

PARK FACILITIES USE AGREEMENT

THIS AGREEMENT is made and executed between the City of South Bend, Indiana (the “City”) Department of Venues, Parks & Arts (“VPA”), by and through its Board of Park Commissioners (“Board”), a municipal corporation existing under the laws of the State of Indiana, and the Michiana Soccer Association, Inc., a non-profit organization (“MSA”), organized under the laws of the State of Indiana and having its offices located at 10601 Cleveland Rd, Granger, IN 46350 (each a “Party” and collectively referred to as the “Parties”).

WHEREAS, the City wishes to support programing for the youth population of the community; and

WHEREAS, MSA exists for the purpose of providing opportunities for all youth of Michiana to play organized soccer; and

WHEREAS, the City is the owner of the property located at 1600-1698 Edison Rd., South Bend, Indiana 46617 (“Boehm Park”), 1507 Byron Drive South Bend, IN 46614 (“Marshall Park”) and 3414 Hepler St. South Bend, IN 46617 (“Tarkington Park”) (collectively referred to hereinafter as the “Facilities”); as depicted and described on **Exhibit A**, incorporated herein by reference and attachment; and

WHEREAS, MSA’s desire is to use space at the Facilities to conduct team practices throughout the MSA soccer season.

NOW, THEREFORE, the City and MSA do hereby mutually agree as follows:

I. TERM OF AGREEMENT

- (a) **Term**. This Agreement shall commence on April 20, 2021 and continue until December 31, 2026. This Agreement may be extended for three (3) successive terms by mutual written agreement of the Parties.
- (b) **Termination**. If either Party fails to keep a material term or condition of this Agreement, such failure shall be deemed a breach. If such default shall continue for a period of thirty (30) days after written notice of breach is given, the non-breaching Party may, in addition to any other remedy available to it at law or in equity, terminate this Agreement by providing written notice to the breaching Party. The termination shall be effective ten (10) days from the date of notice of termination.

II. CONSIDERATION AND SCHEDULES OF USE

- (a) **Consideration**. During the term of this Agreement, VPA agrees to allow MSA to use the designated Facilities, for soccer practice of teams within its recreational soccer program, free-of-charge, waiving its standard field reservation fees (valued at approximately Four Thousand Dollars (\$4,000) per year based on a rate of Ten Dollars (\$10.00) per hour per field), in exchange for MSA listing VPA as a sponsor at the club level, along with MSA providing VPA with a combination of free and/or discounted

player registrations to distribute at its discretion, in an amount not to exceed Twelve Thousand Dollars (\$1,200) per programming season.

- (b) Schedule of Use. The City and MSA will work together to develop a schedule of the dates and times of MSA's scheduled use for each of the City Facilities. During times of scheduled MSA use, the Facilities' parking lots shall remain open and available for parking by the City and the public.
- (c) Insurance. MSA shall have in place, at all times during the term of this Agreement, insurance coverage, including commercial general liability coverage in the minimum amount of \$1,000,000 per occurrence or \$2,000,000 in the aggregate. Coverage under all such policies shall name the City of South Bend, Indiana as an additional named insured and a certificate evidencing such coverage shall be provided to the City, upon request.

III. RESPONSIBILITIES OF VPA

- (a) VPA agrees to work together with MSA to develop a schedule of dates and times for use of the Facilities for recreational soccer programming.
- (b) VPA agrees to include promotion of MSA's recreational soccer program through VPA's various website(s) and social media channels.
- (c) VPA shall be responsible for the removal of trash and debris located in the trash receptacles and dumpster located at the Facilities as customary and necessary.
- (d) VPA shall be responsible for the cost of electricity usage at the Facilities, including lighting of the Facilities' parking lots during use of the Facilities by MSA.
- (e) VPA shall be responsible for the maintenance, upkeep and repairs of the Facilities, not caused by MSA's use of the Facilities, in the sole discretion of VPA.

IV. RESPONSIBILITIES OF MSA

- (a) MSA is responsible for complying with all Centers for Disease Control ("CDC") protocols while using the City Facilities.
- (b) MSA agrees to work together with VPA to develop a schedule of dates and times for use of the Facilities for the purpose of recreational soccer programming.
- (c) MSA agrees to provide VPA with basic data on the total number of program participants supported through its soccer programming by City Facility location.
- (d) MSA shall provide its own soccer goals and nets at each Facility; and agrees to allow public use of the soccer goals nets at each Facility during times not in use by MSA during the term of this Agreement.
- (e) MSA shall provide staffing and supervision for the program.

- (f) MSA shall handle registration of participants for the program.
- (g) MSA shall provide all marketing and supply needs for the program.
- (h) MSA understands and agrees that the Facilities to be used only for the purpose of conducting recreational soccer programming and for no other purposes without the prior written consent of VPA.
- (i) MSA shall be responsible for the maintenance, upkeep and repairs of the soccer goals and nets provided by MSA.
- (j) MSA shall be responsible for lining the fields and any other special preparation of the Facilities prior to scheduled uses of the Facilities and shall restore and repair any damage to the Facilities caused by MSA, normal wear and tear excepted.
- (k) MSA agrees to obey all rules and regulations of the Facilities as well as all applicable local, state and federal laws and regulations.
- (l) MSA may provide portable restrooms at each Facility, at MSA's discretion.

(V) ASSIGNMENT

MSA may not assign the rights granted under this Agreement without first obtaining prior written consent from VPA.

(VI) INDEMNIFICATION

MSA hereby agrees to defend, indemnify, and hold harmless the City, its departments, boards, officials, employees and agents from any and all claims of any nature which arise from MSA's use of the City Facilities, and from all costs and attorney fees in connection therewith, excepting for claims arising solely out of the negligence of the City, its departments, boards, officials, employees and agents.

(VII) INSURANCE

MSA shall, at its sole cost and expense, obtain and/or maintain insurance in the following amounts and provide Certificates of Insurance evidencing the same, upon written request from the City:

- (a) Workers' Compensation Insurance that satisfies the minimum statutory limits; and
- (b) Commercial General Liability in an amount not less than: (1) \$1,000,000 per occurrence; and (2) \$2,000,000 general aggregate limit, **listing the City as an additional named insured.**

MSA shall ensure that the Certificates of Insurance contain provisions that the policies and coverages afforded thereunder will not be canceled until at least 30 days after written notice is provided to the City.

(VIII) ILLEGALITY

If any provision of this Agreement is found by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision that is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

(IX) NON-DISCRIMINATION

The City is committed to ensuring equality of opportunity and does not exclude, deny the benefit of, or otherwise subject any person to discrimination in any City program, service or activity on the basis of race, color, sexual orientation, national origin, sex, age or disability. MSA agrees to comply with and to act consistently with this policy in the performance of MSA's duties under this Agreement.

(X) ENTIRE AGREEMENT; AMENDMENT

This document contains the entirety of the agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall not be amended or modified except by written mutual agreement of the Parties.

(XI) LAW GOVERNING AGREEMENT

This Agreement shall be governed by the laws of the State of Indiana and venue shall be in St. Joseph County, Indiana.

(XII) COUNTERPARTS; ELECTRONIC SIGNATURE

This Agreement may be executed in one or more counterparts which when taken together shall constitute one fully executed original. This Agreement may be executed by electronic signature pursuant to Indiana Code Section 26-2-9-106. Electronic signatures shall be deemed originals for purposes of this Agreement.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have caused this Agreement to be executed as of the day and year first written above. The parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures hereby agree to its terms.

MICHIANA SOCCER ASSOCIATION, INC.

Signature

Printed Name and Title

Street Address

P.O. Box

City, State Zip

**CITY OF SOUTH BEND, INDIANA
BOARD OF PARK COMMISSIONERS**

Mark Neal, President

Consuela Hopkins, Vice President

Aimee Buccellato, Member

Dan Farrell, Member

ATTEST:

Eva Ennis, Clerk

EXHIBIT A
CITY FACILITIES LOCATIONS