

STATE OF TEXAS  
Van Zandt County

This contract expires 10 days from the date of receipt by USER if not executed.

# Fruitvale Independent School District Athletic Facility Use Agreement

This Use Agreement is made and entered into this \_\_\_\_\_, by and between Fruitvale Independent School District and \_\_\_\_\_ (“USERS”).

Whereas FISD owns and operates, or lawfully controls, the athletic facility ("FACILITY") described below, and USER desires to use said FACILITY, FISD agrees to make said FACILITY and no other available to USER at the date(s) and time(s) and for the purposes referenced below and no other.

**Facility:** SOFTBALL or BASEBALL FIELD  
**Date(s):**  
**Purposes of Use:** ("EVENT").

In consideration for being permitted to use the FACILITY for the stated EVENT, the USER Agrees to pay the following fees and abide by the following conditions:

## **ARTICLE 1: USE FEE AND OTHER PAYMENTS**

1.1 USE FEE - For use of the FACILITY, the USER agrees to pay FISD (see above with additions listed below)

### Fruitvale ISD school facility Rental Fees:

Rental Fees will be payable in advance no later than 48 hours prior to the rental date.

Playoff games will be paid from gate receipts after any required UIL deductions. Any remaining funds will be divided equally between the competing schools, with checks being forwarded by Fruitvale ISD accordingly. Any deficit will be divided between the competing schools, with bills being forwarded by Fruitvale ISD accordingly. The competing schools are responsible for scheduling and cost of officials, and for any trophies or awards to be given. The competing schools are responsible for bringing warm-up balls, and the game ball to be used.

Rental Fees:		Community Usage	Playoff Games/Other school game usage	
Classroom		Personnel		\$
Cafeteria or Kitchen		Personnel		\$
High School Cafeteria		Personnel		\$
Gymnasium		Personnel	500 Playoff/400 District	\$
Baseball and Softball Fields		Personnel	600 District/1000 Playoff	\$
High School Stadium		Personnel	1000	\$

Custodial workers	Minimum 2 hours required	\$20/hour	\$20/hour	\$
Administrator	Required 1 from FISD district	\$150/game	\$150/game	\$
Announcer		\$50/game	\$50/game	\$
Bookkeeper/chains/pitch count		\$40/game	\$40/game	\$
Clock Operator		\$40/game	\$40/game	\$
Security		\$100/game	\$100/game	\$
Ticket sales		\$40/game	\$40/game	\$
			TOTAL	\$

This USE FEE includes charges for existing electric lights and water as may be needed for presentation of the EVENT, but only in places and amounts as now installed in the FACILITY.

1.2 OPERATING EXPENSES – In addition to the USE FEE described above, the USER will be responsible for paying all OPERATING EXPENSES, if any, of the EVENT. OPERATING EXPENSES include, but are not limited to, the following: other fees, stage hands, ticket sellers, ticket takers, door guards, cleanup, police, parking, parking control, ushers and special stage security. A schedule of estimated expenses is included above.

(Charges will be based on actual hour usage.)

1.3 DUE - All amounts due under this Agreement, are due and payable prior to the EVENT.

1.5 TAXES - FISD shall not be responsible for the payment of any taxes arising out of or connected with the use of the FACILITY by the USER. The USER shall be responsible and be required to pay upon demand to FISD an amount sufficient to discharge all taxes which may arise from or in connection with the USER's use of the FACILITY.

## **ARTICLE 2: TERMS & CONDITIONS**

2.1 INGRESS/EGRESS - All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public utilities of the premises shall be kept unobstructed by the USER and shall not be used for any purpose other than ingress or egress to and from the premises by the USER.

2.2 CONCESSIONS AND MERCHANDISE - All rights to sell concessions at the EVENT are reserved by FISD, and the USER will not be permitted to sell any beverages, confections, tobacco, or food for consumption at the FACILITY, except as specifically granted to in this or additional written agreements. The sale and distribution of alcohol to the general public is strictly prohibited. All rights to sell merchandise at the EVENT are reserved by FISD, and the USER will not be permitted to sell merchandise, programs, souvenirs, or other personal property unless expressly agreed to in this or additional written agreements. \*USER WILL BE ALLOWED TO SELL THEIR BRANDED MERCHANDISE.

2.4 SAFETY COMPLIANCE - The USER agrees to use and occupy the FACILITY in accordance with all FISD policies, regulations, rules, and practices and with all applicable municipal, state, and federal laws, including but not limited to fire codes. FISD assumes no responsibility whatsoever, for any property placed in said FACILITY by USER, its employees, its agents, its guests, its patrons, and its

invitees, and FISD is hereby expressly released and discharged from any and all liabilities for any loss, injury or damages to person or property that may be sustained by reason of the use of said FACILITY under this Agreement.

- 2.5 PARTICIPANTS AND ATTENDEES – The USER is responsible for providing all necessary and appropriate safety instruction to all participants and attendees at USER's activity. The USER is responsible for any and all damages to buildings, grounds, fields, and equipment caused by participants and attendees. If the use of the FACILITY is open to any non-members, then no one shall be denied the equal privileges and enjoyment of having free and open access to the FACILITY on the basis of race, color, national origin, religion, age, veteran's status, sex, or disability.
- 2.6 SECURITY - All watchmen or other protective service desired by the USER must be arranged for by special agreement with FISD and the USER is responsible for all such costs. FISD requires security for all events having an audience of 75 or greater.
- 2.7 MANAGEMENT RIGHTS - It is understood and agreed that FISD hereby reserves the right to control and manage the FACILITY and to enforce all necessary and proper rules for the management and operation of the same. FISD, its employees, and its agents shall have free access at all times to all space occupied by the USER. Design of the staging is to be approved by FISD.
- 2.8 ABANDONED PROPERTY - Any property left in the FACILITY shall, after a period of ten days from the last day of use hereunder, be deemed abandoned and shall become property of FISD to be disposed of or utilized at FISD's sole discretion.
- 2.9 REPAIRS - The USER shall be responsible for all damage to buildings, grounds, fields, and equipment incident to the USER's use of said FACILITY. USER shall make no temporary or permanent modifications to the FACILITY without the prior written consent of FISD. USER shall not operate trucks, forklifts and other non-passenger vehicles outside of areas designated by FISD. An amount equal to the Deposit shall be withheld until such time as the costs of repairs, if any, have been determined. The amount will be refunded, less any reasonable expenses, within ten business days.
- 2.10 CANCELLATION OR POSTPONEMENT OF CONTRACT - USER agrees that cancellation or postponement of the EVENT, unless permitted by FISD in writing, may be considered by FISD as breach of the Agreement and all deposits, costs, advances, use fees, and charges shall be due upon demand by FISD from the USER.
- 2.11 TERMINATION - FISD may terminate this agreement at any time in its discretion. If FISD terminates because USER has violated the terms of this agreement, or because participants or attendees have violated laws or FISD policies, the USER is obligated to make full payment of all fees under this agreement. Otherwise, termination by FISD shall result in a pro rata refund of the applicable fee, based on the portion of the use period that was actually used but less any expenses incurred by FISD.

### **ARTICLE 3: INDEMNIFICATION, HOLD HARMLESS, AND INSURANCE**

- 3.1 INDEMNIFICATION - The USER shall indemnify and save harmless FISD, its officers, its agents, and its employees from all loss, cost, and expense arising out of any liability or claim of liability for injury or damages to persons or property sustained or claimed to have been sustained by any one whomsoever, by reason of the use or occupancy of the FACILITY, whether such use is authorized or not, or by any act or omission of USER or any of its officers, agents, employees, guests, patrons, or invitees. USER shall pay for any and all damage to the property of FISD, or loss or theft of such property, done or caused by such persons.
- 3.2 HOLD HARMLESS - The USER expressly waives any and all claims for compensation for any and all losses or damage sustained by reason of any defect, deficiency, failure or impairment of the water

supply system, drainage system or electrical system leading to or on the demise of the FACILITY. In the event the FACILITY or any part thereof is damaged by fire or any other peril including, but not limited to strikes, failures of utilities, or any act of God, which, in the judgment of FISD renders the fulfillment of this Agreement by FISD impossible, the USER hereby expressly releases, discharges, and will save harmless FISD, its officers, its agents, and its employees from any and all demands, claims, actions and causes of actions arising out of any of the causes aforesaid.

- 3.3 **COPYRIGHT FEES, ROYALTIES AND OTHER LICENSES** - If any material, composition or name to be used or performed under this AGREEMENT is copyrighted, the USER shall be responsible for securing, before using or employing such material, composition or name, the assent in writing, of the owner or licensee of such copyright. The USER agrees to be fully responsible for any fees, royalties and licensees in connection therewith. Furthermore, the USER shall indemnify and save FISD harmless from any and all claims, expenses or suits for copyright infringements which may arise from the performance of this Agreement.
- 3.4 **DOCUMENT LIABILITY** - The USER certifies and attests that it has a valid, properly executed, and compatible contract with the performers whose services form the basis for its desire to use the FACILITY. Upon request of FISD, USER shall submit a copy of the performers' contract within 5 business days after the request.
- 3.5 **INSURANCE** - User shall purchase and maintain in full force and effect, with underwriters approved by FISD the following policies of insurance, which will be primary as to any other valid and existing policies of FISD. All such policies shall name FISD as additional insureds, but only to the extent of User's indemnification obligations set forth in this Agreement and shall waive all rights of subrogation by the underwriters against all members of FISD.
- 3.5a - Workers Compensation & Employers Liability Insurance including \$1,000,000 for coverage "B"
- 3.5b - Commercial General Liability Insurance- \$1,000,000 including products and completed operations coverage's
- 3.5c - Automobile Liability Insurance - owned, non-owned and hired vehicles - \$1,000,000
- 3.5d - Umbrella - no less than \$5,000,000 each accident and in the aggregate above the coverage provided in 3.5a through 3.5c above
- 3.5e - Property insurance covering User's property
- 3.5f - Accidents - in the event any member of the User (including User's property or vehicles or any third party) is involved in any loss, injury or damage, such incident will be reported immediately to FISD.
- 3.6 **PROOF OF INSURANCE** - A certificate evidencing the insurance as required under this Agreement shall be delivered to FISD no later than 5 days prior to the start of the EVENT. Each such certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed, or modified without giving ten days written notice to FISD. Providing and maintaining insurance coverage is a material term of this contract.
- 3.6 **FORCE MAJEURE** - If the FACILITY is rendered unsuitable for the conduct of the EVENT by reason of Force Majeure, FISD and the USER are released from their obligations as they pertain to the EVENT. FISD shall not be responsible for any damages sustained by USER but USER shall be entitled to a refund of the DEPOSIT. Force Majeure shall mean fire, earthquake, hurricane, flood, act of God, strikes, work stoppages, or other labor disturbances, riots or civil commotions, war or other act of any

foreign nation, power of government, or governmental agency or authority, or any other cause like or unlike any cause mentioned which is beyond the control of FISD.

#### **ARTICLE 4: MISCELLANEOUS**

- 4.1 RESERVATION - All matters not authorized expressly by the terms of this contract shall be reserved to the discretion of FISD. The USER shall be subject to the terms and conditions of the Rules and Regulations of the FACILITY, a copy of which shall be provided by FISD to USER.
- 4.2 PERSONAL - This Agreement is personal, and the USER shall not assign this Agreement nor sublet the FACILITY without the prior written consent of FISD.
- 4.3 SUCCESSORS AND ASSIGNS - This Agreement and all and each of its terms and conditions shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 4.4 RELATIONSHIP OF THE PARTIES - It is agreed that the USER, its promoter, its members, its agents, and its employees are independent contractors and have no employment relationship, no joint venture nor partnership with FISD with respect to the subject matter of this Agreement.
- 4.5 WHOLE AGREEMENT – This writing contains the whole and complete agreement between FISD and USER
- 4.6 SEVERABILITY - The terms of this Agreement are severable such that if one or more provisions are declared illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- 4.7 GOVERNING LAW - This Agreement shall be governed by and construed under and in accordance with the laws of the State of Texas, without regard to its conflicts of law principles, the choice of law being the laws of the State of Texas. Venue for any lawsuit arising from or incident to this Agreement shall be in Van Zandt County, Texas.

4.9 **Baseball/softball field rental: There will be no food or drink other than water, no paint, colored liquid, gum, seeds of any kind, candy, tobacco or any loose particulates allowed inside the fenced area.** \_\_\_\_\_ (user initials)

**5.0 ABSOLUTELY NO METAL CLEATS ARE ALLOWED ON THE SOFTBALL/BASEBALL FIELD AT ANY TIME.** \_\_\_\_\_ (user initials)

**5.1 All parties utilizing the fields are responsible for the cleanup of the facilities after use and are responsible for any repairs or damage caused by their use. This includes removing trash bags from the trash cans, placing trash bags in the facility dumpster, and removing all trash and debris from dugouts, fields and spectator areas.**

**5.1 Liability insurance: must furnish cover page** \_\_\_\_\_ **(user initials)**

**6.0 Security Agreement: must furnish a copy of the security agreement since using outside entity.** \_\_\_\_\_ **(user initials)**

Signatures

\_\_\_\_\_

User Authorized Signature

\_\_\_\_\_

Title:

\_\_\_\_\_

Date:

Phone number:

Email Address:

Physical Address:

Mailing Address:

\_\_\_\_\_

FISD Superintendent

\_\_\_\_\_

Date: