

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

MEMORANDUM OF AGREEMENT
BETWEEN
CITY OF FAYETTEVILLE
AND
FAYETTEVILLE SOCCER CLUB, INC

CONCERNING THE USE AND OPERATION OF THE
FAYETTEVILLE SOCCER CLUB SOCCER PROGRAM
AT THE JORDAN SOCCER COMPLEX

THIS MEMORANDUM OF AGREEMENT (hereinafter the "AGREEMENT") entered into this 26 day of JANUARY, 2021, by and between the CITY OF FAYETTEVILLE (hereinafter the "CITY") on behalf of the FAYETTEVILLE-CUMBERLAND PARKS AND RECREATION DEPARTMENT (hereinafter the "DEPARTMENT") and the FAYETTEVILLE SOCCER CLUB, INC (hereinafter the "ORGANIZATION").

WITNESSETH:

WHEREAS, the ORGANIZATION is interested in conducting a youth soccer program at the JORDAN SOCCER COMPLEX (hereinafter the "COMPLEX") in coordination with the CITY and under the auspices of the DEPARTMENT; and

WHEREAS, the CITY and Methodist College have entered into a lease agreement dated December 1, 2020 in which the CITY has agreed to lease the COMPLEX for five (5) years commencing December 1, 2020 and ending November 30, 2025.

WHEREAS, DEPARTMENT soccer programs are recreational in nature; and

WHEREAS, the ORGANIZATION is interested in providing youth soccer opportunities of a more competitive nature (not withholding a recreational pool level); and

WHEREAS, the DEPARTMENT recognizes the merit of such programs; and

WHEREAS, the ORGANIZATION has experienced a long-term use of the COMPLEX; and

WHEREAS, in the interest of providing facilities for the ORGANIZATION, full cooperation between the CITY and the ORGANIZATION is necessary; and

WHEREAS, the parties desire to enter into an AGREEMENT for providing the community with expanded youth soccer opportunities through the ORGANIZATION.

NOW, THEREFORE, in consideration of these premises the CITY and the ORGANIZATION agree as follows:

1. Term. The CITY grants the ORGANIZATION the use of the COMPLEX for conducting its youth soccer program beginning January 1, 2021 through November 30, 2025 or so long as the term of the lease agreement between the CITY and Methodist University for the use of the COMPLEX.

2. Organizational Structure of ORGANIZATION. The ORGANIZATION's bylaws shall be placed on file with the DEPARTMENT. A list of current officers and the board of directors of the organization shall be filed at the same time. Officers shall be updated annually. Contact information shall be updated any time a change is made.

3. Membership of ORGANIZATION. Membership in the ORGANIZATION shall be at the discretion of the ORGANIZATION; however, no person shall be denied an opportunity to participate because of race, color, national origin, religion, handicap, or other non-merit factors.

4. ORGANIZATION's Operation. The ORGANIZATION shall coordinate facility use with the DEPARTMENT DIRECTOR (hereinafter the "DIRECTOR") or his/her designee by the deadlines set by the DIRECTOR or his/her designee.

5. Jurisdictional Authority of CITY. The CITY shall not have any jurisdictional authority over the ORGANIZATION's program administration or internal affairs other than in matters pertaining to the use and care of the COMPLEX.

6. Registration. Registration for ORGANIZATION's sponsored activities will be the responsibility of the ORGANIZATION.

7. Fees. The ORGANIZATION will set its own fees.

8. Coordination of Programs. The CITY, through the DEPARTMENT, will be responsible for approval of scheduling all programs at the COMPLEX that will meet the current needs of the ORGANIZATION. This coordination should occur annually, or within 15 days' notice in regards to changes.

9. Concessions. The CITY, through the DEPARTMENT, reserves the right to operate or contract concessions at the COMPLEX.

10. Admission or Gate Fees. The ORGANIZATION shall be responsible for collecting any admissions and/or gate fees.

11. Alcohol or Drug Use. Possession or use of alcoholic beverages or illegal substances is prohibited on any CITY property. Anyone under the influence of alcohol and/or illegal drugs before, during, or after a scheduled program, to include practices, will be indefinitely suspended from all facilities and programs.

12. Program Supervision. All practices and other related activities must be under adult supervision. These individuals must be provided by the ORGANIZATION and be at least 18 years of age.

13. Restroom Facilities. The CITY will provide and maintain restroom facilities at the COMPLEX. The ORGANIZATION will be responsible for opening and securing restrooms for practices, matches, and tournaments. The ORGANIZATION will be responsible for maintaining restrooms during their scheduled programming.

14. Indemnification. The ORGANIZATION agrees to save, defend, hold harmless, and indemnify CITY, its elected officials, employees, officers, agents, successors, and assigns, from and against all claims, losses, damages, injuries, causes of action, lawsuits, expenses, and liability arising from or arising out of the ORGANIZATION's, its invitees or vendors, failure to comply with the responsibilities and stipulations stated herein.

15. Facility Usage. The CITY, through the DEPARTMENT, agrees that 5 designated fields and facility buildings will be allocated to the ORGANIZATION as the onsite operations management group throughout the term of the AGREEMENT, subject to the further terms of this AGREEMENT.

- a. The ORGANIZATION has first option to make use of 5 designated fields and facility buildings for programming needs to include tournaments/events.
 - i. The CITY, through the DEPARTMENT will utilize 3 designated fields for programming and public use.
 - ii. The facility usage needs of Methodist University will be coordinated through the ORGANIZATION, unless otherwise noted in a separate agreement.
- b. The CITY grants the ORGANIZATION the authority to oversee the usage of 5 designated fields and facility buildings on a daily basis in order to guarantee the standards of quality playing surfaces, facility upkeep, and liability.
 - i. The DEPARTMENT will have access to all unscheduled field space for programming needs to include tournaments/events.
 1. The Fayetteville Area Convention and Visitors Bureau through the DEPARTMENT will have access to 12 weekend tournament dates (3 per quarter) for entire COMPLEX usage yearly throughout the term of this AGREEMENT.
 - ii. The restroom facility and unscheduled field space will be open for public use.
 1. No "organized programming" shall occur on the 5 playing fields designated for the ORGANIZATION by outside groups/organizations without rental agreements and additional insurance policies indemnifying the CITY, DEPARTMENT, and ORGANIZATION.
 2. Organized programming is defined as:
 - a. groups of individuals of 5 or more determined to be not related to each other (i.e. non-family), obvious training

exercises (i.e. practices, physical training (pt), scrimmages, matches, etc.), groups in uniforms, events using the Cape Fear River Trail without specific authorization and other determined unlawful or non-sanctioned gatherings of people without specific permission of usage per the CITY, DEPARTMENT and/or ORGANIZATION.

16. Payments Due. The ORGANIZATION shall remit an annual rental fee in the amount of \$33,000.00 for maintenance and use of the COMPLEX. Payments shall be required on a quarterly basis. Quarterly payments, in the amount of \$8,250.00 are due each year by March 31st, June 30th, September 30th, and December 31st. The ORGANIZATION shall remit tournament-related fees within thirty (30) days of the date of each tournament. Below are the following payout scenarios for event /tournament use at the COMPLEX:

- a. If an event/tournament is administered and facilitated by the ORGANIZATION, the ORGANIZATION agrees to pay the CITY 20% of net revenue that the event/tournament earns.
- b. If an event/tournament is administered and facilitated by the CITY, no monies will exchange from the ORGANIZATION to the CITY or vice-versa unless otherwise stated in a separate agreement between the CITY and the ORGANIZATION.
- c. If an event/tournament is administered and facilitated by a third party organization through a rental agreement:
 - i. and the third party is connected to the ORGANIZATION directly, then the ORGANIZATION will pay the CITY 25% of the allocated rental income for said event/tournament.
 - ii. and the third party is connected to the CITY directly through the DEPARTMENT and/or a CITY affiliate (i.e. Convention and Visitors Bureau or Sport Commission); then no money will be exchanged between the ORGANIZATION and the CITY, unless otherwise agreed upon in a separate agreement.

17. Use Conflict. If conflicts among two or more organizations concerning the use of the COMPLEX arise, the DIRECTOR or his/her designee shall be contacted for resolution.

18. Vehicle Parking. The ORGANIZATION shall ensure all vehicles are parked in designated parking areas at the COMPLEX. The ORGANIZATION officials, coaches, parents, and/or spectators are prohibited from parking vehicles on grassy areas unless prior arrangements have been made with the DIRECTOR.

19. Construction. All plans and specifications by ORGANIZATION for the placement of all equipment, facilities, and permanent improvements upon the premises require prior written approval by the DIRECTOR. The DEPARTMENT shall approve the type, design, and construction. Furthermore, Methodist University must approve the improvements.

20. Advertising. The ORGANIZATION shall be allowed to erect and display a temporary sponsor board and/or temporary field signage. The DIRECTOR or his/her designee

shall approve the design, placement, and timeframe for display of the sponsor board and/or temporary field signage.

- a. The CITY, through the DEPARTMENT, will allow promotion of the ORGANIZATION's advanced development programming, which does not conflict with the DEPARTMENT's current programming, utilizing standard department methods. Any advertising created should align with the DEPARTMENT's mission.

21. Precaution. The ORGANIZATION shall be responsible in coordination with the CITY for preventing excessive noise (such as public address systems), traffic congestion, parking problems, and late use (curfew), or any other situations, which might be a nuisance to residential areas and/or residents living near the COMPLEX. Failure to take these precautions could result in loss of COMPLEX use.

22. Debts/Damages to Facility. The ORGANIZATION shall be responsible for making all payments of debts and expenses approved and incurred by the ORGANIZATION. Accidents or damages to a facility must be reported to the DIRECTOR or his/her designee within 24 hours or on the next working day if it falls on a weekend or holiday. The ORGANIZATION shall be responsible for reimbursing the CITY for all damages incurred during its use of the COMPLEX.

23. Conduct. Misconduct, abusive behavior, and/or offensive language during the ORGANIZATION's activities by spectators, coaches, parents, or participants will not be tolerated. The ORGANIZATION, or appointed designee(s), will be responsible for settling issues of misconduct or abusive behavior by any individual(s) attending or participating in the ORGANIZATION's sponsored programs. If necessary, the City of Fayetteville Police Department shall be called for assistance.

24. Insurance. The ORGANIZATION is required to maintain during the term of this AGREEMENT Commercial General Liability insurance in a minimum amount of \$1,000,000.00 combined single limit of coverage for the protection of the CITY against all liability of any nature that may accrue against the CITY because of damage to the property of, injury to or death of any person, under any circumstances when that damage, injury or death is due to the negligence of the ORGANIZATION, its agents, employees, invitees, or vendors. An insurance company licensed by the State of North Carolina shall issue such insurance. A copy of a certification of insurance shall be provided to the CITY by the ORGANIZATION on or before the effective date of this AGREEMENT.

If ORGANIZATION owns or operates a motor vehicle or employs a motor vehicle to conduct business, then a business automobile policy shall be obtained at ORGANIZATION's own expense, with a minimum of \$1,000,000.00 coverage per accident. A certificate of insurance showing proof of coverage shall be provided to the CITY.

Each of the policies named above shall name the CITY as an additional insured.

25. Responsibilities of the CITY. The CITY shall:

- a. Ensure routine facility maintenance, and mow fields that are under its jurisdiction as needed when the ORGANIZATION is unable to maintain the COMPLEX.
 - i. i.e. maintenance equipment failure or lack of resources.
- b. Designate practice and playing fields to be utilized by the ORGANIZATION as detailed in the Field Usage section of this AGREEMENT.
- c. Maintain parking lot, buildings, landscaping, and annual athletic turf needs (i.e. chemicals, fertilizer, sod, etc...)
- d. Athletic field marking for DEPARTMENT events.
- e. Pay all utility bills.
- f. Routinely clean restrooms.
- g. Responsible for opening and closing of COMPLEX gate daily.
- h. Reserve the right to operate or contract concessions at the COMPLEX.
- i. Perform capital improvements to the COMPLEX, as approved by Methodist University, the property owner.
- j. Approve ORGANIZATION's facility/field schedule annually.

26. Responsibilities of the ORGANIZATION. The ORGANIZATION shall:

- a. Abide by and enforce all DEPARTMENT facility use policies.
- b. Athletic field maintenance to include mowing and turf maintenance on all fields.
- c. Athletic field marking for ORGANIZATION events.
- d. Maintain restroom facility cleanliness throughout the duration of ORGANIZATION events.
- e. Recruit coaches and program volunteers for its program; ensure coaches and volunteers have a current approved background check on file. Records regarding clearance must be made available to the CITY within five (5) business days of written request.
- f. Conduct registration, tryouts, and drafts for its program.
- g. Prepare and review all rosters for its program.

- h. Prepare all schedules for its program and coordinate COMPLEX/field use with the DIRECTOR or his/her designee. The schedule of COMPLEX/field use to be submitted by the ORGANIZATION to the CITY annually.
- i. Provide uniforms and supplemental equipment for its program.
- j. Provide adult supervision (coaches) for team practices and games for its program.
- k. Recruit, train, schedule, and pay all game officials for its programs.
- l. Pay all club related salaries.
- m. Pay all State and National affiliation dues for its program.
- n. Address and resolve coach/parent/player grievances related to its program.
- o. Administer and be responsible for all other related ORGANIZATION program matters not mentioned herein.
- p. Provide free coaching clinics to the DEPARTMENT's youth soccer program volunteers. Maximum of two per year.

27. Renewal of Agreement. The CITY has the right to renew this AGREEMENT for an additional two (2) years by giving said ORGANIZATION at least three months written notice prior to the expiration of this AGREEMENT.

28. Amendment. This AGREEMENT may be amended at any time by the written consent of both parties.

29. Termination. It is further understood and agreed that either party to this AGREEMENT may at anytime terminate this AGREEMENT upon giving in writing to the other party three months prior written notice of its intention to terminate. Notice of termination shall be provided in writing to the CITY to:

Michael Gibson
 Fayetteville-Cumberland Parks & Recreation Director
 121 Lamon Street
 Fayetteville, NC 28301

30. Sovereign Law. This AGREEMENT shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina.

31. Venue and Forum Selection The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County

(Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina

32. Force Majeure Neither party shall be deemed to be in default of its obligations hereunder if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

33. Morality Clause If, in the sole opinion of the City of Fayetteville, at any time Contractor or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City of Fayetteville or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City of Fayetteville's finances, public standing, image, or reputation or are embarrassing or offensive to the City of Fayetteville or may reflect unfavorably on the City of Fayetteville or are derogatory or offensive to one or more employee(s) or customer(s) of the City of Fayetteville, the City of Fayetteville may immediately upon written notice to Contractor terminate this Agreement, in addition to any other rights and remedies that the City of Fayetteville may have hereunder or at law or in equity.

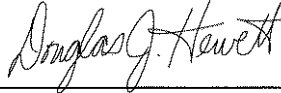
34. E-Verify Contractor acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Contractor further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Contractor pledges, attests and warrants through execution of this contract that Contractor complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by Contractor shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this contract.

35. Entire Agreement. This AGREEMENT contains the entire AGREEMENT between the parties and no statements, pledges, agreements, promises or inducements not set forth above made by either of them or any of their agents shall be valid, enforceable or binding on either of them.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed on their behalf.

CITY OF FAYETTEVILLE;
FAYETTEVILLE-CUMBERLAND
PARKS AND RECREATION
DEPARTMENT

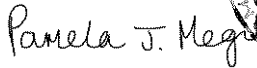
By:



Douglas J. Hewett, ICMA-CM
City Manager

ATTEST:

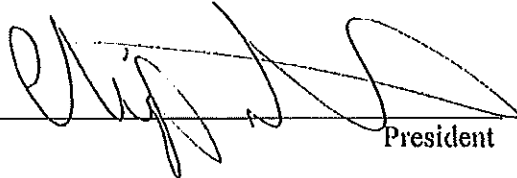




2/23/2021

FAYETTEVILLE SOCCER CLUB, INC

By:


President

ATTEST:

CHIP STAPLETON

This instrument has been pre-audited in the manner
Required by the Local Government Budget and Fiscal
Control Act.


JAY TOLAND
Chief Financial Officer



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/13/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	K&K Insurance Group, Inc. 301 Commerce Street, Suite 2370 Fort Worth, TX 76102	CONTACT NAME:	Sports Division	
		PHONE:	(800) 441-3994	FAX:
		E-MAIL ADDRESS:	kk.sports@kandkinsurance.com	
INSURED	North Carolina Youth Soccer Association P. O. Box 18229 Greensboro, NC 27419	INSURERS AFFORDING COVERAGE		NAIC #
		Insurer A:	National Casualty Company	11991
		Insurer B:	Nationwide Life Insurance Company	66869
		Insurer C:		
		Insurer D:		
		Insurer E:		
		Insurer F:		

COVERAGES

CERTIFICATE NUMBER: 20105227

REVISION NUMBER: 0

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSRD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS		
A	GENERAL LIABILITY	X		KKO-85307-00	9/1/2020	9/1/2021	EACH OCCURRENCE	\$1,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000	
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$5,000	
							PERSONAL & ADV INJURY	\$1,000,000	
							GENERAL AGGREGATE	\$5,000,000	
							PRODUCTS - COM/OP AGG	\$1,000,000	
							PARTICIPANT LEGAL LIABILITY	\$1,000,000	
	GENL AGGREGATE LIMIT APPLIES PER:								
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC								
	A						AUTOMOBILE LIABILITY		
<input type="checkbox"/> ANY AUTO		BODILY INJURY (Per person)							
<input type="checkbox"/> ALL OWNED AUTOS		BODILY INJURY (Per accident)							
<input type="checkbox"/> SCHEDULED AUTOS		PROPERTY DAMAGE (Per accident)							
<input checked="" type="checkbox"/> HIRED AUTOS									
<input checked="" type="checkbox"/> NON-OWNED AUTOS									
A	UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR		XKO-85308-00	9/1/2020	9/1/2021	EACH OCCURRENCE	\$5,000,000	
	<input checked="" type="checkbox"/> EXCESS LIAB						<input type="checkbox"/> CLAIMS-MADE	AGGREGATE	\$5,000,000
	DEDUCTIBLE:								
	RETENTION \$								
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N/A				WC STATUTORY LIMITS	OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in RI)								
	If yes, describe under								
	E. L. EACH ACCIDENT								
	E. L. DISEASE - EA EMPLOYEE								
B	PARTICIPANT ACCIDENT MEDICAL			BAX-314597-00	9/1/2020	9/1/2021	E. L. DISEASE - POLICY LIMIT	\$100,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

This certificate is issued on behalf of North Carolina Youth Soccer Association & Fayetteville Soccer Club. Certificate Holder is Additional Insured as respects the operations of the Named Insured for sanctioned activities of the state association.

CERTIFICATE HOLDER

Fayetteville City Parks & Recreation
433 Hay Street
Fayetteville, NC 28301

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Scott Paul