certificate of insurance and copy of the endorsement that evidences proof of such insurance shall be provided to the City starting on the beginning date of the Term and thereafter no more frequent than annually upon request of the City and as further provided in Section 13 below.
- 4.8. Concussion and Cardiac-Arrest Protocols. TSSA shall adopt the guidelines and other pertinent information and forms developed by the Tennessee Department of Health to inform and educate youth-athletic directors and coaches, as well as youth athletes and their parents or guardians, as to the nature, risk, and symptoms of head injury (including concussion) and sudden cardiac arrest, including continuing to play after suffering a concussion or other head injury or experiencing symptoms associated with cardiac arrest.
- 4.9. Non-Discrimination. TSSA shall not discriminate against any person on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected

under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

- 4.10. Advertisement; Promotion. TSSA shall have the right to advertise and promote all Events conducted at the Facility, including but not limited to a marquee billboard that identifies the Facility and sponsors of TSSA, the Facility and Events, such advertising and promotion to mention or identify the City to the extent practicable (TSSA understands the importance of promoting the City and its image and desire and agree to assist in such regard) and in accordance with the provisions of Section 6.2 below.
- 4.11. TSSAs' Books and Records. All books and records of the Facility that relate specifically to the obligations to the City that TSSA have undertaken to perform hereunder shall be kept in accordance with reasonably accepted accounting principles and shall be subject to inspection by the City at the Facility during regular business hours upon two days' prior written notice to TSSA. The City will, to the extent allowed by law, protect the confidentiality of any books and records provided to it by TSSA.
- 4.12. Contracts with Third Parties. Except as otherwise provided in this Agreement, TSSA shall have the right to enter into lawful contracts in TSSA' name in furtherance of any of its rights and obligations upon terms and conditions that are consistent the terms of this Agreement.
- 4.13. Limitations. TSSA' rights and obligations under this Agreement are subject to the following additional limitations:
  - a. No contract entered into by either or both of TSSA pursuant to this Agreement may impair any right of the City hereunder.
  - b. Except as otherwise provided in this Agreement or the Office Lease Agreement, TSSA shall not undertake any improvements, repairs, or upgrades to the Facility without the prior written permission of the City. In addition, no liens, including mechanic's liens, may be placed on the Facility in connection with construction or repair work undertaken in accordance herewith by contractors, subcontractors and suppliers on behalf of TSSA. TSSA shall take no action which may result in the attachment of a permanent lien or cloud on the City's interest in or title to the Facility. If, as a result of TSSA' actions, a lien or cloud is attached to the City's interest or title to the Facility, TSSA shall immediately take all reasonable and necessary steps to remove such lien or cloud. Notwithstanding the foregoing, TSSA may, in their sole discretion, grant to third parties security interests in any property acquired and/or paid for by TSSA, other than property to be deeded by TSSA to the City hereunder or paid for by TSSA with funds provided by the City.
  - d. TSSA shall not knowingly occupy or use the Facility for any purpose or in any manner that is unlawful.
  - e. Within the policies and standards set forth in this Agreement, TSSA shall function as an independent contractor in fulfilling the duties required by this Agreement. All staff required by TSSA to accomplish their obligations under this Agreement shall be employees or contractors of TSSA and not the City.



- f. Other than the Facility Equipment to be provided by the City as part of the Facility, TSSA shall provide and maintain, at their expense, all other equipment they may need in connection with TSSA's events and operations at the Facility.
- g. The Facility shall not be used for the manufacture or storage of flammable materials, explosive materials or Hazardous Materials, except for paint and Hazardous Materials typically found for use or sale in retail stores, including supermarkets.

## **5. City's Rights and Obligations**

- 5.1. Scheduling. The City shall control the scheduling and use of the Facility, including all Facility Playing Fields, the Indoor Practice Facility, and Championship Field, and will make reasonable attempts to grant TSSA priority scheduling.
- 5.2. Rental Fees. The City shall have the exclusive right to set any and all rental fees for the Fields Playing Fields, Flex Fields, and Indoor Practice Facility and to retain any and all revenue generated from the rental of these venues to TSSA or any other person.
- 5.3. Staffing of Facility. The City shall provide sufficient staffing at the Facility and for administration of this Agreement.
- 5.4. Facility Improvements. The City shall improve the Facility and the Jordan Farm Fields as set forth in the Recitals hereto.
- 5.5. Utilities. The City shall throughout the Term pay all water, sewer, gas, electricity and other utilities to the Facility.
- 5.6. Insurance. The City shall provide liability coverage through its self-insurance retention for the City Events and property coverage for the Facility in the same manner as other City property.

## **6. Business Development; Sponsorships.**

- 6.1. Business Development. The City and TSSA agree to cooperate in marketing the Facility for regional and national tournaments and other soccer-related events, with the goal of generating 20,000 hotel room nights per year in connection with such events.
- 6.2. Sponsorships. The City and TSSA will address sponsorships of TSSA events by third parties through separate sponsorship agreements..

## **7. Coordination of Routine Maintenance and Capital Repairs.** Representatives of TSSA and City shall meet in February of each year following the Effective Date annually to review the City's anticipated Routine Maintenance activities, which shall be submitted to TSSA in writing by the City; allocate any anticipated work between anticipated Routine Maintenance and anticipated Capital Repairs; determine budgets and timetables for anticipated Capital Repairs; and generally effectuate the administration of all activities related to Routine Maintenance and Capital Repairs.

## **8. Default/Remedies**

- 8.1. TSSA's Default. The occurrence of any one or more of the following events constitutes a "Default" by TSSA under this Agreement:

- a. Failure by TSSA to observe or perform in any material respect any material covenant, agreement, condition, or provision of this Agreement, if such failure continues for 30 days after written notice thereof has been delivered by the City to TSSA; provided, however, that TSSA shall not be in Default with respect to matters which cannot reasonably be cured within 30 days so long as within such 30 day period, TSSA commences such cure and diligently proceed to complete the same thereafter; or
  - b. In addition to any other remedy available under this Agreement, and except as provided in Section 14, if at any time during the Term, TSSA ceases to conduct its primary operations at the Facility, such event shall constitute a “**Cessation of Use**” of the Facility by TSSA and shall be deemed a Default under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, a Cessation of Use of the Facility by TSSA shall entitle the City to terminate this Agreement by giving TSSA 10 days’ written notice of such termination. TSSA shall have 10 days after receipt of the aforementioned notice of termination to renounce the Cessation of Use by confirming to the City its intention to continue to use the Facility. Otherwise, termination pursuant to the provisions of this Section 8.1(f) shall become effective upon the expiration of such 10-day cure period.
- 8.2. City’s Default. In the event of any failure by the City to observe or perform in any material respect any material covenant, agreement, condition, or provision of this Agreement, and if such failure shall continue for 90 days after notice thereof has been delivered to the City by TSSA, then the City shall be deemed to be in Default hereunder; provided, however, that the City shall not be deemed to be in Default with respect to matters which cannot reasonably be cured within 90 days so long as within such 90 day period, the City commences such cure and diligently proceeds to complete the same thereafter.
- 8.3. Remedies. In the event of a dispute or Default under this Agreement, remedies shall be available under Sections 8.3(a), 8.3(b) or 8.3(c) however, in no event shall a party (except with respect to any third-party Claims) be liable hereunder for indirect, incidental, exemplary, punitive, special or consequential damages (it being understood that amounts paid or to be paid, or due or to become due, hereunder shall not be deemed to be incidental, consequential or special damages), including, without limitation, damages for loss of profits, incurred by any party hereto, whether in an action in contract or tort, even if the other party has been advised of the possibility of such damages.
- a. Arbitration. All disputes or Defaults under this Agreement shall be resolved pursuant to Expedited ADR (attached as Exhibit B), unless the nature of the dispute is such that a party will be irreparably harmed due to the time necessary to resolve the dispute pursuant to Expedited ADR.
  - b. Judicially Administered Equitable Remedies. In the event of a dispute or Default that would result in irreparable harm to a party due to the time necessary to resolve the dispute if resolved pursuant to Expedited ADR, a party shall be entitled to seek an injunction or decree for specific performance or equitable relief from a court of competent jurisdiction.

8.4. Termination. The following events shall permit the City on the one hand and TSSA on the other hand to terminate this Agreement following the expiration of an additional 90 days' notice to the defaulting party.

- a. Failure of the defaulting party to pay an award or follow a determination rendered pursuant to Section 8.3(a) of this Agreement, in which case TSSA may terminate this Agreement if the City is the defaulting party and the City may terminate this Agreement if either of TSSA is the defaulting party
- b. Failure of TSSA to make a payment contractually required under this Agreement.

9. **Assignment/Sublease.** This Agreement may not be assigned by either party to any other Person without the prior written consent of all other parties, which consent may be granted or denied by the parties in their sole discretion; provided, however, that this Agreement may be assigned by the City without TSSA's consent (but with prior written notice to TSSA) to a non-profit or governmental entity whose primary purpose is to own and/or manage facilities for sports or other entertainment purposes ("**Permitted Transferee**"). The City shall give prior written notice to TSSA of any anticipated assignment of this Agreement to a Permitted Transferee and such Permitted Transferee shall expressly assume the obligations of the City hereunder in writing.

## 10. **Representations and Warranties**

10.1. City. The City represents and warrants to TSSA that:

- a. Authority. The City has full power and authority to enter into this Agreement, and the execution, delivery and performance of this Agreement by the City have been duly authorized by all necessary actions. This Agreement is a valid and binding obligation of the City, enforceable against the City in accordance with its terms.
- b. Ownership. As of the date hereof and, except as an assignment or other form of conveyance may be permitted under this Agreement, the City owns and will own, as applicable, fee title to the Facility and there are and will be, as applicable, no easements, liens or encumbrances that could adversely affect TSSA's contemplated use of the Facility.

10.2. TSSA. TSSA represents and warrants to the City that:

- a. Authority. TSSA is nonprofit corporation duly organized and validly existing under the laws of the State of Tennessee, qualified to transact business in the State and in good standing under the laws of the State. TSSA has full power to enter into this Agreement, and the execution, delivery and performance of this Agreement by TSSA have been duly authorized by all necessary limited liability company actions. This Agreement is a valid and binding obligation of TSSA, enforceable against TSSA in accordance with its terms.
- b. Compliance with Other Agreements and Instruments. The execution, delivery and performance of this Agreement by TSSA is not prohibited by and does not violate or breach any other agreements or instruments to which TSSA is a party or is otherwise subject, or any applicable Legal Requirement.

## 11. Miscellaneous

- 11.1. Notices. Any notice required by or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered by hand or by overnight delivery service addressed as follows (or to such other address as a party shall inform the other party):

If to the City:                      City Manager  
   City of Murfreesboro  
   111 West Vine Street  
   Murfreesboro, Tennessee 37130

Copy to:                                City Attorney  
   City of Murfreesboro  
   111 West Vine Street  
   Murfreesboro, Tennessee 37130

If to TSSA:                            Tennessee State Soccer Association  
   2630 Elm Hill Pike, Ste. 100  
   Nashville, TN 37214-3168  
   Attention: President

- 11.2. Amendment. This Agreement may not be amended, changed, modified or rescinded except in writing by the City and TSSA, and any attempt at oral modification of this Agreement shall be void and of no effect.
- 11.3. Entire Agreement. This Agreement, including its exhibits, constitute the entire agreement between the parties, and supersede all prior or contemporaneous agreements (whether oral or written) between them (including the MOU), with respect to the subject matter hereof.
- 11.4. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.
- 11.5. Counterparts. This Agreement may be executed in two or more counterparts which have been signed and delivered by each of the parties (a party may execute a copy of this Agreement and deliver it by facsimile or electronic transmission; provided, however, that any such party shall promptly deliver an original signed copy of the Agreement).
- 11.6. Jurisdiction and Venue. The exclusive, convenient, and proper venues for any legal proceeding arising out of, or related to, this Agreement shall be the Circuit and Chancery Courts for the County of Rutherford, Tennessee. Moreover, subject to Section XX, all parties to this Agreement, persons and entities alike, consent to the personal jurisdiction of the Rutherford County Circuit and Chancery Courts and irrevocably waive any objections to said jurisdiction.
- 11.7. Time of Essence. Time is of the essence in the performance of this Agreement.
- 11.8. Headings. The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.
- 11.9. Severability. If any clause, provision, or section hereof is held illegal, invalid, or unenforceable by any court, the illegality, invalidity, or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions, or sections

hereof, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, provision or section had not been contained herein.

- 11.10. Waiver. No failure on the part of any party to exercise, and no delay in exercising, and no course of dealing with respect to any right hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy provided at law or in equity, except as expressly set forth herein.
- 11.11. Survival. Sections 8.3, 11.3, 11.4, 11.6, 11.10, 11.13, and 12 shall survive termination of this Agreement.
- 11.12. Interpretations. To the extent permitted by the context in which used, (a) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa; (b) reference to “persons” or “parties” in his Agreement shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and other entities; and (c) (unless specified otherwise) references to sections are to sections of this Agreement.
- 11.13. Third Party Beneficiary. No person other than TSSA, the City, and, with respect to Section 13, the Indemnified City Parties and the Indemnified TSSA Parties, and the successors and permitted assigns of such, shall have any rights whatsoever under this Agreement.

## **12. Indemnification**

- 12.1. Indemnification by TSSA. To the fullest extent permitted by law, TSSA shall indemnify, protect, and hold the City its officers, agents, and employees, and each of their respective successors and assigns (collectively, the “**Indemnified City Parties**”) harmless from and defend the Indemnified City Parties against any and all “liabilities” (as hereinafter defined), including for any “bodily injury” (as hereinafter defined) or “property damage” (as hereinafter defined), whatsoever arising out of or resulting from (i) any breach of any representation or warranty of TSSA set forth herein or default in performance of any obligation on the part of TSSA to be performed hereunder, (ii) the acts or omissions of TSSA, or TSSA’s agents, contractors or employees in, on or about the Facility, or (iii) the use, occupancy, and operation of any part of the Facility occupied, operated, or controlled by TSSA or one of TSSA, including (but not limited to) environmental liability (e.g., contamination of the Facility by Hazardous Materials) caused, contributed to, allowed, or not prevented by TSSA or one of TSSA, but not to the extent that any of the liabilities are caused by the negligence or willful misconduct of the Indemnified City Parties, nor to the extent that the City Indemnified Parties have expressly undertaken the obligation to indemnify TSSA for such liabilities pursuant to the terms of this Agreement or any other agreement.
- 12.2. Indemnification by the City. To the fullest extent permitted by law, the City shall indemnify, protect, and hold TSSA, their respective Affiliates and the officers, agents, employees, directors, partners, successors and permitted assigns of TSSA and their respective Affiliates (collectively, the “**Indemnified TSSA Parties**”) harmless from and defend the Indemnified TSSA Parties against any and all “liabilities” (as hereinafter defined), including for any “bodily injury” (as hereinafter defined) or “property damage” (as hereinafter defined), whatsoever arising out of or resulting from (i) any breach of any representation or warranty

of the City hereunder or default in the performance of any obligation on the part of the City to be performed hereunder, (ii) the negligent or intentionally tortious acts or omissions of the City, or the City's agents, contractors directly hired by the City or City employees in, on or about the Facility, but not to the extent caused by the negligence or willful misconduct of the Indemnified TSSA Parties or (iii) any City Event unless caused by the negligence or willful misconduct of the Indemnified TSSA Parties.

- 12.3. Definitions. As used in this Agreement, “**liabilities**” shall mean, subject to Section 8.3, all liabilities, claims, damages, losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including reasonable attorneys and experts fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim or proceeding, whether out of court, at trial or in any appellate or administrative proceeding). “**Bodily injury**” means bodily injury, sickness or disease sustained by a person, including death resulting from any of the foregoing. “**Property damage**” shall mean physical injury to tangible property, including all resulting loss of use of that property, or loss of use of tangible property that is not physically injured.
- 12.4. Procedure for Indemnification -- Third Party Claims. Promptly after receipt by an indemnified party under Sections 12.1 or 12.2 of notice of a third-party claim against it (“**Claim**”), such indemnified party shall, if a claim is to be made against an indemnifying party under such Section, give notice to the indemnifying party of such Claim, but the failure to notify the indemnifying party will not relieve the indemnifying party of any liability that it may have to any indemnified party, except to the extent that the indemnifying party demonstrates that the defense of such action is prejudiced by the indemnified party's failure to give such notice.
- a. If any Claim is made against an indemnified party and it gives notice to the indemnifying party of such Claim, the indemnifying party will be entitled to participate in the defense of such Claim, and, to the extent that it wishes to assume the defense of such Claim with counsel satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense of such Claim, the indemnifying party will not, as long as it diligently conducts such defense, be liable to the indemnified party under such Section for any fees of other counsel or any other expenses with respect to the defense of such Claim in each case subsequently incurred by the indemnified party in connection with the defense of such Claim, other than reasonable costs of investigation; provided, however, that if the indemnifying party and the indemnified party have potential or actual conflicting interests that would make it inappropriate for the same counsel to represent them, or the indemnified party has defenses available to it that are not available to the indemnifying party, the indemnifying party may select one separate counsel for its representation at the indemnifying party's expense. If the indemnifying party assumes the defense of a Claim, (a) no compromise or settlement of such Claim may be effected by the indemnifying party without the indemnified party's consent unless (i) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any Person by the indemnified party, (ii) the indemnified party receives a full and unconditional release from all liability as to any Claims that are the subject matter of the applicable

action and (iii) the sole relief provided is monetary damages that are paid in full by the indemnifying party and (b) the indemnifying party will have no liability with respect to any compromise or settlement of any Claim(s) effected by the indemnified party without the indemnifying party's consent. If notice is given to an indemnifying party of a Claim and the indemnifying party does not, within thirty (30) days after the indemnified party's notice is given (or such lesser period of time as may be necessary to avoid a default on such Claim), give notice to the indemnified party of its election to assume the defense of such Claim, the indemnified party shall have the right to undertake, at the expense and risk of the indemnifying party, the defense, compromise or settlement of said Claim.

- b. Notwithstanding the foregoing, if an indemnified party determines in good faith that there is a reasonable probability that a Claim may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the indemnified party may, by notice to the indemnifying party, assume the exclusive right to defend, compromise, or settle such Claim, but the indemnifying party will not be bound by any determination of a Claim so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

- 12.5. Procedure for Indemnification—Other Claims. A claim for indemnification for any matter not involving a third-party Claim may be asserted by notice to the party from whom indemnification is sought.
- 12.6. Obligation Reduced by Other Recovery. An indemnifying party's duty to pay an indemnity claim shall, in each instance, be reduced by the amount the indemnified party recovers from any third-party, including, without limitation, as a result of exercising its rights as a third party beneficiary under another contract or of receiving insurance proceeds in connection with such indemnity claim. The intent of this provision is that the indemnified party be made as whole as possible and not receive a windfall.
- 12.7. Independent Provisions; Survival of Termination. The provisions of this Section 12 are independent of, and will not be limited by, any insurance obligations in this Agreement, and shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

### **13. Insurance.**

#### **13.1. TSSA Policies.**

- a. TSSA shall maintain, at their sole cost, the following insurance (the “**TSSA Policies**”):
  - 1. General Liability. General liability insurance in an occurrence form to protect against loss from liability imposed by law for damages on account of property damage or personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of TSSA or under their respective control or direction in the following minimum amounts:



\$2,500,000	each occurrence premises and operations
\$2,500,000	each occurrence personal and advertising injury
\$2,500,000	each occurrence products-completed operations
\$5,000,000	general aggregate

2. Auto. Automobile liability for bodily injury and property damage arising from the use of TSSA owned, non-owned and hired vehicles, in an amount not less than \$2,000,000 per accident.
  3. Workers' Compensation. Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the City.
  4. Liquor Liability. Liquor liability for bodily injury and property damage on an occurrence form in an amount not less than \$2,000,000 combined single limit per occurrence, provided that TSSA shall not be required to provide such insurance if provided by the vendor(s) serving alcoholic beverages at the Facility.
- b. Limits. Total per occurrence limits may be satisfied in any combination of primary and excess policies of insurance. All amounts referenced herein shall be increased appropriately during the Term of the Agreement to assure that comparable coverage is provided throughout the Term of the Agreement.
  - c. Additional Insured Parties. Each of TSSA Policies, except the workers' compensation and employer's liability policy, shall be endorsed to name City and its respective employees, agents, representatives, successors, assigns and Affiliates as additional insured parties (the "**City Additional Insured Parties**").
  - d. Waiver of Subrogation. TSSA hereby waives all rights of subrogation under all policies against the City Additional Insureds for losses or damages covered by any policy of insurance.
  - e. Notice of Changes. TSSA Policies shall provide for not less than thirty (30) days' advance written notice to the City of a cancellation or termination of TSSAs Policy, of a reduction of the coverage limits of any TSSA Policy or of any other material change in TSSAs Policy.
  - f. Certificate of Insurance. Within ten (10) business days after commencement of the Term, TSSA shall deliver to the City a certificate of insurance which shall confirm the existence or issuance of the City Policies in accordance with the provisions of this Section 13.1 and a copy of the endorsement of TSSA Policies in accordance with the provisions of Section 13.1(a), above. Notwithstanding the immediately preceding sentence, the City shall be under no obligation either to ascertain or confirm the existence or issuance of TSSA Policies, or to examine TSSA Policies, or to inform TSSA in the event that the coverage of any of TSSA Policy does not comply with the requirements of this Section 13.1. TSSA' failure to secure and

maintain TSSA Policies as required herein shall constitute a material default under this Agreement.

- g. All of the insurance policies required under Sections 13.1 above shall be effected from insurance companies recognized by and authorized in the State, and provide a notice of cancellation or material coverage change provision of thirty (30) days' notice in favor of the party.
- h. If TSSA fail to furnish the certificate(s) of insurance as required above, the City may, after notice and an opportunity to cure as set forth in this Agreement, obtain the insurance, and the premiums on that insurance shall be deemed additional rent to be paid TSSA to the City on demand. TSSA shall be responsible for securing, at their own expense, whatever insurance coverage they may desire on the contents of the Facility. All certificates of insurance required by this Agreement shall be provided on a standard ISO form.

- 13.2. City Coverage. Throughout the Term, the City shall, and in accordance with Tennessee Governmental Tort Liability Act, Tennessee Code Annotated § 29-20-101 et seq, be self-insured.

#### **14. Force Majeure**

- 14.1. Force Majeure Event. A Force Majeure Event means any fire or other casualty, act of God, earthquake, flood, hurricane, lightning, tornado, epidemic, landslide, war, riot, civil commotion, general unavailability of materials, strike, slowdown, labor dispute, governmental laws or regulations or other occurrence beyond TSSA' or City's control.
- 14.2. Effect. Should any Force Majeure Event prevent performance of this Agreement in accordance with its provisions, performance of this Agreement by either party shall be suspended or excused to the extent commensurate with such occurrence, except as specifically provided herein, and such failure to perform due to a Force Majeure Event shall not be deemed a default under this Agreement. A party shall not be entitled to the benefits of this Section 14.2 unless it gives reasonably prompt written notice to the other parties of the occurrence of a Force Majeure Event which it believes permits a delay in the performance of its obligations pursuant to this Section 14.2; provided, however, if the other parties are already aware of such a Force Majeure Event, no such written notice shall be required
- 14.3. Partial Destruction. In the event of a partial destruction of the Facility, if TSSA determine, at their sole discretion, that the undamaged portion of the Facility is still suitable for its operations, then this Agreement shall continue in full force and effect with no adjustments in the obligations of the parties, and the City shall restore the Facility as soon as possible from insurance proceeds or the City's own funds; provided, however, that to the extent that TSSA are responsible for causing such partial destruction, TSSA shall be responsible for the cost of repair.
- 14.4. Facility Not Suitable for Use. In the event of total or partial destruction or damage of the Facility, if TSSA reasonably determine that the Facility is not suitable for its operations and/or cannot be used as the venue for tournament games, then this Agreement shall be suspended immediately until the Facility is repaired. Within twelve (12) months of the

occurrence of such total or partial destruction or damage, the City shall begin to repair or rebuild the Facility using the proceeds from the property coverage for that purpose and shall diligently pursue such repair or rebuilding until completed. Once the City contracts with an architect or an engineer or design build firm to draw plans for the repair or rebuilding of the Facility, the City shall be deemed to have begun the repair or rebuilding of the Facility. This Agreement shall continue to be suspended until the Facility is suitable for operations and/or as the venue for tournament games.

## **15. Consents, Approvals, and Liens**

- 15.1. Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given by a party under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act.
- 15.2. Standard. Unless this Agreement specifically provides for the granting of consent or approval at a party's sole discretion, then consents and approvals which may be given by a party under this Agreement shall not (whether or not so indicated elsewhere in this Agreement) be unreasonably withheld or conditioned by such party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.
- 15.3. Approvals for the City. The City hereby agrees that, subject to applicable laws and regulations, the City Manager (or the City Manager's authorized designee) shall be authorized to grant consents or approvals on behalf of the City with respect to this Agreement.
- 15.4. No Fees, Etc. Except as otherwise expressly authorized in this Agreement, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Agreement (provided that the foregoing shall not be deemed in any way to limit the City acting in its governmental, as distinct from its proprietary, capacity from charging governmental fees on a nondiscriminatory basis).

IN WITNESS THEREOF, the undersigned have executed this Agreement as of the day and year first above written.

CITY OF MURFREESBORO, municipal  
corporation of the State of Tennessee

TENNESSEE STATE SOCCER ASSOCIATION,  
a nonprofit corporation of the State of Tennessee

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

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

Its: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Adam Tucker, City Attorney

## **EXHIBITS**

- |           |  |
|-----------|--|
| Exhibit A | Diagram of the Facility                  |
| Exhibit B | Expedited Alternative Dispute Resolution |



# Exhibit A - Diagram of Facility



- LEGEND**
- 1 MAIN BUILDING
  - 2 TSA OFFICE
  - 3 INDOOR PRACTICE FACILITY
  - 4 CHAMPIONSHIP FIELD
  - 5 CHAMPIONSHIP BLEACHERS
  - 6 SYNTHETIC TURF FIELD
  - 7 NATURAL TURF FIELD
  - 8 FOOD TRUCK PLAZA
  - 9 PAVILION
  - 10 PLAYGROUND
  - 11 VOLLEYBALL COURT
  - 12 MAINTENANCE FACILITY

## Siegel Soccer Complex

Murfreesboro, Tennessee





## **EXHIBIT B**

### **Expedited Alternative Dispute Resolution**

1. Disputes submitted to Expedited ADR hereunder will be conducted before an arbitrator (the "**Arbitrator**") appointed in the manner provided in Section 2 below. The decision of the Arbitrator will be final and binding upon the parties as to all matters in dispute and will be enforceable by a court of competent jurisdiction. The rules of the American Arbitration Association ("**AAA**") will be used for guidance in establishing procedures for the arbitration, but their use will not be mandatory unless the parties are unable to agree on an alternative body of rules, and decisions shall be made in accordance with this Agreement. Although the rules of AAA may be used, AAA will not be used to facilitate the arbitration.
2. In the case of a dispute submitted to Expedited ADR hereunder, the parties shall select a qualified Arbitrator by mutual agreement. In the event mutual agreement is not reached within three business days, each party will designate a partner or shareholder in a Nashville law firm of not less 50 attorney who practices litigation, and these two attorneys will select an attorney experienced in arbitration who, as determined by the selected person, has no ethical conflicts to decide the matter. Nothing herein is intended to preclude the parties from agreeing to select one of the foregoing persons as Arbitrator.
3. Within 15 days following the determination of the availability of the Person who will be the Arbitrator as provided above, the Arbitrator shall hold a hearing, which hearing shall be held at Murfreesboro, Tennessee, or at any other place agreed to by the parties involved; provided, however, that if the dispute is of a nature that is reasonably expected to adversely affect the ability of the City to satisfy the Critical Path schedule or otherwise have a material negative impact on the construction process (an "**Expedited Dispute**"), then the Arbitrator shall hold a hearing within three business days of such determination.
4. The City or TSSA may join any other party to the arbitration which is needed for just adjudication. The standard for joinder of any other party shall be that provided under Rule 19 of the Tennessee Rules of Civil Procedure.
5. If the Arbitrator specifically determines that any party's position in the dispute was without merit, such party will pay the other party's (or parties') reasonable attorneys' fees and costs related to the arbitration, including the costs and fees of the Arbitrator and other costs of such arbitration otherwise payable by such party in the arbitration proceedings. In all other cases, TSSA, on the one hand, and the City, on the other hand, will share equally the costs of such arbitration and will pay their own attorneys' fees.
6. At least 10 days prior to the hearing or, in the event of an Expedited Dispute, at least one business day prior to the hearing), the parties shall meet and exchange exhibits and pre-hearing statements and stipulate and agree on non-disputed facts. No exhibit shall be admitted unless listed on the pre-hearing statement and exchanged between the parties. No witness may be presented unless indicated on the pre-hearing statement or unless produced for rebuttal purposes. Prior to or at the hearing, each party shall submit a memorandum not to exceed five pages outlining the relevant issues for the Arbitrator. At the hearing, the rules of procedure and evidence shall be as agreed upon herein, unless agreed upon by all parties. The Arbitrator shall allow each party to present that party's case, evidence and witnesses, and argument, and desired award or order. Each party shall present the specific award or order being sought. The Arbitrator shall render its award or order in writing within 10 days of the conclusion of the arbitration hearing, or in the event of an Expedited Dispute, within two days of the conclusion of the arbitration hearing.



April 29, 2019

For Murfreesboro Parks and Recreation Commission:

**RE: City Park Tour**

As an item for the agenda of May 1, 2019, to present to commission information on the City Park Tour program.

The City Park Tour is a program that will partner with the Better Boro Project offering 4 city park tours in which participants may decide to walk or run the park route from 6-7 pm; they may decide the distance. The locations and dates are as follows:

- Thursday, June 6- Central Valley Trailhead
- Thursday, June 13- Oaklands Park
- Thursday, June 20- Old Fort Park
- Thursday, June 27- Rogers Park

The participants can pay \$5 per event or sign up for all 4 for \$15.00. Those who participate in all 4 events will be given a t-shirt. The costs are mostly salary related with very little setup to hold the events. Water will be provided for runners, and the t-shirts will cost less than \$10 and be covered by the \$15 paid for all 4 events.

Thank you for giving us the opportunity to present the City Park Tour program.

Becki Johnson  
Facility Operations Coordinator

Jennifer Joines  
Better Boro Project