

**FACILITY USE AGREEMENT BETWEEN MAD RIVER GIRLS
FASTPITCH SOFTBALL ASSOCIATION & THE CITY OF FORTUNA
FOR
NEWBURG PARK FACILITY USE**

This is a Memorandum of Understanding between the City of Fortuna, hereafter referred to as “CITY”, and Mad River Girls Fastpitch Softball Association, hereafter referred to as “ASSOCIATION”.

WHEREAS, CITY is the owner of the property located at Newburg Park; and

WHEREAS, said properties are designed for softball activities and buildings are designed to be used as concession stands; and

WHEREAS, ASSOCIATION is desirous of procuring from CITY on days not conflicting with CITY use or Special Events March 16, 2026 through June 7, 2026 the right to use Williams Field and field lighting, Harwood Field and field lighting, Newburg Concession Stand, and storage shed in Newburg Park specifically for youth softball practices and youth softball games; and

WHEREAS, the months March 16, 2026 through June 10, 2026 shall hereafter be referred to as “Spring Season”;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

A. PURPOSE

The purpose of this Memorandum of Understanding is to establish and maintain an effective working relationship between CITY and ASSOCIATION. ASSOCIATION is given, except as otherwise provided in the section of this Agreement titled, SALE OF FOOD AND DRINK BY OTHERS, the exclusive right, license and privilege to sell and vend soft drinks, food and other refreshments at Newburg Park.

B. HOLD HARMLESS AND INDEMNIFICATION

1. Indemnification by Association. To the fullest extent permitted by law, ASSOCIATION shall defend (with counsel reasonably acceptable to CITY), indemnify, protect, and hold harmless CITY and its elected officials, officers, employees, agents, and volunteers (collectively, "CITY Indemnitees") from and against any and all claims, demands, actions, losses, damages, liabilities, costs, and expenses of every nature and kind, including but not limited to bodily injury, death, personal injury, property damage, lost revenues, economic losses, and reasonable attorneys' fees and litigation costs (collectively, "Claims"), arising out of or in connection with:

- i. ASSOCIATION's use or occupancy of the facilities described in this Agreement, including Williams Field, Harwood Field, the Newburg Concession Stand, and the storage shed;
- ii. ASSOCIATION's performance of, or failure to perform, any obligation under this Agreement;
- iii. The acts or omissions of ASSOCIATION, its officers, directors, employees, agents, volunteers, subcontractors, participants, spectators, or any other person present at the facilities at the invitation or direction of ASSOCIATION;

- iv. Any third-party claims arising from ASSOCIATION's activities at Newburg Park, including but not limited to claims by game participants, spectators, neighboring property owners, or members of the general public; or
- v. ASSOCIATION's breach of any representation, warranty, covenant, or obligation set forth in this Agreement.

The foregoing obligation to defend and indemnify shall not apply to Claims arising from the sole negligence or willful misconduct of CITY Indemnitees.

2. **Duty to Defend.** ASSOCIATION's duty to defend CITY Indemnitees shall be separate and independent from its duty to indemnify, and shall arise immediately upon tender of any Claim by CITY, regardless of whether liability has been established and regardless of the outcome of any legal proceeding. ASSOCIATION shall not condition its assumption of the defense upon a final adjudication of fault or the resolution of any coverage dispute with its insurer.
3. **Cooperation.** CITY shall provide ASSOCIATION with prompt written notice of any Claim for which indemnification may be sought under this section. CITY shall reasonably cooperate with ASSOCIATION in the defense of any such Claim at ASSOCIATION's expense. Failure by CITY to provide prompt notice shall not relieve ASSOCIATION of its indemnification obligations except to the extent ASSOCIATION is materially prejudiced by such failure.
4. **Survival.** The obligations of both parties under this HOLD HARMLESS AND INDEMNIFICATION section shall survive the expiration or earlier termination of this Agreement for a period of four (4) years, or for such longer period as may be required by any applicable statute of limitations for Claims arising during the term of this Agreement.
5. **Insurance Not a Limitation.** The indemnification obligations set forth in this section are independent of, and shall not be limited by, the insurance requirements set forth in the LIABILITY INSURANCE section of this Agreement. ASSOCIATION's indemnification obligations shall apply whether or not the applicable insurance coverage is in force, sufficient, or available.

C. LIABILITY INSURANCE

ASSOCIATION shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the ASSOCIATION, their agents, representatives, employees, volunteers or subcontractors.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California

Minimum Limits of Insurance

ASSOCIATION shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
3. Sexual Abuse and Molestation (SAM) Liability: \$1,000,000 per occurrence and \$3,000,000 aggregate, covering claims arising from actual or alleged sexual abuse, molestation, or misconduct involving any participant, volunteer, employee, or agent of ASSOCIATION. This coverage shall name CITY as an additional insured.

Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the CITY, its officers, officials, employees and volunteers; or the ASSOCIATION shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The CITY, its officers, officials, employees and volunteers are to be **covered as insureds** with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the ASSOCIATION; and with respect to liability arising out of work or operations performed by or on behalf of the ASSOCIATION including materials, parts or equipment furnished in connection with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured or in any case where an agreement to indemnify the additional insured would be invalid under subsection b of Section 2782 of the Civil Code. General liability coverage can be provided in the form of an endorsement to the ASSOCIATION's insurance, or as a separate owner's policy.
2. For any claims related to this use, the ASSOCIATION's insurance coverage shall be **primary** insurance in respect to the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the ASSOCIATION's insurance and shall not contribute with it.

3. The insurance policy required by this clause shall include an Endorsement which states that coverage shall not be canceled by either party, except after thirty **(30) days' prior written notice** by certified mail, return receipt requested, has been given to the CITY.

Acceptability of Insurers

Insurance is to be placed with California-admitted insurers with a current A.M. Best's rating of no less than A:VII.

Verification of Coverage

ASSOCIATION shall furnish the CITY with **original** certificates and amendatory endorsements effecting coverage required by this clause, including evidence of Workers' Compensation coverage in the form required by the State of California. The endorsements shall be signed by an authorized representative of the issuing insurer. The endorsements shall conform to the CITY's requirements. All certificates and endorsements are to be received and approved by the CITY before activities commence. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

D. APPLICATION, LICENSES, PERMITS AND TAXES

ASSOCIATION shall submit a Parks & Recreation Rental Request Form at least 60 days prior to the start of each season.

ASSOCIATION shall obtain any and all permits or licenses, including City of Fortuna Business License and health permit as required by Humboldt County Health Department for food service, which may be required by law or ordinance in the conduct of their operations. They shall pay any and all taxes which may be assessed against them or their property in this operation.

E. TERM

The term of this agreement shall be from **March 16, 2026** through **June 10, 2026**. The Agreement shall not renew automatically.

F. FACILITY USE

ASSOCIATION may use Williams Field, Harwood Field, Newburg Concession Stand, and storage shed from 8am to 10pm during agreement term. ASSOCIATION may use field lighting during dark hours only and no later than 10pm. Exceptions in this agreement, including but not limited to Section M apply.

ASSOCIATION acknowledges and agrees that it has inspected, or had the opportunity to inspect, the facilities described in this Agreement, including Williams Field, Harwood Field, the Newburg Concession Stand, and the storage shed, and accepts them in their existing condition, **"AS-IS, WHERE-IS, WITH ALL FAULTS."** CITY makes no representations or warranties, express or implied, regarding the condition, safety, suitability, or fitness for a particular purpose of any facility covered by this Agreement. ASSOCIATION assumes all risk associated with the condition of the facilities and their use for softball activities.

ASSOCIATION shall conduct its own independent inspection of all facilities prior to each use, including assessment of field conditions, equipment, and lighting. CITY's placement or non-placement of a 'Field Closed' sign pursuant to the Wet Weather Procedures section of this Agreement shall not constitute a warranty or representation by CITY that any field is safe, suitable, or free from hazard.

Any individuals working on fields on behalf of ASSOCIATION must submit a completed volunteer application and volunteer waiver to Park Staff prior to being on premise.

Prior to the start of the Spring Season, ASSOCIATION shall ensure that all adult volunteers, coaches, and staff who will have direct contact with minors at City facilities have undergone a criminal background check through a screening provider acceptable to CITY. ASSOCIATION shall maintain records of completed background checks and shall certify to CITY in writing, prior to commencement of activities, that all required background checks have been completed with results satisfactory to ASSOCIATION. CITY reserves the right to deny access to any individual whose background check results, in CITY's reasonable judgment, present a risk to the health, safety, or welfare of program participants.

G. UTILITIES

CITY shall provide water, electricity and garbage services. All other utilities, including propane, are the responsibility of ASSOCIATION.

H. NEWBURG PARK CONCESSION STAND

The ASSOCIATION may use the Newburg Park Concession Stand specifically for youth softball practices and youth softball games for the Spring Season so long as it does not conflict with CITY use or Special Events, and such use is included in the cost outlined in Section P.

ASSOCIATION shall not use Newburg Park Concession Stand during any special event unless authorized as a vendor by the special event organizer. Such arrangement must also be authorized by the CITY.

ASSOCIATION shall not utilize propane-fueled appliances, such as a BBQ or grill, indoors. Such use is subject to immediate cancellation of Concession Stand Use without refund.

ASSOCIATION shall ensure that fryer is completely under the commercial hood for proper ventilation.

The concession stand shall be left in broom-clean condition, free of all food debris, grease, and personal property, with all appliances cleaned inside and out, floors mopped, walls and hood wiped down, and all ASSOCIATION equipment removed. CITY and ASSOCIATION shall jointly complete a pre-season and post-season inspection checklist, which shall be signed by authorized representatives of both parties. The post-season inspection checklist shall serve as the basis for any deposit deductions.

Cleaning maintenance includes but is not limited to; cleaning dirty dishes, removing food items, cleaning floors, cleaning range hood, cleaning walls/ceiling of cooking residue, cleaning interior and exterior of appliances, and informing the CITY of fryer oil. ASSOCIATION shall not dispose of fryer oil. The CITY will dispose of used oil so long as the ASSOCIATION has informed the CITY.

Any other equipment or supplies remaining in or around the concession stand seven (7) days after last approved use/game as outlined in this Agreement shall become the property of CITY. ASSOCIATION will be responsible for any cost to CITY to dispose of any equipment left behind on any CITY premise, including but not limited to fields and concession stand.

I. EQUIPMENT

ASSOCIATION shall supply and maintain all equipment and supplies needed to carry out the terms and conditions of this contract. Upon termination, all supplies and equipment shall be immediately removed by the ASSOCIATION, or shall become the property of the CITY. Any equipment or supplies remaining on or in any park facility three (3) days after termination of this Agreement shall become the property of CITY. ASSOCIATION will be responsible for any cost to CITY to dispose of any equipment left behind on any CITY premise, including but not limited to fields and concession stand. No passenger vehicles shall be operated on any grass or infield areas without prior consent.

J. GENERAL

The ASSOCIATION will meet with CITY annually prior to the start of the Spring Season for a pre-season training with CITY staff regarding field care.

ASSOCIATION is an independent organization and not an officer, employee, partner, or agent of CITY. ASSOCIATION shall comply with all applicable federal, state, and local laws including ADA.

K. REPAIRS, MAINTENANCE AND MODIFICATIONS

ASSOCIATION shall keep all ballfields, concession stands, storage areas and all immediate outside areas in a clean and sanitary condition at all times, including but not limited to litter pick-up on and around fields, dugouts, bleachers, picnic tables, and playgrounds. During multi-game days and tournaments, ASSOCIATION shall also complete litter pick-up of the restrooms, dumpster area, and parking lot. All trash shall be secured in a garbage receptacle. Whenever possible, loose trash and debris should be placed in a bag prior to being placed in the dumpster. If ASSOCIATION fails to keep said premises in a clean and presentable condition, CITY may notify ASSOCIATION of deficiencies in writing, and if after receipt of such written notice, ASSOCIATION has not immediately instigated measures to remedy the unsatisfactory conditions, CITY may cause to have the necessary maintenance and/or cleaning services provided by others and the cost thereof shall be the responsibility of the ASSOCIATION. If said costs are not paid promptly by the ASSOCIATION, this Agreement shall be determined to be in default and CITY shall be entitled to all legal remedies provided herein.

Additionally, the CITY may require that the ASSOCIATION rent portable restroom(s) at the ASSOCIATION'S expense. The number of required portable restrooms would be based on the Special Events Handbook recommendation. Portable restroom location/placement is subject to CITY approval and removal must take place on Portable restroom company's next business day.

No modifications shall be made to any CITY property without prior consent by the Parks & Recreation Director.

Any modifications to the concession stand buildings by ASSOCIATION or CITY shall become

the property of the CITY. Modifications will include any items attached to the building, in any way. Portable equipment and supply items are not considered modifications for the purposes of this Agreement and shall be removed from premises at the end of the season. No equipment or property shall be stored outside during the duration of the season. CITY is not responsible for ASSOCIATION's equipment or property that is stored on the premises.

ASSOCIATION shall put away gear in the correct shop or shed (red rock dragging devices, tools, fire hoses, etc.) and remove it from public spaces. Additionally, the ASSOCIATION must pick up balls left out in the grass.

ASSOCIATION is only permitted to use small equipment (side-by-side, four wheelers and tractors) when dragging red rock. Pick-up trucks ARE NOT permitted for use. Additionally, operators must only detach the red rock drag mat while on the red rock, and never while on the grass. Any residual debris left from detaching the drag mat should be evenly dispersed back onto the field by the ASSOCIATION. Infield dragging must be done slowly with caution and in a manner to avoid rock spray, dust, and the creation of berms where the infield meets the outfield.

Association may use water to wet dusty fields.

The following will be completed by the ASSOCIATION: ASA bases are to be pulled at the end of each season, and rubber plugs are to be returned into the base anchors. When removing plugs, ASSOCIATION shall store plugs in a safe location and return plugs immediately after use.

ASSOCIATION may be charged for lost plugs. Any damage to plates, rubbers, or base anchors are to be reported by the ASSOCIATION to the CITY for repairs. CITY staff will install plates if the replacements are purchased by the responsible party.

Pepper or soft tosses against the CITY's fences are not permitted with any type of equipment other than whiffle balls.

The ASSOCIATION shall report any operational concerns to CITY as soon as possible, so that CITY can plan to attempt to remedy. ASSOCIATION shall not wait to report concerns until they become more urgent.

L. WEEKEND FIELD USE

CITY working hours for weekends (Friday – Sunday) are from 8:00am to 4:00pm, with gates/restrooms typically unlocked by 9am. If restrooms and/or garbage cans are in need of service during working hours, the ASSOCIATION must call the CITY staff at (707)362-5201. If the ASSOCIATION is in need of accessing the park before 9 am, ASSOCIATION must request authorization at least 5 days in advance and make arrangements to pick up a gate key. ASSOCIATION shall only access facilities as agreed upon and authorized by CITY.

M. WET WEATHER PROCEDURES

If CITY deems a field to be entirely unplayable, a "Field Closed" sign will be placed at home plate to caution ASSOCIATION against field use.

If CITY deems a field to be only partially playable, a "Field Closed" sign will be placed at the point of the field which the CITY has deemed as unplayable to caution ASSOCIATION against field use.

CITY's field assessment will be reported to the Park Office Staff on a daily basis. ASSOCIATION may call Park Office for field closure information.

ASSOCIATION may walk the grass areas and review field conditions if desired.

If ASSOCIATION uses a field that is deemed either partially or entirely unplayable by CITY, ASSOCIATION must repair any damage to the field within three (3) days or the next date the space is reserved by any party other than ASSOCIATION, including CITY (whichever comes first). The adequacy of any such repair shall be determined in the reasonable discretion of the CITY Parks & Recreation Director. If ASSOCIATION fails to complete repairs to the satisfaction of the Parks & Recreation Director within the applicable timeframe, CITY may cause repairs to be completed by others, and the full cost thereof shall be the responsibility of ASSOCIATION, consistent with the provisions of the REPAIRS, MAINTENANCE AND MODIFICATIONS section of this Agreement.

If ASSOCIATION is in agreement with CITY assessment of unplayable fields, games may be rescheduled at no additional cost so long as rescheduled games are scheduled by the end of the same season and do not interfere with CITY use nor existing reservations.

Wet weather conditions do not warrant refund from CITY to the ASSOCIATION.

N. SALE OF FOOD AND DRINK BY OTHERS

ASSOCIATION shall have exclusive right and privilege to provide soft drinks, food and other refreshments, excluding beer and wine or other alcoholic beverages, from concession stands during games. Notwithstanding the foregoing, CITY retains the right to authorize other vendors during City-sponsored or permitted special events.

O. QUALITY OF FOOD

ASSOCIATION shall put forth an effort to serve quality, attractively prepared and wholesome food, beverages, confections and other healthy options.

P. SUB- GROUPS OR ASSOCIATIONS

ASSOCIATION must receive permission from CITY prior to allowing other groups' use of the Newburg Park Concession Stand. This includes but is not limited to volunteer work parties. All sub-ASSOCIATIONS or groups must provide individual insurance requirements and pay the hourly fees for use of the building. The CITY has the right to refuse use of the building to any other ASSOCIATION group.

Q. PAYMENT TERMS

ASSOCIATION shall submit a \$250 refundable deposit for each of the three facilities (Williams Field, Harwood Field, Newburg Concession Stand) prior to the start of the season, for a total deposit of \$750. Deposits shall be returned to ASSOCIATION within thirty (30) days following the end of the season, provided that: (a) all facilities have been left in satisfactory condition as determined by CITY; (b) all fees, charges, and costs owed to CITY have been paid in full; and (c) ASSOCIATION has complied with all terms of this Agreement. CITY reserves the right to withhold all or a portion of any deposit to offset unpaid fees, repair costs, or cleaning costs incurred by CITY as a result of ASSOCIATION's use of the facilities.

ASSOCIATION shall pay CITY according to the following non-refundable fee schedule with payments due in full 7 days prior to the start of each season:

Spring 2026 Season..... \$6,600

ASSOCIATION shall fund all expenses for field modifications specific to the ASSOCIATION's use. Field modifications are subject to approval. Field lights left on after 10:00pm will be charged to ASSOCIATION at the rate of \$35 per hour. CITY shall provide ASSOCIATION with written notice of any such charges within ten (10) business days of the occurrence. Payment shall be due within thirty (30) days of notice.

In addition, ASSOCIATION shall fund all expenses for re-keying the concession stand or lighting boxes if keys are lost.

ASSOCIATION is responsible for any additional incurred costs related to the use of the facilities.

R. ADDRESS OF SERVICE

Any notice to be served or sent to either CITY or ASSOCIATION may be served or sent to them at the following address:

City of Fortuna
621 11th Street
P.O. Box 545
Fortuna, CA 95540

Mad River Girls Fastpitch Softball Association
Kelly Helms, President
P.O. Box 4361
Arcata, CA 95518

S. DEFAULT OF ASSOCIATION

In the event that default shall be made by ASSOCIATION in any of the covenants herein agreed to be performed by ASSOCIATION, or if ASSOCIATION violates any of the ordinances of the City of Fortuna or any laws of the State of California or any Federal laws, CITY shall have the right to terminate this contract. CITY may exercise said option to terminate this contract after ten (10) days written notice to ASSOCIATION specifying wherein such default or breach is alleged to exist on the part of ASSOCIATION to correct such default or breach within ten (10) days after the date of such notice. All other notice or demand required by the law to terminate this contract is hereby expressly waived by ASSOCIATION. In the event this contract is terminated, it shall be lawful for CITY immediately thereafter to remove all persons and property from the premises except as hereinafter provided.

T. TERMINATION BY CITY

CITY shall have the right to terminate and cancel this agreement in its entirety and all rights ensuing there from if any one or more of the following shall occur:

1. ASSOCIATION shall fail duly and punctually to pay fees and charges or to make any other payments required hereunder when due to CITY.
2. Failure of ASSOCIATION to maintain the quality of food and the quality of service to the satisfaction of the CITY Director of Parks and Recreation, after service of a ten (10) day notice to correct the condition objected to.
3. Failure of ASSOCIATION to maintain the improvements, equipment and facilities in good condition and repair after service of a written notice to correct the condition objected to.
4. The happening of any act which results in the suspension or revocation of any licenses or permits necessary for the conduct and operation of the concession stand as herein authorized.
5. The transfer of the interest of the ASSOCIATION under this agreement by operation of law, or otherwise, to any other person, firm or corporation.
6. Any substantial change in the ownership or proprietorship of ASSOCIATION which, in the opinion of the CITY, is not in the best interests of CITY or the public.
7. ASSOCIATION shall fail to keep, perform and observe every promise, covenant, and agreement set forth in the Agreement on their part to be kept, performed or observed.

U. NON-ASSIGNMENT.

ASSOCIATION shall not assign, transfer, sublet, or otherwise convey any right or interest under this Agreement, in whole or in part, without the prior written consent of CITY, which consent may be withheld in CITY's sole discretion. Any attempted assignment without such consent shall be void and shall constitute grounds for immediate termination of this Agreement. This restriction includes, without limitation, any transfer arising by operation of law, merger, consolidation, or change in control of ASSOCIATION.

V. AMENDMENT

This Agreement may not be modified, amended, or supplemented except by a written instrument signed by authorized representatives of both parties. No oral statements, representations, or agreements shall be deemed to modify or amend this Agreement.

W. ENTIRE AGREEMENT

This Agreement, together with any exhibits or attachments incorporated herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, warranties, understandings, and agreements, whether written or oral, relating to the subject matter of this Agreement.

X. SEVERABILITY

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be modified to the minimum extent necessary to make it enforceable, or if modification is not possible, such provision shall be severed from this Agreement. The remaining provisions of this Agreement shall continue in full force and effect.

Y. GOVERNING LAW, VENUE & DISPUTE RESOLUTION

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law principles. Any legal action or proceeding arising out of or relating to this Agreement shall be brought exclusively in the Superior Court of the State of California, County of Humboldt.

Prior to initiating any litigation, the parties agree to attempt in good faith to resolve any dispute through mediation before a mutually agreed-upon mediator in Humboldt County, California. The costs of mediation shall be shared equally by the parties. If mediation is unsuccessful, either party may pursue its available legal remedies.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _____ day of _____, 2026:

MAD RIVER GIRLS FASTPITCH SOFTBALL ASSOC.

CITY OF FORTUNA

By _____

Kelly Helms
Mad River Girls Fastpitch Softball Assoc. President

By _____

Amy Nilsen
City Manager