

Tarleton State University Memorial Stadium Complex Facilities Use Agreement

This Athletic Facility Use Agreement (“Agreement”) is made and entered into as of the last signature date below, by and between Tarleton State University (“University”), a member of The Texas A&M University System and an agency of the State of Texas, and the Stephenville Independent School District (“SISD”). The University and SISD enter this Agreement as permitted by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

Article I

- 1.01 Term. The term of the Agreement is for a two-year period, commencing August 1, 2016, and ending on July 31, 2018.

Article II

- 2.01 Definitions.

2.01.1 Athletic Facilities (“Facilities”), including real property, furniture, fixtures, and equipment, are defined as:

- 1) Tarleton Memorial Stadium-Regulation Football Field (“Game Field”);
- 2) Tarleton Memorial Stadium-Physical Education Field Facility/Field House (“Field Facility”);
- 3) Tarleton Memorial Stadium-Concession Facilities and Restrooms (“Concession Facilities”);
- 4) Tarleton Memorial Stadium-Bleachers and Stands (“Bleachers”);
- 5) Tarleton Memorial Stadium-Press Box (“Press Box”);
- 6) Tarleton Memorial Stadium Parking Facilities (“Parking”);
- 7) Wisdom Gym-Basketball Courts
- 8) Wisdom Gym-Bleachers and Stands
- 9) Wisdom Gym Parking Facilities
- 10) Wisdom Gym- Press Box
- 11) Cecil Ballow Baseball Complex
- 12) Cecil Ballow Baseball Complex-Bleachers and Stands
- 13) Cecil Ballow Baseball Complex-Press Box
- 14) Cecil Ballow Baseball Complex Parking Facilities
- 15) Tarleton State University Softball Field
- 16) Tarleton State University Softball Field-Bleachers and Stands
- 17) Tarleton State University Softball Field-Press Box
- 18) Tarleton State University Softball Field Parking Facilities
- 19) Potishman-Lard Tennis Courts
- 20) Potishman-Lard Tennis Courts-Bleachers and Stands
- 21) Potishman-Lard Tennis Courts Parking Facilities

- 2.01.2 Athletic Events ("Events") are defined as regular season scheduled athletic competitions involving SISD's Grade 10-12 recognized sports program participants.

Article III

- 3.01 Financial Consideration and Payment Schedule. The total contract amount paid by SISD to the University over the two-year period is ONE HUNDRED SEVENTY ONE THOUSAND, FIVE HUNDRED DOLLARS (\$171,500), which equates to a fixed rate of EIGHTY-FIVE THOUSAND, SEVEN HUNDRED FIFTY DOLLARS (\$85,750) per year. Each annual payment of \$85,750 shall be paid by SISD to the University no later than October 1 of each year during the term of this Agreement.
- 3.02 Rental Payment: All rental payments are payable by SISD by October 1 of each year (as stated in Section 3.01 above); checks should be submitted to the following address:

Tarleton State University
Office of the Vice President for Finance and Administration
Box T-0110
Stephenville, Texas 76402

- 3.03 Non-Appropriation. Notwithstanding the foregoing, University agrees that SISD has the continuing right to terminate this Agreement without notice at the end of an SISD budget period in which funds for this Agreement are not appropriated. In such case of termination for non-appropriation, SISD shall, on the last day of the fiscal period for which appropriations were received, vacate the Facilities, remove all of its personal property, if any, from same and turnover the Facilities in the same condition in which it was last delivered for use, reasonable wear and tear excepted, without further penalty or expense to SISD.

Article IV

- 4.01 Use. The Facilities may be used by SISD to conduct Events on a scheduled and as needed basis as per **Attachment A** of the Agreement. Only Varsity, Junior Varsity Blue and Junior Varsity White Football teams will play in Memorial Stadium. Attachment A of the Agreement may be amended on an annual basis upon the mutual written consent of the University and SISD. SISD will coordinate, in writing, such Events with the University to avoid conflict with the University's events. In the event of conflict, the University reserves the right to resolve such conflict.

- 4.02 The University is responsible for reasonable maintenance of playing surfaces, including playing surface markings, in a manner suitable for competition; providing inclement weather conditions or other Acts of God preclude such maintenance from occurring.
- 4.03 All Events conducted by SISD at the Facilities will be performed in a prudent manner with due care to protect the Facilities from damage. After each Event, the Facilities will be inspected. If there are any damages to the Facilities, SISD will be responsible to reimburse the University for any and all costs incurred by the University to repair the damage to the Facilities that occur during an SISD Event.
- 4.04 SISD shall not use, or permit the use of, the Facilities in any manner which results in waste for the Facilities or constitutes a nuisance or violates any statute, ordinance, rule, or regulation applicable to the Facilities. SISD agrees to hire, at their expense, at least one University Police Officer for each scheduled event.
- 4.05 SISD shall not sublease the Facilities or authorize the use of the Facilities for events or other use.
- 4.06 The University reserves the right to cancel or relocate Events to avoid damages to playing surfaces during unusually wet conditions. SISD will be notified of the cancellation or relocation by the Athletics Director or other designated representative of the University, not less than twenty-four (24) hours prior to Events, whenever possible.
- 4.07 SISD agrees to remove all of its concession and other temporary equipment from the Facilities the morning following completion of the Event. Arrangements for said removal are to be coordinated through the University Athletics Director.
- 4.08 SISD agrees to prohibit the display of all commercial advertisements within the Facilities.
- 4.09 Use of Facilities for SISD sports that are added to the program during the term of this Agreement will require prior approval of the University.
- 4.10 Athletic Events that are a part of post-season and/or play-off championship competition are excluded from the Agreement and are subject to the existing terms and rates established for the use of the Facilities by the University. SISD is to coordinate and schedule post-season and/or championship competitions in writing with the University Athletics Director as early as practicable, but not less than two weeks prior to an Event. In the event of time conflicts, priority will be given in the following order: (1) University, (2) SISD, and (3) other parties.
- 4.11 Use of flammable, combustible, acidic, or other items and materials (i.e. confetti, silly string, duct tape, etc.) that could damage the synthetic surface are prohibited from use on the Game Field.

- 4.12 Use of tape or other materials that could damage surfaces (press box, billboards, etc.) are prohibited from use in the Facilities.

Article V

- 5.01 Availability. The University will continue, for the remaining term of this Agreement, to make the Facilities available for use by SISD for Events should the University discontinue its athletic programs.
- 5.02 Facilities will be available to SISD for band and drill team rehearsal two hours prior to the beginning of an Event.
- 5.03 Evacuation of the Facilities in the event of threatening weather conditions will be in accordance with University Procedure 34.07.01.T1.01 (located on the Internet at <http://www.tarleton.edu/policy/documents/34.07.01.T1.01.pdf>). Participants will be allowed access to designated and available areas within the Field Facility and Wisdom Gymnasium.

Article VI

- 6.01 Utilities, Maintenance, and Custodial Services. The University will be responsible for all utilities, maintenance, and custodial services for the Facilities at no additional cost to SISD. SISD will be responsible for the removal and disposal of food and drink residue in the concession stands no later than the morning following each Event.

Article VII

- 7.01 Notices. All notices to either Party by the other will be signed by the designated representative of such Party, or their successors in interest or office, and delivered personally or sent by U.S. certified or registered mail, return receipt requested, postage prepaid, addressed to such representative at the following respective addresses:

University: Vice President for Finance and Administration
Tarleton State University
Box T-0110
Stephenville, Texas 76402

SISD: President, Board of Trustees
Stephenville Independent School District
2650 W. Overhill
Stephenville, Texas 76401

Either Party may change the above address by sending written notice of such change of address to the other Party in the manner provided for above.

Article VIII

- 8.01 This Agreement is between SISD and the University. This Agreement is not assignable, and any attempt to assign the rights under this Agreement, whether it is formally or informally will terminate this Agreement immediately. Written notice from the University will be provided to SISD if termination is to occur.

Article IX

- 9.01 Insurance. SISD will provide to the University, on an annual basis, a valid and current certificate of insurance, which details coverage and limits. The University reserves the right to request that SISD adjust its insurance coverage and limits when deemed necessary and prudent by The Texas A&M University System's Office of Risk Management based upon changes in statutory law, court decisions, or the claims history of the industry as well as that of SISD.
- 9.02 Subject to SISD's right to maintain reasonable deductibles in such amounts as are approved by University, SISD shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SISD's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to University, in the following type(s) and amount(s):

	<u>TYPE</u>	<u>AMOUNT</u>
1.	Workers' Compensation and Employer's Liability	Statutory \$250,000/500,000/100,000
2.	Commercial General (public) Liability insurance, including coverage for the following:	
	a. Premises operations	Combined single limit for bodily injury and property damage or operations
	b. Independent contractors	
	c. Personal injury	\$1,000,000 per occurrence or its equivalent
	d. Medical payments	
	e. Fire legal liability	
	f. University's property in SISD's care, custody, or control	\$250,000
	g. Food/concessions	

- 9.03 University shall be entitled, upon written request, and without expense, to receive copies of the policies and all endorsements thereto. Upon such written request by University, SISD shall exercise reasonable efforts to accomplish such reasonable changes to the policy coverage requested by the University due to a change in circumstances, and shall pay the cost thereof.

- 9.04 SISD agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:
- a. Provide for thirty (30) days notice to University for cancellation, nonrenewal, or material change at the address in the "Notices" provision herein;
 - b. Provide for notice to University at the address in the "Notices" provision herein

Article X

- 10.01 Default in Covenants or Payment of Consideration. If SISD defaults in the payment of any sum to be paid by SISD under this Agreement and such default continues for ten (10) days after written notice to SISD given in compliance with Article VII, or default is made in the performance of any of the other covenants or conditions which SISD is required to observe and perform, and such default continues for thirty (30) days after written notice to SISD given in compliance with Article VII, then University may treat the occurrence as a breach of this Agreement and terminate this Agreement without penalty or liability.
- 10.02 If University defaults in the performance of any of the covenants or conditions, which University is required to perform and such default continues for thirty (30) days after written notice to University, then SISD may, at SISD's option, terminate this Agreement and be relieved of all future obligations under this Agreement.

Article XI

- 11.01 Waiver. No waiver by University or SISD of any default or breach of any term, condition, or covenant of this Agreement will be deemed to be a waiver of any other breach of any other term, condition, or covenant.

Article XII

- 12.01 Choice of Law, Venue. This Agreement is construed under and in accordance with the laws of the State of Texas. Venue for any dispute arising out of this Agreement shall be in Erath County, Texas.

Article XIII

- 13.01 Article Headings. Headings used are for the convenience of University and SISD for reference and identification and will not be construed to limit or alter the meaning of the provisions of this Facilities Use Agreement.

Article IX

- 14.01 Entire Agreement. This Agreement represents and constitutes the entire Agreement between University and SISD and will not be explained, modified, or contradicted by any prior or contemporaneous negotiations, representations, or agreements either written or oral. Only a written instrument signed by both designees of University and SISD may amend this Agreement.

Article XV

- 15.01 Status of Parties. It is expressly agreed and understood between University and SISD that University is a member of The Texas A&M University System, an agency of the State of Texas, and nothing herein will be construed as a waiver or relinquishment by University of its right to claim such exemptions, privileges, and immunities as may be provided by law; and that SISD is an Independent School District operating under the laws of the State of Texas subject to such limitations as may be imposed on Independent School Districts by the State of Texas.

Article XVI

- 16.01 Force Majeure. Neither University nor SISD will be in default in the performance of its obligations under this Agreement, if such performance is prevented or delayed by Force Majeure; provided, the Party claiming such Force Majeure notifies the other Party of the occurrence thereof within ten (10) days and promptly commences, diligently pursues and takes all reasonable actions to limit the effect of such Force Majeure. Force Majeure is understood to be any cause which is beyond the reasonable control of the Party affected, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, wind, flood; or because of any law, order, proclamation, regulation, or ordinance of the State or Federal government or of any subdivision thereof.

Article XVII

- 17.01 Severability. If any provision of this Agreement is, for any reason, held to violate any applicable law, and such provision is held unenforceable, then the invalidity or illegality of such specific provision will not be held to invalidate any other provision.

Article XVIII

- 18.01 Authority. Each party hereto represents and warrants that all necessary approvals for this Agreement have been obtained, in an open meeting if required by Chapter 551 of the Texas Government Code, and the person whose signature appears below has the necessary authority to execute this Agreement on behalf of the party indicated.

IN WITNESS WHEREOF, University and SISD hereto have executed this Agreement in duplicate.

Approved:
Stephenville Independent School District

Matt Underwood
Superintendent

Date

Approved:
Tarleton State University



F. Dominic Dottavio, Ph.D.
President



Date

Attachment A

To Tarleton State University Athletic Facilities Use Agreement (August 1, 2016 – July 31, 2018)

Tarleton State University Athletic Facilities Use Agreement

Event	Tarleton Memorial Stadium – Game Field	Field Facility – Home Dressing Room	Field Facility – Visitor Dressing Room	Field Facility – Hallway (Inclement/Threatening Weather)	Track	Field Event area	Concession/Ticket Booth	Bleachers	Press Box	Parking Provided by TSU Within Proximity to Stadium	Recreational Sports Complex – Fields & Concession/Restroom Facilities	Wisdom Gym – Basketball Courts and Parking, and Bleachers	Cecil Ballow Baseball Complex and Parking, Bleachers, and Press Box	Tarleton State University Softball Field and Parking, Bleachers, and Press Box	Potishman-Lard Tennis Courts, Parking, and Bleachers
High School Varsity Football	X	X	X				X	X	X	X					
High School Blue and White Junior Varsity Football	X			X				X	X	X					
High School Varsity, Junior Varsity and Freshman Teams					X	X	X	X	X	X		X	X	X	X