

**ORDINANCE NO. 2020-27**

**AN ORDINANCE FO THE CITY COUNCIL OF THE CITY OF CUERO, TEXAS APPROVING A LEASE AGREEMENT WITH FRINED OF CUERO SOFTBALL, INC. AND AUTHORIZING THE EXECUTION OF SAID AGREEMENT BY THE MAYOR OF THE CITY OF CUERO, TEXAS.**

**WHEREAS**, Friends of Cuero Softball, Inc., a Texas Non-Profit corporation, has requested that the City of Cuero, a municipal corporation, lease (use) the Cuero Municipal Park Men’s Softball Field owned by the City to Friends of Cuero Softball, Inc.; and

**WHEREAS**, the City Council of the City of Cuero has reviewed the lease agreement and has approved same in all respects; and

**WHEREAS**, the City Council of the City of Cuero finds that the lease provides for sufficient retention of control by the City over the land and the lessee and that there is no improper delegation of municipal power; and

**WHEREAS**, the City Council of the City of Cuero finds that the use of the land to be leased is for a purpose as is maintained by the City of Cuero; there being no change in the use of the said land (“parkland”); and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CUERO, TEXAS:**

The City of Cuero by and through the Mayor execute a lease agreement in the form attached hereto and incorporated herein by reference at length as Exhibit “A” being the Cuero Municipal Park Men’s Softball Field located at 202 Martin Luther King Drive in Cuero, Texas to Friends of Cuero Softball, Inc.

That all terms and conditions are as provided in the Attached Exhibit “A”.

That the baseball season is beginning and as such it is necessary that this Ordinance be adopted immediately in order to allow this lease agreement to be in effect for the baseball season. Such facts constitute an emergency for the preservation of the public health, safety, and business demanding that the Rule which requires ordinances to be read at more than one meeting of the City Council be and the same is hereby suspended and this Ordinance shall take effect immediately upon and after its passage on first reading.

**UPON MOTION OF COUNCILMEMBER \_\_\_\_\_, SECONDED BY COUNCILMEMBER \_\_\_\_\_, THAT THE ORDINANCE BE PASSED ON THIS EMERGENCY READING THE 28th DAY OF SEPTEMBER 2020. AYES: NAYES: MOTION CARRIED.**

\_\_\_\_\_  
**SARA POST MEYER, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**JENNIFER ZUFELT, CITY SECRETARY**

**EXHIBIT "A"**

**LEASE AGREEMENT-CITY OF CUERO WITH FRIENDS OF CUERO SOFTBALL, INC.**

**THE STATE OF TEXAS:**

**: KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF DEWITT :**

**THIS LEASE AGREEMENT** is made and entered into this 1st day of October 2020, by and between the **City of Cuero ("City or Lessor")**, a Municipal Corporation and **FRIENDS OF CUERO SOFTBALL, INC. ("Friends" or "Lessee")**, a Texas Nonprofit Corporation, each acting herein by and through its duly authorized officials.

**WHEREAS**, Friends is a nonprofit sports organization formed to promote organized softball in the City of Cuero; and

**WHEREAS**, Friends has upgraded, renovated and improved the Cuero Softball Field and its associated facilities located at 202 Martin Luther King Dr. in Cuero, Texas through donations, gifts, fundraisers, and volunteer services; and

**WHEREAS**, Friends has requested this agreement from the City to allow for the use of the said Cuero Softball field; and

**WHEREAS**, the City had previously leased the Cuero Softball Field, located at 202 Martin Luther King Drive to the Friends of Softball for the last several years in connection with softball games and practices during the Softball seasons; and

**WHEREAS**, Friends agrees that all use of said facilities shall be exclusively used for softball and softball related activities; and

**WHEREAS**, this lease provides for sufficient retention of control by the City over the land and the lessee and that there is no improper delegation of municipal power; and

**WHEREAS**, the use of the land to be leased is for a purpose as is maintained by the City of Cuero, and there will be no change in the use of the said land ("parkland"); and

**WHEREAS**, the **City** and **Friends** now enter into this agreement for the use of the Cuero Softball Field located at 202 Martin Luther King Dr. Cuero, Texas; and

**NOW THEREFORE**, for and in consideration of the premises and the further consideration of the faithful performance by all parties hereto of the covenants, terms and conditions herein set forth, the City of Cuero, Texas, acting by and through its Mayor, has Leased, Let and Demised, and by these presents does hereby Lease, Let and Demise unto **Friends of Cuero Softball, Inc.**, the non-exclusive use of the facilities of the Cuero Softball Field, including field, bleachers and concession stand situated at 202 Martin Luther King Dr. Cuero, DeWitt County, Texas. This Agreement is made upon the following expressed terms and conditions:

- (1) The Term of this lease shall be for a period of two (2) years beginning October 1, 2020, and expiring on September 30, 2022.

- (2) In the event Friends is in default of this agreement, the City shall notify Friends of said default and provide them with 30 days to cure the default. If Friends does not cure same within said time period, the City reserves the right to terminate this lease agreement immediately.
- (3) Any notice to Friends will be at the following address:

Friends of Cuero Softball, Inc.  
c/o Toi Rangnow, President  
P.O. Box 964  
Cuero, Texas 77954

**Friends Obligations and Agreements:**

- (1) AS consideration for this agreement, it shall be the responsibility of **Friends** for all repairs and maintenance of facilities including the playing field, including the mowing, bleachers, scoreboard, concession stand, and fencing.
- (2) **Friends** agree that all use of said facilities shall be used exclusively for softball and softball related activities. **Friends** shall be responsible for scheduling all events.
- (3) **Friends** shall obtain, furnish and display adequate warning signs disclaiming responsibility by **City** and **Friends** for accidents and shall have the responsibility for the enforcement of safety and the conduct of all activities on the facilities herein leased.
- (4) As further consideration of execution of this lease, **Friends** does hereby agree to furnish the City Manager with copies of all invoices and other proof of funds expended in improvement of such facilities and copies of minutes of the meetings of **Friends**. **Friends** will provide the City Manager with an annual report of all expenditures and income statements, as well as copies of minutes of all meeting.
- (5) **FRIENDS AND ITS AGENTS AND ASSIGNS SHALL INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY OF CUERO AND ITS AGENTS, OFFICERS, ELECTED OFFICIALS, EMPLOYEES AND ASSIGNS FROM ANY DAMAGES OR LIABILITIES FROM ANY ACCIDENT OR INJURY TO PARTICIPANTS OF ANY ACTIVITIES OCCURING ON THE LEASED PREMISES SPONSORED BY FRIENDS. THE CITY SHALL NOT BE LIABLE TO FRIENDS OR ITS AGENTS, EMPLOYEES, OFFICERS, LICENSEES, INVITEES, CLIENTS OR ANY OTHER PERSONS USING THE SAID PREMISES FOR DAMAGES SUSTAINED EITHER TO PERSON OR PROPERTY AS A RESULT OF THE CONDITION OR USE OF THE SAID PREMISES AND FRIENDS SHALL SAVE AND HOLD CITY HARMLESS FROM EVERY CLAIM, DEMAND, LIABILITY, DAMAGE (PERSONAL AND PROPERTY) OR CAUSE OF ACTION ARISING OUT OF ANY SUCH INJURY OR DAMAGE. FRIENDS WAIVES ALL CLAIMS AGAINST THE CITY AND RELEASES THE CITY FROM ANY LIABILITY, BASED ON ANY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF ANY PROPERTY BELONGING TO FRIENDS OR ANY THIRD PERSON.**

- (6) Friends shall maintain the insurance coverage described in Exhibit "A", Insurance Addendum.
- (7) **Friends** will require all teams playing on the lease premises to provide Friends with proof of team liability insurance as well as waivers of liability signed by team members.
- (8) **Friends** may not make any alteration to the said playing fields without the approval, in advance, of the City. Any alterations or additions to the said premises and any permanent attachments or fixtures thereto shall be deemed a part of the real estate and shall belong to **City**.

#### **City's Obligations**

- (1) **City** does hereby agree to furnish water and electricity at no charge to **Friends**.

#### **General Obligations**

- 1) **City** and **Friends** do agree and covenant that all improvements to the softball field including any of the facilities erected by the **Friends** shall be the assets of the **City**. **Friends** shall maintain and receive as the property of **Friends** all revenue received by **Friends** for activities, including but not limited to, admission fees, entrance fees, application fees, the concession stand and advertisement by sponsors of events.
- 2) Both parties acknowledge that Cuero Independent School District may have use of the field and its facilities.
- 3) If Friends shall in all things perform the terms and conditions of this lease as herein set forth, **City** does hereby covenant that **Friends** shall enjoy the leased premises during the term of this lease.
- 4) The **City** and **Friends** agree that this agreement allows for fair compensation to the other.
- 5) The **City** and **Friends** agree that this agreement is for the non-exclusive use of the field and that other persons, groups, entities and organizations, including the Cuero Little League, Inc. may use the field for softball and softball related activities, unless otherwise provided for herein. **Friends** will work out use times with those persons, groups, entities and organizations. In the event there is a conflict with Friends and any other person, firm or entity, including the Cuero Little League, Inc. then Friends will attempt to work out any field usage issues without City intervention. In the event a conflict continues, same will be addressed and resolved by the City, by and through its City Manager. All decisions by the City Manager are final.
- 6) It is also agreed that the field house located on the leased premises may be used in part by the Cuero Soccer Association, Inc. for the storage of soccer equipment.
- 7) **Friends** may from time to time find that other Schools from other towns may want to use the field described herein for play-off games. In the event other Schools request to play games on the said field, **Friends** will notify the **City** of the request and obtain approval from the **City** for the other schools to play on said fields.
- 8) Any amendments, deletions or additions to this agreement shall be in writing and signed by both parties.

- 9) This lease may not be assigned without the consent of the other party.
- 10) **This lease may be terminated anytime by either party upon 30 days' written notice to the other party.**

**EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON THIS THE 28<sup>TH</sup> DAY OF SEPTMBER 2020, TO HAVE AN EFFECTIVE DATE OF OCTOBER 1, 2020**

**City/Lessor:**  
CITY OF CUERO

Attest:

By: \_\_\_\_\_  
Sara Post Meyer, Mayor

\_\_\_\_\_  
Jennifer Zufelt, City Secretary

**Friends/Lessee:**  
Friends, Inc.

Attest:

By: \_\_\_\_\_  
Brenda Martin, President

\_\_\_\_\_  
Secretary

**EXHIBIT A**  
**INSURANCE ADDENDUM TO LEASE**

Maintain the property and/or liability insurance policies required below (mark applicable boxes) and such other insurance coverages and/or higher policy limits as may be required by the City during the Term and any period before or after the Term when Friends is present on the Premises:

<b>Type of Insurance or Endorsement</b>	<b>Minimum Policy or Endorsement Limit</b>	
<i>General Liability Insurance Policies Required of Friends:</i>		
X Commercial general liability (occurrence basis)	Per occurrence:	\$ _____
	General aggregate:	\$ _____

*Required Endorsements to Friend's General Liability or Business Owner's Policy:*

- |                          |  |          |
|--------------------------|--|----------|
| <input type="checkbox"/> | Designated location(s) general aggregate limit | \$ _____ |
| <input type="checkbox"/> | _____  | \$ _____ |

*Property Insurance Policy Required of Friends:*

- |                          |                             |   |
|--------------------------|-----------------------------|---|
| <input type="checkbox"/> | Causes of loss—special form | 100 percent of replacement cost of (a) all items included in the definition of Friend's Rebuilding Obligations and (b) all of Friend's furniture, fixtures, equipment, and other business personal property located in the Premises |
| <i>Or</i>                |                             |   |
| <input type="checkbox"/> | Business owner's policy     | 100 percent of replacement cost of (a) all items included in the definition of Friend's Rebuilding Obligations and (b) all of Friend's furniture, fixtures, equipment, and other business personal property located in the Premises |

2. Comply with the following additional insurance requirements:

- a. The commercial general liability (or business owner's property policy) must be endorsed to name City as "additional insured" and must not be endorsed to exclude the sole negligence of the City from the definition of "insured contract."
- b. Additional insured endorsements must not exclude coverage for the sole or contributory ordinary negligence of the City.
- c. Property insurance policies must contain waivers of subrogation of claims against City.
- d. Certificates of insurance and copies of any additional insured and waiver of subrogation endorsements must be delivered by Friends to City before entering the Premises and thereafter at least ten days before the expiration of the policies.

3. Obtain the approval of City with respect to the following: the forms of City's insurance policies, endorsements and certificates, and other evidence of City's Insurance; the amounts of any deductibles or self-insured retentions amounts under City's Insurance; and the creditworthiness and ratings of the insurance companies issuing City's Insurance.