

**ST. JOSEPH PARKS, RECREATION, AND
CIVIC FACILITIES USE AGREEMENT**

THIS ST. JOSEPH PARKS, RECREATION, AND CIVIC FACILITIES USE AGREEMENT (hereinafter, this "Agreement"), is hereby made on this ____ day of _____, 2023, by and between the City of St. Joseph, Missouri, a municipal corporation (hereinafter, the "City"), and the following (hereinafter, the "User"):

User: Pony Express Baseball, Inc. (PEB)
Mailing Address: PO Box 1588
City, State Zip Code: St. Joseph, MO 64502

WHEREAS, the City is the owner of certain facilities or public park spaces, which ordinarily are made available for public use or are capable of being made available for public use; and

WHEREAS, the User wishes to utilize the following facility, or portions thereof (hereinafter, the "Parks Facilities"), pursuant to the terms stated in this Agreement:

Facility Name/Location:
Hyde Park Complex fields 1-5, 402 East Hyde Park Ave.
Eagles Field 1&2, 2406 Marion Street
Hochman Field, 5218 Pickett Road
Lions Field, 11th & Grand Ave

WHEREAS, the City desires to make the Parks Facilities, or portions thereof, available to the User during the times indicated herein pursuant to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the User hereby agree as follows:

A. Modification by Exhibit. Except as modified by the attached Exhibit "A" the terms stated in this Agreement shall be binding on the User and the City. To the extent a term stated in Exhibit "A" can be effective in conjunction with terms stated herein, both shall be deemed effective; in the event a term stated in Exhibit "A" conflicts with, or cannot be reconciled with a term stated herein, this term stated in Exhibit "A" shall be deemed controlling.

B. Use of Parks Facilities. During the term of this Agreement, and except as otherwise specified herein, the City shall make the Parks Facilities available for the User's use and possession as set forth below.

1. **Facility-Specific Use Terms.** The terms stated in the attached Exhibit "B" shall supersede any conflicting terms stated in this Paragraph B of this Agreement, or the subparagraphs thereto.

2. Use Periods. Use and possession of the Parks Facilities by the User for the purposes described herein shall occur during the following time periods (hereinafter, "Use Periods") on an annual basis:

Beginning Date/Time: March 15th of each year

Ending Date/Time: October 15th of each year

Exceptions:

3. Intended Use; Restrictions. The User shall use the Parks Facilities for the purposes for which such facilities are designed and ordinarily used. Any use of the Parks Facilities for uses other than the purposes for which such Facility is designed and ordinarily used, may be approved, in writing, by the Director of Parks, Recreation, and Civic Facilities (hereinafter, the "Director"). In no event shall any of the Parks Facilities be used for political events or purposes.

4. Shared Parks Facilities. Except as expressly stated herein, the User's use of the Parks Facilities shall not be deemed exclusive. To the extent the City has granted other users authority to use the Parks Facilities during the Use Period, or the City needs to use the Parks Facilities during the Use Period, the User shall coordinate with such other users to develop a schedule for events being planned by all such users and to provide sufficient availability of the Parks Facilities to accommodate events, including events that must be rescheduled due to inclement weather. Other users of the Parks Facilities who have been granted authority to use the Parks Facilities during the Use Period or who are reasonably expected to be granted authority, include the following:

School District of St Joseph
Missouri Western State University

5. Promotional Materials; Signage. During Use Periods, the User may place promotional materials and signage on the Parks Facilities and areas adjacent to the Parks Facilities for purposes of corporate advertising, provided said materials and signage does not permanently alter the physical appearance of the Parks Facilities and complies with signage requirements established by the City's Code of Ordinances.

6. Access to Parks Facilities. Notwithstanding any provision contained herein, the City shall have free access to the Parks Facilities for the purpose of making necessary inspections or attending to any other matter that is usual and customary in the managing and regulating of the Parks Facilities and associated grounds. The City shall be provided with copies to all keys and other locking devices used at the Parks Facilities.

7. Use and Care. No activities will be allowed that might cause damage to the Parks Facilities, or property location in the general vicinity of the Parks Facilities. At the conclusion of each Use Period, the Parks Facilities, or property located in the general vicinity of the Parks Facilities, shall be left in substantially the same condition it was in prior to the Use Period. If damages occur to the Parks Facilities, or property located in the general vicinity of the Parks Facilities, including, but not limited to, damages to the grounds, the User

agrees to restore the same to the condition they were in prior to the Use Period, or, in the alternative, to reimburse the City for its costs associated with such restoration.

C. Events; Use and Access. The following provision shall apply to the User's use of the Parks Facilities during events.

1. **Restroom Access.** Any restrooms on the Parks Facilities may be rendered inoperable by the City at any time when necessary to prevent potential damage due to weather, misuse, or use when the restrooms are not fully functional.

2. **Admissions and Ticket Sales.** The User shall have authority to grant or deny members of the general public admission to scheduled competitions and other events organized by the User during the Use Periods. The User may maintain all ticket sale proceeds collected by it as a result of events it schedules.

3. **Sale of Goods.** The User may sell promotional souvenirs and related goods and retain all proceeds from such sales.

4. **Parking.** Except as restricted by the Director, the User and all patrons using the Parks Facilities in conjunction with events organized by the User may, where legally permissible, use City-controlled areas located adjacent to Parks Facilities to park vehicles. Surface parking spaces shall be utilized as the primary parking areas; however, grass-covered areas excluding playing fields and playing surfaces may be used for secondary overflow parking, provided such use does not damage the surface. The User will use reasonable efforts to encourage patrons to park in accordance with the requirements of this paragraph. The User shall repair all damage to unpaved areas utilized for parking or ingress and egress for parking.

5. **Discrimination.** The User shall not discriminate against any persons relative to admission, services, or privileges offered to, or enjoyed by, the general public in connection with any use of the Parks Facilities on the basis of race, color, religion, sex, national origin, ancestry, marital status, disability, sexual orientation, gender identity, or status as a member of the uniformed services.

D. Maintenance, Repairs, and Alterations.

1. **Routine Maintenance of the Parks Facilities and Associated Areas.** The User shall maintain the Parks Facilities during the Use Periods in substantially the manner in which the Parks Facilities is ordinarily maintained to accommodate ordinary use. Such routine maintenance includes, but is not limited to, the following during the Use Periods:

a. **Cleaning.** Post-event cleaning, routine cleaning, and garbage pick-up on the grounds.

b. **Supply Replenishment.** Replenish depleted paper products, soaps, and other supplies that are utilized and discarded during use of the Parks Facilities.

c. Securing. Locking and other securing of enclosure buildings and areas at the Parks Facilities when the Parks Facilities is not in use.

2. Major Repairs/Replacement. The User shall notify the Director of any needed major repairs at the Parks Facilities or needed replacement of fixtures at the Parks Facilities upon identifying or learning of the needed repairs or replacement. Notwithstanding any provision stated in this Agreement, the City shall not be obligated to make any repair or replacement of the Parks Facilities.

3. Dangerous Conditions. In the event a dangerous condition develops or is created in the Parks Facilities, the User shall immediately restrict access to the area in which the dangerous condition exists and report the condition to the Director.

4. Alterations of Parks Facilities. The User shall not materially alter the Parks Facilities or any property thereon without prior written consent by the Director.

E. Fees. The User shall pay the following fees to the City for use of the Parks Facilities:

Twenty-Four Thousand Dollars (\$24,000) in 2023

Twenty-Five Thousand Five Hundred Dollars (\$25,500) in 2024

Twenty-Seven Thousand Dollars (\$27,000) in 2025

F. Term and Termination.

1. Term. The initial term of this Agreement shall go into effect on March 15th and remain in effect through October 15th the following year. The Agreement may be renewed annually thereafter for up to two (2) additional terms (March 15, 2024 through October 15, 2025 and March 15, 2025 through October 15, 2026), by resolution of the City Council, unless the User notifies the Director of its desire to terminate the Agreement at least thirty (30) days prior to the end of the then-current term. Any additional one (1) year extension of the Agreement will coincide with an annual fee increase to the User of One Thousand Five Hundred Dollars (\$1,500) as provided in Section E above.

2. Termination for Cause. In the event that either party is found to be in breach of this Agreement, the non-breaching party shall have the right to terminate this Agreement for cause following the delivery of written notification thereof to the breaching party and allowing a minimum cure period of thirty (30) calendar days from the date on which said written notice was mailed or otherwise delivered.

3. Termination Due to Conditions. In the event the Parks Facility is substantially damaged, otherwise becomes unusable in its then-current condition, or must undergo capital improvements, either party may terminate this Agreement by providing written notification thereof and identifying the condition that has rendered the Parks Facility unusable.

4. **Termination for Convenience.** The City may terminate this Agreement for its convenience by providing at least sixty (60) days' notice, provided such termination does not interrupt a scheduled event season within the upcoming twelve (12) months. In the event such termination would interrupt a scheduled event season within the upcoming twelve (12) months, the termination for convenience shall be effective upon conclusion of all events scheduled during that event season.

5. **Surrender of Possession.** The City shall not be required to provide notice to quit possession following expiration or termination of this Agreement. Upon such expiration or termination of this Agreement, the User shall peaceably surrender possession of the Parks Facilities in substantially the same condition as the condition upon execution of this Agreement, reasonable wear and tear and acts of God excepted.

G. Indemnification. The User agrees to indemnify, defend, and save harmless the City, its officers, agents, and employees, from and against any and all loss of, or damage to, property, or injuries to, or death of, any person or persons, including its officers, agents, and employees, from any and all claims, damages, suits, costs, expense, liability, actions, or proceedings of any kind or nature whatsoever, in any way resulting from, or arising out of, directly or indirectly, the User's operations in connection herewith, or its use or occupancy of the Parks Facilities, including acts of commission or omission of employees, representatives, or agents of the User. The indemnification granted herein shall not apply to occurrences which are due to the gross negligence of the City of St. Joseph, its agents, or employees.

H. Insurance. The User shall maintain insurance policies in accordance with the terms stated below.

1. **Commercial General Liability.** The User agrees to carry for the full term of this Agreement and at the User's own expense, Commercial General Liability insurance from a carrier acceptable to the City with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate covering bodily injury, including death and personal injury, and property damage occurring in, upon, or about the Parks Facilities, or resulting from, or in connection with, the use, operation, or occupancy of the Parks Facilities. Such insurance shall include coverage for the Parks Facilities and operations, products, and completed operations, personal, and advertising injury, and contractual liability covering the indemnity obligations of this Agreement.

2. **Additional Insured.** All insurance required herein shall include the City of St. Joseph as an additional insured on a primary and noncontributory basis. Prior to commencement of this Agreement, and upon request of the City thereafter, the User shall provide the City with a certificate of insurance as evidence that the User maintains the insurance required herein. The City's acceptance of the User's certificate of insurance is not an acknowledgement that the User's insurance meets the requirements of this Agreement and shall not relieve or decrease the liability of the User arising out of, resulting from, or in connection with, the use, operation or occupancy of the Parks Facilities.

3. **Assignment and Use.** The User shall not assign this Agreement, or allow any use of the Parks Facilities other than that herein specified, or lease or sublease the Parks Facilities, or allows any article to be brought into or act done on the Parks Facilities, which vitiate or increase the premiums on the policy or policies of insurance held by the City on its facility and associated grounds.

I. Miscellaneous.

1. **Notices.** Except as otherwise expressly provided herein, all notices required to be given by this Agreement shall be in writing and shall be sent by certified mail, return receipt requested, to the following:

If to the City: Director of Parks, Recreation & Civic Facilities
1920 Grand Avenue
St. Joseph, Missouri, 64505-2810

If to the User: President, Pony Express Baseball
PO Box 1588
St Joseph, MO 64502

The parties may designate in writing from time to time any change of persons or addresses to which notice is to be provided under this Agreement.

2. **Payment of Taxes and Fees.** Unless appropriately exempted, the User shall pay for all municipal, county, state, and federal taxes that are required to be paid, whether in the nature of a sales tax, amusement tax, entertainers tax, occupational license, or any other kind of tax or fee, whether arising from the sale of tickets or the employment or engagement of persons or agencies to provide a service in support of the use of the Parks Facilities.

3. **Compliance with Laws.** The User agrees to abide by, and conform with, all rules and regulations that are, from time to time, adopted or prescribed by the City for the government and management of the Parks Facilities. The User shall comply with all rules and requirements of the Police Department and Fire Department and other municipal authorities of the City of St. Joseph and will not do or suffer to be done anything on the Parks Facilities in violation of law.

4. **Binding Agreement.** This Agreement shall bind the parties hereto, as well as their respective heirs, executors, administrators, and assigns.

5. **Relationship of Parties.** The parties shall not be deemed partners, or in any way jointly interested in any mutual enterprise as a result of entering into this Agreement.

6. **Writing.** The terms and conditions of this Agreement shall supersede all other agreements, including any addendums or amendments thereto, between the City and

the User for use of the Parks Facilities. No amendments may be made to this Agreement or the exhibit attached hereto except as may be agreed upon, in writing, by the parties.

7. Assignment. The User shall not assign this Agreement, or allow use of the Parks Facilities, other than that herein specified, or let or sublet the same, without the City's prior express written consent.

8. Headings. All headings, titles, and paragraph captions are inserted in this Agreement for convenience of reference only; said headings, titles, and paragraph captions are descriptive only and shall not be deemed to add to or detract from, or otherwise modify the meaning of the paragraphs.

9. Waiver. Waiver of any provisions of this Agreement or any breach of this Agreement shall not thereafter be deemed to be a consent by the waiving party to any further waiver, modification, or breach by the other party, whether new or continuing, of the same or any other covenant, condition, or provision of this Agreement. Failure by one of the parties to this Agreement to assert its rights for any breach of this Agreement shall not be deemed a waiver of such rights.

10. Severability. If any of the provisions of this Agreement shall be construed to be invalid or illegal, the legality or validity of the other provisions of this Agreement shall not be affected thereby. To the contrary, the illegal or invalid provision of this Agreement shall be severable, and any other provisions shall remain in full force and effect.

11. Attorneys' Fees. Should the City be required to institute legal action to enforce any of its rights set forth in this Agreement, then the City shall be entitled to reimbursement for all reasonable attorneys' fees and costs incurred as determined by the Court in any such cause of action.


12. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto and all other representations or statements heretofore made, verbal or written, are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

[Reminder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto for themselves, their successors, and assigns, have executed this Agreement as of the day and year first written above.

USER
("PEB")

CITY OF ST. JOSEPH, MISSOURI
("City")



Mike Montgomery, PEB President

Bryan Carter, City Manager

ATTEST:

ATTEST:

Secretary

Paula Heyde, City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit "A"
Supplementary Terms

PEB/User hereby agrees to:

- (a) Conduct USSSA sanctioned or other approved league play and tournaments promoting the advancement of boys' baseball, with the understanding that the Director reserves the right to utilize the fields for other Department and/or community events, with consideration in scheduling from PEB.
- (b) Assume sole responsibility for all PEB personnel and volunteers, including, but not limited to, umpires, scorekeepers, and ball shags, for all events sponsored by PEB.
- (c) Purchase portable pitching mounds and mechanical pitching machines, and other equipment used in the performance of youth baseball games.
- (d) Operate or contract concessions at all locations. Said responsibility shall include ensuring the cleanliness of the concession area, restroom facilities, and spectator seating areas.
- (e) Communicate league schedules through electronic mail, and in a timely fashion, to the Department's Recreation Programs and Facilities Supervisor for purposes of scheduling necessary field maintenance activities. Any scheduled league play on Saturdays, Sundays, or City observed holidays will carry with it a minimum \$100 per field, per day additional charge to the user for field preparation completed by City staff assuming the City is able to provide such service as staffing allows.
- (f) All communications from PEB related to scheduling, field conditions, necessary repairs to facilities, capital improvement requests, and other information directly related to the relationship between PEB and the City should come from a pre-determined PEB board member to the Parks Department's Recreation Programs and Facilities Supervisor or their designee.
- (f) Notify the City within a minimum of 15 working days prior to any tournaments they sponsor, other than the annual City tournament. Field maintenance for said tournaments will require PEB to perform those duties with volunteers or a paid contractor of their choice. The contractor will be required to use their own equipment. City equipment will not be available due to liability restrictions.
- (g) Provide prior written notice to the Department's Recreation Programs and Facilities Supervisor of any intent to alter the Park Facilities in any way. Alterations must receive the prior approval of the Director. The City will consider all reasonable requests.
- (h) Refrain from using the Park Facilities for any special event(s) and/or use(s) other than those for which the Park Facilities are designed and intended, unless

authorized by the City pursuant to its Special Events Policy. The City will consider all reasonable requests.

- (i) Refrain from the sublease or rental of the Park Facilities, or any portion thereof, including the surrounding premises, to, or otherwise allow the Park Facilities to be used by, any other person and/or entity for a purpose other than hosting youth baseball league or tournament games. In the event PEB is approached by a person or entity with a request to sublease or rent the Park Facilities for a purpose other than that specifically set forth in this Agreement, then PEB may, if it chooses, submit this request, in writing, to the Director; *provided, however*, that this written request is received at least *thirty (30) calendar days prior* to the proposed event and written approval of such request is received from the Director at least *ten (10) calendar days prior* to said event.
- (j) Pay all costs associated with field preparation services provided by the City for all summer and fall youth baseball league play in the amount of \$24,000 in 2023, \$25,500 in 2024, and \$27,000 in 2025, to be billed in equal amounts, on June 1 and October 1 of each year.

If PEB engages in, or attempts to engage in, any activity other than that specifically granted to them under this Agreement, PEB will cease and desist from such activity upon receipt of written notice from the Director.

Organization. PEB shall be organized as a registered association that is administered to by a Board of Directors, elected by its users, which shall have full authority to set all policies, rules and regulations of said organization; said policies, rules and regulations shall be set out in its By-Laws.

Financial Disclosure. PEB shall provide the City with a financial disclosure statement. This statement shall be comprised of a list of line-item expenses, i.e., a simple credit/debit column, showing the fund balance as of the closing of its fiscal year. The statement shall be sent to the Department's Recreation Programs and Facilities Supervisor within sixty (60) days after the close of its fiscal year.

Miscellaneous. The use and lighting of the ball fields, for games as well as practices, shall be governed by the policies and procedures set forth by the Director.

The City hereby agrees to:

- (a) Maintain and operate the ball fields used by PEB. More specifically, the City shall be responsible for the maintenance and/or replacement of the individual field assets, which include, but are not limited to: bases, home plates, and infield and outfield playing surfaces at all Park Facilities.
- (b) Relight and repair the lighting system, as needed, at the request of PEB.

- (c) Upkeep of ball fields, as well as cleanliness of playing surface and dugouts at all Park Facilities. The City will also be responsible for trash pick-up, mowing and ensuring that the fields are playable, when weather permits, at all Park Facilities, i.e., the City shall be responsible for dragging and lining each field (defined as being a part of the Park Facilities) at one point in time during each day on which games are scheduled, determining whether the fields are suitable for play and trimming the grass surrounding the fences and other appropriate areas.
- (d) Provide field chalk for the preparation of fields for game play; although the City will not supply field drying materials or participate in inordinate field preparation activities that are "weather" related.
- (e) Provide trash pickup service for all Park Facilities; provided, however, that the trash has been picked up by responsible party and placed in trash receptacles.

Exhibit "B"
Facility-Specific Use Terms

Facility:	Hyde Park Complex, fields 1-5
Beginning Date/Time:	March 15 of each year
Ending Date/Time:	October 15 of each year
Other Terms Related to Use:	

Facility:	Eagles Field 1 & 2
Beginning Date/Time:	March 15 of each year
Ending Date/Time:	October 15 of each year
Other Terms Related to Use:	

Facility:	Lions Field
Beginning Date/Time:	March 15 of each year
Ending Date/Time:	October 15 of each year
Other Terms Related to Use:	

Facility:	Hochman Field
Beginning Date/Time:	March 15 of each year
Ending Date/Time:	October 15 of each year
Other Terms Related to Use:	

Facility:	
Beginning Date/Time:	
Ending Date/Time:	
Other Terms Related to Use:	