

Sports Facility Use Agreement

THIS SPORTS FACILITY USE AGREEMENT ("Agreement") is entered into this _____ day of _____, 2017, between the City of Clearwater, a municipal corporation of the State of Florida, whose mailing address is P.O. Box 4748, Clearwater, FL 33758-4748 ("City") and Pennsylvania Professional Soccer, LLC (also known as Philadelphia Union), a Limited Liability Company incorporated in the State of Delaware ("TEAM"), whose mailing address is 2501 Seaport Drive, Suite 500, Chester, PA 19013, individually referred to herein as "Party" or collectively as "Parties".

WHEREAS, it has been determined to be highly desirable to bring major professional teams to the City of Clearwater for their preseason training; and

WHEREAS, it is proven that those teams and their fans bring an economic boost to the Clearwater area; and

WHEREAS, the City has facilities desirable for the use by professional teams/clubs; and

WHEREAS, the TEAM is a major soccer club and a part of the MLS league; and

WHEREAS, the TEAM desires to have their preseason training in Clearwater at the Joe DiMaggio Sports Complex in February; and

WHEREAS, the Joe DiMaggio Sports Complex is available during this time of year;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable considerations, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Facilities Premises and Term: The City hereby grants to the TEAM the non-exclusive right to occupy and use City property as more particularly described in Exhibit "A", attached hereto and made a part hereof, (the "Premises" or "Facility Premises"), subject to the terms and conditions herein set forth, commencing on February 1, 2018 and expiring on April 1, 2020, ("Term"), unless sooner terminated as herein provided. The Facility Premises shall be used for the sole purpose of providing soccer training and games during the annual TEAM Soccer Preseason Training which is approximately four (4) weeks a year primarily during the month of February at the Joe DiMaggio Sports Complex, and additional areas at other fields on site or at other athletic facilities as may be added under this Agreement by mutual consent and approval of TEAM and the Parks and Recreation Director, as designee of the City Council. Each year of the Agreement, 12 weeks prior to commencement of TEAM Soccer Preseason Training, TEAM will specify the dates of the upcoming season/term.

2. No Interest in Land. The rights to the TEAM under this Agreement are not coupled with an interest in land. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other real property interest in the Facility Premises to the TEAM. The City specifically reserves the right to grant other rights of entry in regard to the Premises as long as the same do not interfere with the rights granted to the TEAM herein.

3. Option to Renew: The Director of Parks and Recreation for the City of Clearwater, as designee of the City, and TEAM may by mutual written agreement extend this Agreement for two (2) additional periods

of three (3) years each, on the same terms and conditions as are set forth herein without obtaining additional approval by the Clearwater City Council. For purposes of this paragraph, written agreement may include letter form or email notice.

4. Costs of Operations: The TEAM shall pay all costs of its Team operations. The City shall pay for all maintenance costs relating to the field and complex amenities including restrooms and meeting room. Any costs associated with upgrades of facility amenities must be approved by the City in writing and discussed with the TEAM (i.e. high speed internet Wi-Fi).

5. Relationship: The TEAM agrees that persons employed by the TEAM for purposes related to the installation, operation or other purposes under this Agreement are not employees of the City for any purpose whatsoever, including unemployment tax, social security contributions, income tax withholding or workers compensation, whether state or federal. The TEAM agrees to pay and be solely responsible for all applicable taxes, both state and federal, in connection with its operations.

6. The TEAM's Responsibilities:

(a) The TEAM will hold their preseason training in Clearwater for approximately four (4) weeks each year from February 1 to February 28 more or less.

(b) The TEAM will conduct one (1) youth soccer clinic for local youth soccer players as well as visiting one (1) school during each preseason training.

(c) TEAM will provide promotional posts across TEAM controlled social media channels to promote Fan Trips, TEAM Spring Training, TEAM Updates, etc. Posts would promote City and/or St. Petersburg/Clearwater Area Convention and Visitors Bureau ("CVB").

7. The City's Responsibilities:

(a) The City will provide for a professionally prepared and maintained practice field area specifically at the Joe DiMaggio Sports Complex.

(b) The City will provide two fields that are prepared to meet MLS standards.

(c) The City will provide four (4) full-size soccer goals.

(d) The City will provide on-site storage area for equipment as well as providing restroom and office area.

(e) The City will provide all grounds maintenance including lining the soccer fields to MLS standard quality.

8. Insurance: The TEAM shall, at its own cost and expense, acquire and maintain (and cause any contractors, representatives or agents to acquire and maintain) during the term with the City, sufficient insurance to adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better.

Specifically the TEAM must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

- a. **Commercial General Liability Insurance** coverage in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate. Coverage should include bodily injury, death, personal injury and property damage.
- b. **Commercial Automobile Liability Insurance** coverage, including property damage liability and bodily injury liability, for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 (one million dollars) combined single limit.
- c. Unless waived by the State of Florida, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$100,000 (one hundred thousand dollars) each employee each accident, \$100,000 (one hundred thousand dollars) each employee by disease and \$500,000 (five hundred thousand dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. TEAM agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from the leased premises.
- d. If the TEAM is using its own property in connection with the performance of its obligations under this Agreement, then **Property Insurance** on an "All Risks" basis with replacement cost coverage for property and equipment in the care, custody and control of others is required.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

Other Insurance Provisions:

- a. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, the TEAM will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable ENDORSEMENTS) evidencing all of the coverage set forth above and naming the City as an "Additional Insured" on the Commercial General Liability Insurance policy and the Commercial Automobile Liability Insurance policy. In addition when requested in writing from the City, TEAM will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

City of Clearwater
Parks & Recreation Department
Attn: Kevin Dunbar
PO Box 4748
Clearwater, FL 33758-4748
Kevin.Dunbar@myclearwater.com

- b. TEAM shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- c. TEAM's insurance as outlined above shall be primary and non-contributory coverage for TEAM's negligence.
- d. TEAM agrees that the City reserves the right to appoint legal counsel for any and all claims that may arise directly or indirectly from the performance of this Agreement by the TEAM, its employees, representatives, or agents.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and failure to request evidence of this insurance shall not be construed as a waiver of TEAM's (or representatives or agents) obligation to provide the insurance coverage specified.

9. Liability/Indemnification. The City will not accept and explicitly renounces any liability of any nature for use of the Premises or Facility Premises by the TEAM, its employees, agents, contractors and invitees. The TEAM shall save and hold harmless the City, its successors and/or assigns, from any and all liability arising from injury to person or property during the term hereof. Nothing contained herein shall be construed to waive or modify the provision of Florida Statute 768.28 or the doctrine of sovereign immunity. In addition, nothing contained herein shall be construed as creating third party beneficiaries or as consent by the City to be sued by third parties in any manner arising from this Agreement. This provision shall survive termination or expiration of this Agreement.

10. Maintenance and Operations. The TEAM will at its sole cost and expense:

- (a) Maintain the Premises in a safe, clean and proper manner.
- (b) Secure any and all licenses or permits required by any governmental agency or authority with respect to the TEAM's operation, occupancy and use of the Premises, including any and all rights or licenses required under applicable copyright or trademark law.
- (c) Secure and be responsible for the security of the Premises during the times of use by the TEAM.
- (d) Not make or permit to be made any alterations, additions or improvements in the Premises without the prior written consent of the City.
- (e) Not permit any mechanic's lien to be filed against the Premises by reason of any work, labor, service or materials performed at or furnished to the Premises;
- (f) Observe, comply with, and execute promptly at its expense during the Agreement Term, all laws, rules, requirements, orders, directives, codes, ordinances and regulations of governmental authorities and agencies and of insurance carriers which relate to its use or occupancy of the Leased Premises. TEAM hereby covenants and agrees to make no unlawful, improper or offensive use of the leased premises. All signs used at the Premises shall be subject to the City's prior approval and applicable law.

11. All notices to either party must be sent by either U.S. Mail or e-mail to the addresses below.

As to City
City of Clearwater
P.O. Box 4748
Clearwater, FL 33758-4748
Kevin Dunbar
Kevin.Dunbar@myclearwater.com

As to TEAM
Pennsylvania Professional Soccer, LLC
2501 Seaport Drive, Suite 500
Chester, PA 19013
Tim McDermott
TMcDermott@philadelphiaunion.com

Miscellaneous Provisions:

12. The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties, as permitted herein. Any provision hereof which imposes upon the City or the TEAM, any obligations after termination or expiration of this Agreement, shall survive termination or expiration hereof and be binding upon the City or the TEAM.

13. This Agreement is personal to the TEAM. It is not assignable, and any attempt to assign this Agreement or any rights and privileges hereof, shall immediately terminate such privileges and this Agreement excepting provisions herein expressly intended to survive termination. In addition, the TEAM shall not sell, mortgage, pledge or in any manner transfer this Agreement or any interest therein, not sublet all or any part of the Premises. The TEAM shall notify the City of any name change made in accordance with applicable law.

14. City, at its option, may terminate this Agreement in the event the Clearwater City Council determines at a duly constituted City Council meeting that the lease premises are needed for other municipal purposes and serves TEAM with sixty (60) days notice of such intended use. The City may also terminate this Agreement immediately, at will, in the City's sole discretion, with cause. This Agreement may also be terminated at any time upon the mutual written agreement of the City or the TEAM. TEAM may terminate Agreement after one year if fields and facilities don't meet the needs of the TEAM or if the TEAM needs exceed the City's ability to provide facilities and services.

15. The TEAM and/or the City reserves the right and/or option to terminate this Agreement if the annual business deal between the TEAM and the St. Petersburg/Clearwater Area Convention & Visitors Bureau ("CVB") in advertising is not finalized or is not extended in any year during the Term, in which case the parties hereto shall be released of any further obligations due and owing hereunder by the other party. Parties will conduct a meeting following each season to "debrief" regarding the season, set forth the following year's plans and review a report of the preseason and business goals, including but not limited to room rates, room nights, spectators, etc.

16. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto it being understood that nothing contained herein, or any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of the City and the TEAM.

17. The TEAM agrees to comply with all local, state and federal statutes and ordinances.

18. All advertising or related communications pertaining to the City must be pre-approved in writing by City's representative.

19. The City shall have the right to enter upon the Premises at all times. The City shall not unduly interfere with the TEAM's business.

20. If this Agreement, or its operation, shall create any ad valorem or other tax obligations, it shall be incumbent solely upon the TEAM to timely discharge same.

21. The TEAM acknowledges that it, its applicants for employment, employees, or volunteers, work or will work with children, the elderly, or the disabled. Therefore, if not otherwise required to conduct background checks by law, the TEAM voluntarily agrees to register with the Florida Department of Law Enforcement ("FDLE") to participate in the Volunteer & Employee Criminal History System ("VECHS") for background checks, as authorized by the National Child Protection Act ("NCPA"), as amended, and Florida Statute 943.0542 (1999), as may be amended from time to time. The TEAM agrees to secure the highest level of background screening available under VECHS, and that this level of background screening is necessary to effectively screen out those not suitable for contact with children, the elderly or the disabled. The TEAM voluntarily agrees to require such screenings in accordance with the processes and procedures set forth by the FDLE and the FBI in order to secure criminal history information on its employees, volunteers and applicants. The TEAM acknowledges that the VECHS program is not available to entities currently mandated to obtain background checks by statute or other law. The TEAM shall pay all costs associated with such background checks and will submit an Affidavit of Criminal Background Screening in substantially the form attached hereto, and incorporated herein, as "Exhibit B". The TEAM shall secure releases from screened parties, use said criminal history information only as permitted by law, and shall unilaterally make the determination of a screened parties' fitness and suitability for working with children, the elderly or the disabled. The City shall not be required to make such a determination under any circumstance. The TEAM shall submit the Affidavit of Criminal Background Screening to the City prior to beginning its operations under this Agreement. If for any reason, including denial of eligibility by the Florida Department of Law Enforcement, the TEAM is unable to secure background checks in accordance with the VECHS program, the TEAM shall secure the highest level of background screening allowed by law.

22. This Agreement contains all of the terms, conditions and covenants binding the parties hereto. There are no other terms, conditions, covenants or understandings, either written or oral, binding upon the parties unless expressed herein in writing or subsequently addended hereto by mutual agreement of the parties.

23. The laws of the State of Florida shall govern this Agreement and any action brought by either party shall lie in Pinellas County, Florida. TEAM shall be responsible to City for any attorneys' fees and costs in the enforcement of any provision of this Agreement.

24. Non-Waiver Clause. No failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by either party shall constitute a waiver of, or shall preclude any other or further exercise of, the same or any other right, power or remedy.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Signed in the Presence of:

Pennsylvania Professional Soccer, LLC

BY: _____

Tim McDermott
Chief Business Officer

Countersigned:

George N. Cretekos
Mayor

CITY OF CLEARWATER, FLORIDA

BY: _____

William B. Horne, II
City Manager

Approved as to form:

Matthew M Smith
Assistant City Attorney

Attest:

Rosemarie Call
City Clerk

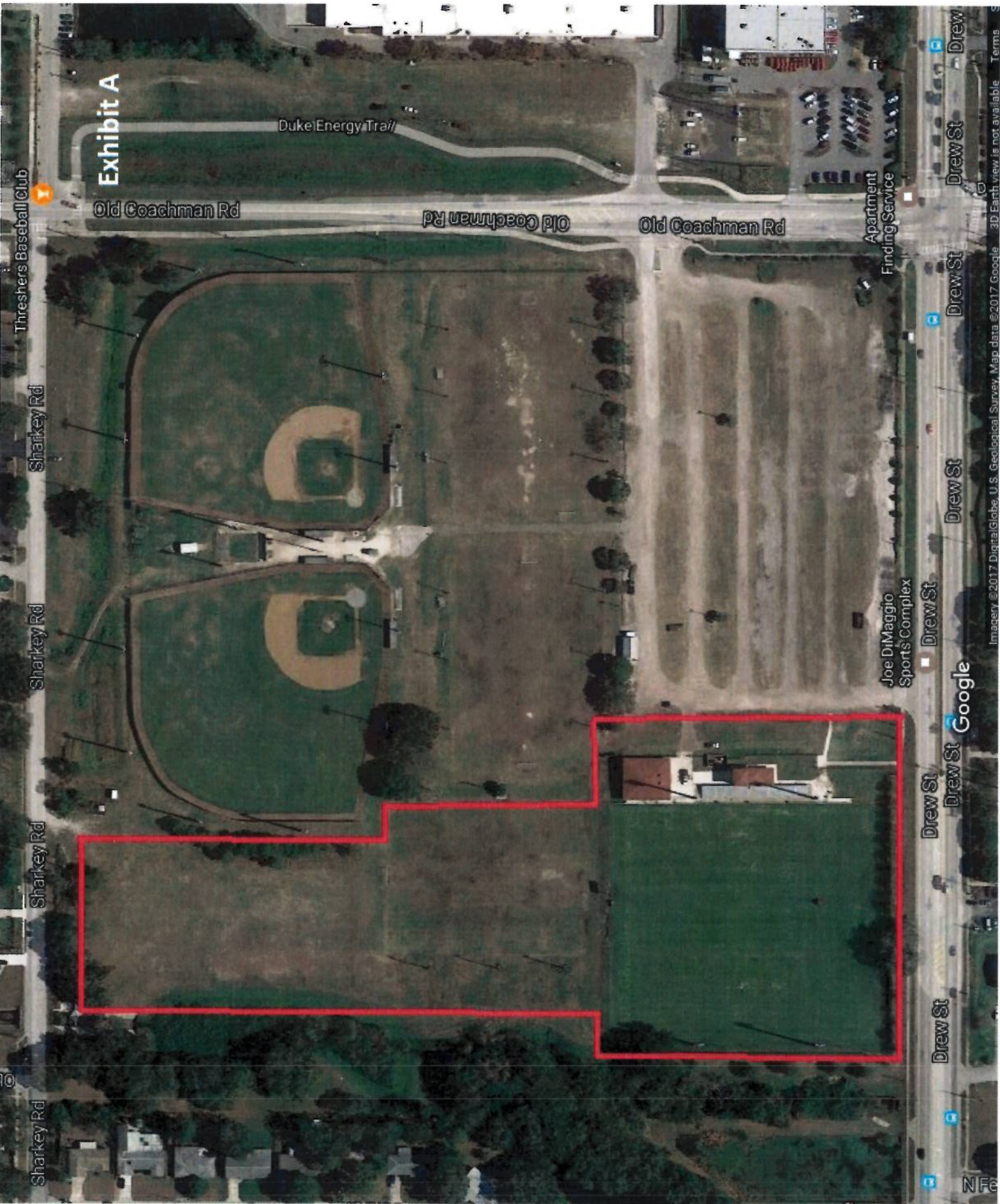


EXHIBIT "B"

AFFIDAVIT OF CRIMINAL BACKGROUND SCREENING

PENNSYLVANIA PROFESSIONAL SOCCER, LLC

DATE: _____

By signing this form, I am swearing or affirming that all individuals employed by PENNSYLVANIA PROFESSIONAL SOCCER, LLC ("TEAM") or providing services to the City under this Sports Facility Use Agreement on behalf of the TEAM on City property have been background screened in accordance with the background screening requirements set forth in the Sports Facility Use Agreement and been deemed eligible by the TEAM to provide services as described in the Sports Facility Use Agreement. The information contained in this Affidavit is up to date as of the date this Affidavit is furnished to City Parks and Recreation Department per the requirements of Section 21 of the Sports Facility Use Agreement.

All individuals providing services under the Sports Facility Use Agreement on City property are listed below. Each individual shall be identified by name, birth date and date deemed eligible.

(List of Individuals)

Signature of Affiant

Sworn to and subscribed before me this ____ day of _____, 20____.

Notary Public
My Commission Expires:

My signature, as Notary Public, verifies the Affiant's identification has been validated by

_____.