

FACILITY USAGE AGREEMENT
BETWEEN
CITY OF COLUMBIA, MISSOURI AND COLUMBIA COLLEGE

This agreement (hereinafter "Agreement") between the City of Columbia, Missouri (hereinafter "City") and Columbia College, a non-profit corporation organized in the State of Missouri (hereinafter "Columbia College"), for the use of athletic fields at both Thomas E. Atkins Jr. Memorial Park and Louis P. Antimi Sports Complex to carry out its men's baseball and women's softball programs for Columbia College's student athletes is entered into on the date of the last signatory noted below ("Effective Date"). City and Columbia College are each individually referred to herein as a "Party" and collectively as the "Parties."

ARTICLE I – BACKGROUND

1. City has a long standing informal agreement to allow Columbia College Women's Softball the use of the softball field(s) at Louis P. Antimi Sports Complex for all practices, tournaments, games and camps. Columbia College pays a fixed fee for each game played.
2. Columbia College has initiated a Men's Baseball program and has communicated to City the desire to create an agreement to use additional athletic fields owned and operated by City.
3. City and Columbia College have now determined that it would be in their mutual best interest to formalize their relationship in regards to the use, maintenance and upgrades/improvements to the field(s) required for use.
4. Thomas E. Atkins Jr. Memorial Park is located at 5220 North Oakland Gravel Road, Columbia, Missouri. Louis P. Antimi Sports Complex is located within Cosmo Park, 1615 Business Loop 70 West, Columbia, Missouri. The Black Field at the Thomas E. Atkins Jr. Memorial Park and the Black Field at Louis P. Antimi Sports Complex shall be hereinafter referred to as "City's Fields" for purposes of this Agreement.

ARTICLE II – PURPOSE OF AGREEMENT

1. Provide the terms and conditions under which Columbia College can continue to use the Black Field at Thomas E. Atkins Jr. Memorial Park for men's baseball and also the Black Field at Louis P. Antimi Sports Complex for women's softball for practice, games and tournament play.
2. Define operational and maintenance responsibilities.
3. Identify responsibilities for improvement and upgrade costs.
4. Identify a process to provide for improvement and upgrades.

ARTICLE III – DURATION OF AGREEMENT

1. This Agreement shall extend for an initial term of ten (10) years from the date the Effective Date (hereinafter “Initial Term”) and shall allow for two (2) ten (10) year extensions with the written approval of both Parties.

ARTICLE IV – EFFECTIVE DATE OF AGREEMENT

1. This Agreement shall become effective on the Effective Date.

ARTICLE V – PERMITTED USES

1. City’s Fields shall be used and occupied by Columbia College only for the purpose of baseball and softball activities for Columbia College student athletes and staff. Columbia College shall not use or permit the athletic fields to be used for any other purpose without the prior written approval of City. Subject to the requirements set forth in the City of Columbia Code of Ordinances, Columbia College may establish and collect reasonable admission fees for Columbia College games held at City’s Fields and for sponsorship/advertising opportunities of Columbia College regular games held at City’s Fields. Notwithstanding the foregoing, Columbia College shall not install advertising and marketing materials on City property or in City’s parks without City’s written consent.
2. Columbia College has permission to install marketing materials and logos within the agreed upon boundaries of City’s Fields. All signs and locations must be approved by City before installation.
3. City reserves the right to install signage and marketing materials within the designated boundary at each field.
4. Special Events. Should Columbia College desire to hold a special event or tournament (hereinafter “Special Event”) on City’s Fields, Columbia College shall provide written notice to City. After consultation with City’s Parks and Recreation Department Director regarding the Special Event, the Director, pursuant to Section 24-73 of the City Code of Ordinances, may refer the Special Event to the City event committee. If the Director does refer the Special Event to the City event committee, a special event permit shall be required for the Columbia College Special Event. To obtain the special event permit for the Special Event, Columbia College shall comply with all requirements specified by the special event committee and City of Columbia Code of Ordinances.
5. Parking. Public parking may be available near City’s Fields. Per Section 17-81 of the City Code of Ordinances, parking shall be in an established or City designated parking area. This Agreement does not grant exclusive rights to parking to Columbia College nor allow for Columbia College to charge for parking near City’s Fields.

ARTICLE VI – PERIOD OF USE

1. Columbia College's use of City's Fields shall be limited to the College's regular baseball and softball practices and games during Columbia College's academic and athletic calendar which will be supplied to City three (3) months in advance of each playing season.

ARTICLE VII – COST OF USAGE

1. Columbia College shall pay City fees for each baseball and/or softball game played on City's Fields according to the fee schedule set forth in the City of Columbia Code of Ordinances. The fee to use the field is established by City Ordinance and may be periodically increased over the term of the lease. As of the date of this Agreement, the fee is currently seventy five dollars (\$75.00) per game per field or Columbia College may qualify for a discounted fee of one hundred seventy dollars (\$170.00) per field per day.
2. City shall invoice Columbia College following each athletic season for the usage of the athletic fields.
3. Columbia College shall have thirty (30) days from the date of the invoice to make payment to City.

ARTICLE VIII – USE BY OTHERS

1. City shall retain the right to allow and approve City's Field use by others during those times when Columbia College is not scheduled to use the athletic fields as noted above. City shall return City's Fields to a good and playable condition. Columbia College's use of City's Fields shall not interfere with City's use of City's Fields when not scheduled by Columbia College. In addition, Columbia College's use of City's Fields shall not interfere with City's use of parks in which the fields are located. In the event Columbia College's use does interfere with City's use of the parks or City's Field, City shall give Columbia College written notice of such interference and Columbia College shall have thirty (30) days from the date of such notice to end any such interference. City's obligation to give Columbia College notice of the interference and an opportunity to end the interference shall not preclude City from taking those steps it deems necessary to protect its operation from further interference. Failure of Columbia College to end the interference within thirty (30) days may be considered by City as a breach of this Agreement by Columbia College.
2. Columbia College understands and agrees City owns, maintains, and uses City's Fields and the parks as part of a public park system, recreational programming related thereto, and for other governmental purposes as needed. Columbia College agrees that the use of City's Fields is done as an accommodation to Columbia College and is not an agreement by City to create a transferable

business interest in City's property for the benefit of Columbia College or to subordinate City's use of the property to Columbia College.

ARTICLE IX – PROPERTY

1. Columbia College shall retain ownership of all items of which it has purchased directly for use of their athletic programs (hereinafter "Columbia College Property"). Columbia College shall obtain and keep at Columbia College's own expense sufficient insurance to cover losses and claims associated with the Columbia College Property. The term Columbia College Property shall not include the Improvements set forth in Article X.
2. Columbia College Property shall remain in Columbia College ownership until the expiration or termination of this Agreement. At least ninety (90) days prior to the termination or expiration of this Agreement, Columbia College shall provide written notice to City of its intent to remove Columbia College Property. Columbia College shall vacate City's Fields and shall remove Columbia College's Property prior to the termination or expiration of this Agreement. Prior to the expiration or termination of this Agreement, the Parties may mutually agree to extend the Term of the Agreement according to a mutually agreed, written removal schedule and then the Term of this Agreement shall be extended according to the terms of the written removal schedule. Property not removed prior to expiration or termination of this Agreement shall become the property of City.
3. City will retain ownership of all permanent improvements at the sports complexes which would include, but not limited to, Improvements set forth in Article X, improvements to the playing field, batting cages, dugouts, bullpens and storage facilities.
4. Columbia College shall restore City's Fields and City's property to substantially the condition existing prior to the removal of Columbia College's Property. Should Columbia College cause any ground disturbance due to its activities, Columbia College shall restore the ground around on city property to its original contour, removing all ruts and reseeding or resodding as necessary at the conclusion of removal of Columbia College Property. Columbia College shall indemnify City for any costs associated with damages caused by the removal of Columbia College's property.

ARTICLE X – REQUIRED INITIAL IMPROVEMENTS & RESPONSIBILITY OF COST

1. Columbia College has presented City with the following required improvements to the Black Field at Thomas E. Atkins Jr. Memorial Park (hereinafter "Improvements").
 - a. Infield Skin & Warning Track Conversion
 - b. Field Tarp, Mound Tarp and Plate Tarp
 - c. Dugout Renovations

- d. Fence Slats
 - e. Storage Shed
 - f. Backstop Padding
 - g. Bullpens
2. Contingent upon the City Council's authorization for the construction of these Improvements following the public improvement process set forth in Chapter 22 of the City of Columbia's Code of Ordinances, City shall supply Columbia College with a firm cost to complete these Improvements. Should the City Council not authorize the construction of these Improvements, either Party may terminate this Agreement upon ten (10) days written notice.
 3. Columbia College shall pay for Improvements up to, but not to exceed one hundred fifty thousand dollars (\$150,000.00) (hereinafter "Initial Investment"). This total shall be due and payable within thirty (30) days of City submitting a formal invoice to Columbia College.

ARTICLE XI – MAINTENANCE & RESPONSIBILITY OF COST

1. City shall, at their sole cost and expense, be responsible for all general maintenance and required game preparations to City's Fields.

ARTICLE XII – SECURITY, PARKING AND TRAFFIC CONTROL

1. During all Columbia College activities, Columbia College shall assign as many members of their organization as necessary to manage and control security, parking, traffic control, and to keep fire lanes and access for emergency vehicles clear. Should an event or game require City staffing of the event for security, parking and traffic control, Columbia College shall reimburse to City any of City's costs associated for City staffing of the event or game. Security, parking and traffic control for special events subject to Section 24-73 shall be addressed as part of the permit process set forth in Section 24-73.

ARTICLE XIII – CONCESSIONS AND SALES

1. Columbia College may sell non-food items during Columbia College games, tournaments and camps within the designated boundary of City's Fields.
2. City agrees to provide concessions and restrooms for all Columbia College baseball and softball games and retains the rights to all sales from the concession facilities.
3. City reserves the right to sell alcohol at Atkins Sports Complex when games are being played on fields not designated for use by Columbia College.

ARTICLE XIV – RULES, LAWS, AND ORDINANCES

1. Columbia College agrees to abide by and uphold the policies and ordinances of the City of Columbia and the laws and regulations of the State of Missouri and of the United States of America.

ARTICLE XV – EXTENSIONS

1. Prior to expiration of this Agreement, Columbia College may apply to City for two (2) ten (10) year extensions. These extensions will be granted only upon the written consent of the Parties, which extension agreements must be executed prior to the expiration of the previous period.

ARTICLE XVI – TERMINATION

1. Termination for Convenience. This Agreement may be terminated by either of the Parties following the giving of one (1) year's written notice of the Party's intent to terminate to the Other Party. Notwithstanding the foregoing, if City shall have completed the Improvement, Columbia College shall not terminate this Agreement for Convenience without first reimbursing City for all costs associated with the Improvement not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00).
Columbia College will have made a considerable Initial Investment into the athletic field(s) as detailed in Article IX, if City terminates this Agreement for Convenience during the Initial Term of this Agreement, then City shall reimburse Columbia College an amount equal to the Initial Investment made by Columbia College, as identified in Article IX, divided by the number of years remaining on the Initial Term.
2. Termination by Mutual Agreement. This Agreement may be terminated by the mutual agreement of the Parties.
3. Termination due to Default. Upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to immediately terminate this Agreement. A Party shall be considered in Default of this Agreement upon: (1) The failure to perform or observe a material term or condition of this Agreement, including but not limited to any material Default of a representation, warranty or covenant made in this Agreement; (2) The Party (i) becoming insolvent; (ii) filing a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or consenting to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) making a general assignment for the benefit of its creditors; or (iv) consenting to the appointment of a receiver, trustee or liquidator; or (3) The purported assignment of this Agreement in a manner inconsistent with the terms of this Agreement.

4. Upon termination, for any reason, any property in the possession of the other Party, which was provided by City or Columbia College, shall be returned to said Party.
5. Failure to fulfill the terms, conditions, and obligations of this Agreement by either Party may be determined to constitute a breach of this Agreement, giving rise to termination of this Agreement.

ARTICLE XVII – INSURANCE

1. Columbia College shall maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Columbia College is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by Columbia College under this Agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A- VIII.
 - a. Workers' Compensation & Employers Liability. Columbia College shall maintain Workers' Compensation in accordance with Missouri Revised Statutes or provide evidence of monopolistic state coverage. Employers Liability with the following limits: \$500,000 for each accident, \$500,000 for each disease for each employee, and \$500,000 disease policy limit.
 - b. Commercial General Liability. Columbia College shall maintain Commercial General Liability at a limit of not less than \$2,000,000 Each Occurrence, \$3,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
 - c. Business Auto Liability. Columbia College shall maintain Business Automobile Liability at a limit not less than \$2,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Columbia College does not own automobiles, Columbia College agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
 - d. Columbia College may satisfy the minimum liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability.

Columbia College agrees to endorse City as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance state the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

- e. The City of Columbia, its elected officials and employees are to be Additional Insured with respect to the project to which these insurance requirements pertain. A certificate of insurance evidencing all coverage required is to be provided at least ten (10) days prior to the Effective Date of this Agreement between the Columbia College and City. Columbia College is required to maintain coverages as stated and required to notify City of a Carrier Change or cancellation within two (2) business days. City reserves the right to request a copy of the policy.
- f. The Parties hereto understand and agree that City is relying on, and does not waive or intend to waive by any provision of this Agreement, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to City, or its elected officials or employees.
- g. Failure to maintain the required insurance in force may be cause for termination of this Agreement. In the event Columbia College fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, City shall have the right to cancel and terminate this Agreement without notice.
- h. The insurance required by the provisions of this article is required in the public interest and City does not assume any liability for acts of Columbia College and/or their employees and/or their subcontractors in the performance of this Agreement.

ARTICLE XVIII – AMENDMENTS/MODIFICATION

1. The provisions of this Agreement may be amended only upon the mutual consent of the Parties. No additions to, or alterations of , the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both Parties.

ARTICLE XIX – HOLD HARMLESS AGREEMENT

1. To the fullest extent not prohibited by law, Columbia College shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of Columbia College, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Columbia College or a subcontractor for part of the

services), of anyone directly or indirectly employed by Columbia College or by any subcontractor, or of anyone for whose acts Columbia College or its subcontractor may be liable, in connection with this Agreement. This provision does not, however, require Columbia College to indemnify, hold harmless, or defend the City of Columbia from the City of Columbia's own negligence.

ARTICLE XX – NO WAIVER OF IMMUNITIES

1. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

ARTICLE XXI – NONDISCRIMINATION

1. During the term of this Agreement, Columbia College shall not discriminate against any employee, applicant for employment or recipient of services because of race, color, religion, sex, sexual orientation, gender identity, age, disability, or national origin. Columbia College shall comply with all provisions of laws, rules and regulations governing the regulation of Equal Employment Opportunity including Title VI of the Civil Rights Act of 1964 and Chapter 12 of the City of Columbia's Code of Ordinances.

ARTICLE XXII – NATURE OF CITY'S OBLIGATIONS

1. All obligations of City under this Agreement, which require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose.

ARTICLE XXIII – NO ASSIGNMENT

1. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

ARTICLE XXIV- NO THIRD-PARTY BENEFICIARY

1. No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any person, so as to constitute any such person a third-party beneficiary under this Agreement.

ARTICLE XXV- GOVERNING LAW AND VENUE

1. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as

applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

ARTICLE XXVI - LAND AND CONSERVATION GRANT REQUIREMENTS

1. Because Land and Conservation funds were used for the park(s), City is required to follow requirements set forth in the grant(s). Columbia College shall comply with all applicable grant requirements related to the Land and Conservation grant program while using City's Fields.

Should this Agreement or any term of this Agreement violate the Land and Conservation program requirements, City may immediately terminate the Agreement in whole or in part as City deems necessary to comply with the requirements of the Land and Conservation program and the grant funding. Such termination of this Agreement shall be deemed a Termination for the Convenience of City.

Should Columbia College violate an applicable term of the Land and Conservation Grant, City may terminate this Agreement for default.

ARTICLE XXVII - NOTICES

1. The following persons are designated by the respective Parties to act on behalf of such Party and to receive all written notices and payment invoices:

If to CITY:

City of Columbia
Parks and Recreation Department
ATTN: Mike Griggs
P.O. Box 6015
Columbia, MO 65205-6015

If to COLUMBIA COLLEGE:

Columbia College
ATTN: Registered Agent Scott J. Dalrymple
1001 Rogers Street
Columbia, MO 65216

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice.

Any such notice, demand, request, or communication shall be deemed completed when sent by certified or registered mail to the other Party at the address set forth herein or delivered in person to said Party or their authorized representative.

ARTICLE XXVIII - ENTIRE AGREEMENT

1. This Agreement contains all of the agreements of the Parties with respect to the subject matter covered or mentioned therein, and no prior agreement shall be effective to the contrary. All previous or contemporaneous agreements,

representations, promises and conditions relating to the Agreement described herein are superseded. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto, and signed by both Parties.

ARTICLE XXIX – SEVERABILITY

1. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, The Parties hereunto set their hands and seals the day and year written below.

COLUMBIA COLLEGE

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

By: _____

Name: _____

Title: _____

CITY OF COLUMBIA, MISSOURI

By: _____

Mike Matthes, City Manager

Date: _____

ATTEST:

By: _____

Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____

Nancy Thompson, City Counselor

CERTIFICATION: I hereby certify that this contract is within the purpose of the appropriation to which it is to be charged, Account No. 440-8800-548.49-90, Project C00681 and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

Michele Nix, Director of Finance