

INDIAN RIVER COUNTY PARKS RECREATION & CONSERVATION LICENSE AGREEMENT

Effective Date:	January 9, 2024	License Duration:	Various dates see attached Fee Schedule
Organization:	Southeastern Fastpitch Inc.	Contact Name:	Russell Pierce
Address:	450 Dancing Water Drive	Phone:	407-575-9752
City/State/Zip Code:	Winter Springs, FL 32708	E-Mail:	russell@southeasternfastpitch.com
Name of Event:	Southeastern Fast Pitch Softball Tournaments	Expected Attendance:	Varied
Event Time:	All Day	Load-Out Date/Time:	11:00 p.m.
Load-In Date/Time:	5:00 a.m.		

WITNESSETH:

WHEREAS, Indian River County (the “County”) is the owner of certain property known as the Dick Bird (South County) Regional Park, and subsequent four (4) field softball complex within the Park, located in Indian River County, Florida, (the “Ballfields”); and

WHEREAS, the County has the authority to issue and/or execute, and Southeastern Fastpitch Inc., (the “Applicant”) desires the issuance and/or execution of, a permit/agreement for the utilization of the Ballfields, which Applicant has inspected and hereby acknowledges to be sufficient for its intended purpose and/or use contemplated hereunder; and

WHEREAS, Applicant warrants to the County that it is qualified and authorized to do business in the State of Florida and Indian River County, Florida and has or will obtain and maintain the proper certification, licensure, insurance, permits and all other requirements pursuant to federal, state and local laws, statutes, ordinances, rules and regulations necessary to conduct any and all activities contemplated herein, and to satisfactorily perform its obligations as herein required; and

WHEREAS, the Applicant acknowledges that the use of the Ballfields is subject to and expressly conditioned by section 205.04 (Permits) of the Indian River County Code of Ordinances, if applicable at the time of the License Duration, which are hereby incorporated by reference when applicable;

NOW, THEREFORE, for and in consideration of the use of the Ballfields and other valuable consideration, the legal sufficiency of which is hereby acknowledged by both parties, and of the mutual covenants herein contained, the parties, as indicated by their authorized representatives’ signatures below, hereby agree to the terms and conditions set forth herein:

A. PARK, PREMISES & EVENT SCHEDULE:

1. This Indian River County Parks, Recreation & Conservation License Agreement (“License Agreement”) applies to the use of the Dick Bird (South County) Regional Park Ballfields (“Ballfields”). The areas, personnel and facilities of the Ballfields which Applicant may apply for a permit, license, or use hereunder are more particularly described as the “Premises” shown in Exhibit B which Applicant acknowledges to be sufficient, as is, for its intended purpose and/or use contemplated hereunder.
2. Applicant may use and have access to the Premises for a period, commencing on the dates outlined in Exhibit B at 5:00 am on the first day of each tournament, and ending at 11:59 pm on the Sunday day of each tournament weekend (“License Duration”), which License Duration shall include set-up, removal and clean-up of Applicant’s property. Where the Applicant requires usage after the stipulated time, Applicant is required to pay additional charges including, but not limited to Parks Staff hourly rates and any overage fees as set forth in the Parks Fee Schedule attached as Exhibit B (“Fee Schedule”).

B. AUTHORIZED USE, TERMS & CONDITIONS:

1. The Premises are to be used by Applicant for the 2024 Southeastern Fastpitch Softball Tournament Season (the “Events”).
 - (a) The Events may include the following activities:
Girls softball tournaments and concession sales as permitted through a Parks Special Event Permit (per weekend)
 - (b) Hours covered under the License Agreement/License Duration are from 5:00am to 11:59pm. Tournament play must be finished no later than 11:00pm each day. All property owned by the Applicant or his subcontractors must be removed from the property no later than 11:59pm otherwise additional fees may be assessed.
 - (c) The Events shall be used for no other purpose whatsoever, unless prior written approval is requested in writing by Applicant and given by the County which approval shall be subject to availability but not be unreasonably withheld, conditioned, or delayed so long as such request is submitted at least 15 days prior to the beginning of each tournament for the entirety of the License Duration. Such change may result in a modification of the insurance requirements set forth in B.15.
2. Applicant agrees to pay to the County as rent, costs, expenses and taxes for the use of the Premises the following sums:
 - (a) Rental fee for the sum of all events will be **\$59,040.00**, plus any additional charges imposed at the request of the Applicant to be reconciled at the end of License Duration, based on the calculations on the attached Fee Schedule. An Event Deposit of **\$1,000** (“Event Deposit”), will be or has been collected from the Applicant in order to secure the Ballfields for the Events. The balance of the rental fee for each tournament and any remaining payments, including any expenses, charges or other fees described in this License Agreement shall be due fourteen (14) days prior to the scheduled date of each tournament weekend. Any

incidental charges or fees not included in this Agreement at the time of execution shall be due within five (5) business days of the conclusion of the Event as described in B.1.b.

- (b) The Event Deposit shall be applied against the fees, costs, expenses, charges and/or delinquent payments described herein, and against any costs of repair or replacement of damages to the Ballfields that directly or indirectly result from the Events, whether caused by Applicant or Applicant's employees, invitees, licensees, contractors, assignees, contestants, exhibitors or performers, or others on the Premises at Applicant's direction or invitation. The County's use of the Event Deposit or any other sum described herein shall in no way constitute a waiver of any other right the County may have at law or equity. An Event Deposit, to the extent unused, shall be returned to Applicant within thirty (30) business days following the last tournament held December 7 and 8, 2024.
3. The Applicant shall provide to the County information as to the total number of teams registered and the start and anticipated end times of games seven (7) business days prior to the start of each tournament. The County reserves the right to cap ticket sales depending on the capacity of the Premises because of law enforcement, sanitation, traffic control or due to other public safety issues.
4. Applicant shall be financially responsible for all charges for all materials, personnel, services and equipment that the County furnishes for the Events.
5. This License Agreement is not a permit. As set forth in sections 205.04 (Permits), of the Indian River County Code of Ordinances, the Applicant must obtain the necessary County use permits, which require the Applicant to timely obtain approvals of plans, including but not limited to, adequate sanitation facilities and sewage disposal, parking facilities, transportation of patrons, adequate medical facilities, adequate security and traffic control. Applicant shall be responsible for all costs associated with such facilities and services.
6. The County shall have the right, after coordination with the Applicant's authorized representative, to determine in its sole discretion the level of County staff necessary to service the facilities during the License Duration. Applicant shall be responsible for all additional costs for County staff and Applicant may request additional staff as needed.
7. Payment for each tournament, as described in Exhibit B, shall be paid in full fourteen (14) days prior to the start of each tournament. Applicant's failure to make any of the payments required hereunder in a timely manner shall constitute a material breach and shall result in the immediate termination of this License Agreement. All fees, costs and expenses, including, without limitation, attorney's fees, incurred by the County in the collection of any payment due hereunder shall be reimbursed by Applicant.
8. Applicant (including all artists, performers, entertainers, sound technicians, employees, and subcontractors of Applicant, and any other participating in the production of the Event) shall comply and ensure compliance with the following during the Event:
 - (a) The starting hours listed above may be adjusted to begin earlier upon approval of the County.
 - (b) The end hours as listed above may be adjusted to end later upon approval from the County.
 - (c) Applicant must discuss the possibility of starting or ending outside of the hours listed above on the Friday before each tournament date.

9. Undisclosed or unpermitted activities or hours shall be cause for this License Agreement to be voidable by the County at any time during the License Duration. Undisclosed and unpermitted activities shall be subject to cancellation of the Event, and Applicant shall be subject to damages, penalties and other legal and equitable remedies including, but not limited to full payment under this License Agreement.
10. Applicant shall not assign this License Agreement or any rights hereunder or sublet the Premises without the express prior written consent of the Deputy County Administrator or his/her designee.
11. In the event that the Premises or any other portion of the Ballfields are not vacated and cleaned by Applicant at the end of the License Duration, the County is hereby authorized to remove from the Premises, at the expense of Applicant, all goods, wares, merchandise and property of any and all kinds and descriptions placed or permitted therein by Applicant and which may be then occupying the same, and County shall not be liable for any damage or loss to such goods, wares, merchandise or other property which may be sustained either by reason of such removal or of the place to which it may be removed. Applicant hereby expressly releases County from any and all such claims for damages of whatsoever kind or nature and agrees to defend, indemnify and hold County harmless at Applicant's expense as to any claims for damages by third parties having interests in such goods, wares, merchandise and property, including costs and attorney's fees.
12. Applicant shall: (i) use and occupy the Premises in a safe and careful manner, including but not limited to properly covering any and all power cords; (ii) comply with all federal, state and local laws, statutes, rules, regulations and ordinances; (iii) use the Premises solely for the purposes provided above; (iv) not permit the Premises, or any part thereof, to be used for any unlawful purpose or in any manner that may result in or cause harm and/or damage to persons or property; (v) not post or exhibit or allow to be posted or exhibited signs, advertisements, show-bills, lithographs, posters or cards of any description inside or in front of, or on any part of the Premises, except with the prior written consent of County, which consent shall not be unreasonably withheld, conditioned, or delayed; and (vi) deliver to the County the Premises in as good a condition and repair, including all necessary trash or waste removal, as the same shall be found at the beginning of the License Duration. Additionally, Applicant:
 - (a) assumes all costs arising from the use of patented, trademarked or copyrighted materials, equipment, devices, processes, or dramatic rights used on or incorporated in the conduct of the Event. Applicant shall defend, indemnify and hold County harmless at Applicant's expense from all suits, actions, proceedings, damages, costs and expenses in law or equity, including attorney's fees, for or on account of any patented, trademarked or copyrighted materials, equipment, devices, processes or dramatic rights furnished or used by Applicant or its employees, invitees, licensees, contractors, assignees, performers, contestants and exhibitors, in connection herewith.
 - (b) shall not alter landscaping, fencing or any permanent structure nor shall there be any obstruction to ingress and egress to and from the Premises without the express written consent by the County.

- (c) acknowledges that the County shall have the sole right to collect and have the custody of articles left at the Premises by persons attending any Event given or held on the Premises, and Applicant or any person in Applicant's employ shall not collect or interfere with the collection or custody of such articles.
 - (d) acknowledges that the County reserves the right to eject any persons reasonably deemed violent or otherwise dangerous to health, safety and welfare.
 - (e) acknowledges that in the event that the Premises' Thorguard lightning detection system sounds an alarm warning the public about the proximity of lightning in the area, the Applicant will stop play and clear the fields until the all clear sound is made by the system.
 - (f) acknowledges that the County may immediately terminate the Event if the National Weather Service issues a severe weather warning, or imminent severe weather conditions develop in the area indicating a risk to public safety, or a state of emergency has been declared. Applicant hereby waives any rights and all claims for damages against the County that may result from the exercise of the rights reserved herein.
 - i. In the event any part of the Ballfields are damaged or unsafe for use to due to a hurricane, fire, water, or any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of the Agreement by the County impossible for the event, the County shall refund all fees to the Applicant.
 - (f) represents and warrants to the County that Applicant's employees, invitees, licensees, contractors, assignees, contestants, exhibitors and performers by their speech, song, music, conduct or manner will not violate or incite others to violate any statute, law, ordinance, rule, regulation or order of any federal, state, municipal or other governmental authority.
13. The County and its officers, agents and employees engaged in the operation and maintenance of the Premises reserve the right to enter upon and to have free access to the Premises at any and all times, which reservation is hereby acknowledged and agreed to by Applicant.
14. Applicant releases and forfeits any right of action against the County or its members, officials, employees and agents from any liabilities, claims for damages, losses, and costs which arise out of or in connection with the Events and to the fullest extent permitted by law, indemnifies, defends and saves the County and County's members, officials, officers, employees and agents harmless (1) against all liability, claims for damages, and suits for or by reason of any injury to any person, including death, and damage to any property for every cause in any way connected with the Event irrespective of negligence, actual or claimed, upon the part of the County, its agents and employees, except where caused by the willful and wanton acts of County officials, officers, employees and agents, and (2) from all expenses incurred by the County for police protection, fire protection and emergency medical services, restoration and clean up, sanitation and maintenance costs and expenses that are required to preserve public order and protect public health, welfare and safety on the Premises of the Event.
15. At least 30 days prior to the License Duration, the Applicant shall, without limiting Applicant's liability submit certificates of insurance naming "Indian River County, FL" as additional insured and shall:

Procure and maintain at Applicant’s sole expense, insurance of the types, coverages and amounts not less than stated below:

Schedule	Limits
Commercial General Liability – No more restrictive than ISO Form CG0001 (including property damage, personal injury, products / comp. ops. agg., premises, operations, and blanket contractual liability, and host liquor liability)	\$1,000,000 Each Occurrence Combined Single Limit
(The County and County’s members, officials, officers, employees and agents, shall be named as additional insureds under all of the above Commercial General Liability coverage).	

In the event the use of motor vehicles is an integral part of the Event (unless a separate ordinance is specifically applicable to the automobiles):

Automobile Liability (all automobiles-owned, hired or non-owned)	\$500,000 Combined Single Limit
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In the event the Applicant hires employees for the Event or is otherwise required to carry workers’ compensation insurance, the Applicant will provide evidence of workers' compensation insurance or exemption as required by Florida Workers Compensation Law as defined in Chapter 440, Florida Statutes. Applicant will assume responsibility for Applicant’s discretion in confirming that all of the Applicant’s contractors or subcontractors engaged in work for the Event have the appropriate workers’ compensation coverage. Such evidence will include evidence of workers’ compensation benefits and employer's liability insurance for the following minimum limits of coverage:

Workers Compensation Including coverage for any appropriate Federal Acts (e.g. Longshore and Harbor Workers Compensation Act, 33 USC §§ 901-952, and the Jones Act, 46 USC §§ 688 et seq.) where activities include liability exposures for events or occurrences covered by Federal statutes.	Florida Statutory Coverage
Employer's Liability	\$100,000 Each Accident \$500,000 Disease Policy Limit \$100,000 Each Employee/Disease

In the event that any services or activities of a professional nature are provided, and Risk Management determines the coverage is necessary, pursuant to (k) below:

Professional Liability (Errors and Omissions)	\$1,000,000 Each Occurrence/Claim
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In the event that children will be supervised in connection with the Event and Risk Management determines the coverage is necessary, pursuant to (k) below:

Sexual Molestation Liability	\$1,000,000 Each Occurrence/Claim
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- (b) Participants – Except as set forth below, the Applicant shall assume all responsibility for Applicant’s discretion in obtaining, if any, insurance from the Event’s contributing participants and subcontractors (such as caterers, vendors, production companies, entertainers, sponsors) in the types and amounts necessary to adequately protect the County and the County’s members, officials, officers, employees and agents.
- (c) Primary and Non-Contributory – The Applicant’s insurance will apply on a primary basis and will not require contribution from any insurance or self-insurance maintained by the County.
- (d) Deductibles – The deductibles of the insurance policies applicable to the Event shall be deemed customary and the responsibility of the Applicant and any named insureds.
- (e) Additional Insured – The Applicant’s insurance, except workers’ compensation and any additional coverages where it is unavailable, will name the Board of County Commissioners of Indian River County and County’s members, officials, officers, employees and agents, as additional insureds under all insurance coverages required for the Event.
- (f) Reporting Provision – The Applicant’s insurance shall be provided on an occurrence form. In the event that coverage is only available on a claims made form, the Applicant shall agree to maintain an extended reporting coverage for a minimum of two years past the expiration of the annual policy term.
- (g) Duration – Notwithstanding anything to the contrary, the Applicant’s liabilities intended to be covered by the insurance coverage(s) required under this section shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of particular policies for insurance coverages.
- (h) Sovereign Entities – State and federal agencies eligible for sovereign immunity may submit a statement of self-insurance for liability as allowed by the applicable state or federal statute. Such statement will be acceptable in place of insurance requirements defined herein.
- (i) Financial Responsibility – Applicant shall obtain insurance by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes, or a company that is declared as an approved Surplus Lines carrier under Chapter 626, Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best Rating of A-VII or better. Applicant must maintain continuation of the required insurance throughout the Event, which includes load-in, setup, tear down, and load-out.

- (j) Evidence of Financial Responsibility – Applicant must provide a certificate of insurance to the County’s Risk Manager, demonstrating the maintenance of the required insurance including the additional insured endorsement fifteen (15) days prior to the Event Date. Upon written request, the Applicant shall make its insurance policies and endorsements available to the County’s Risk Manager. The County’s Risk Manager shall approve the Applicant’s insurance if it complies with this License Agreement’s requirements, including, if any, additional insurance coverages deemed necessary by the Risk Manager. No material alteration or cancellation, including expiration and non-renewal of Applicant’s insurance, shall be effective until 30 days after receipt of written notice by the County from the Applicant or the Applicant’s insurance company.
 - (k) Discretionary Authority – Depending upon the nature of any aspect of any event and its accompanying exposures and liabilities, the County may, at its sole option, require additional insurance coverages not listed above, in amounts responsive to those liabilities, which may or may not require that the County also be named as an additional insured.
 - (l) Applicant is required to immediately notify the County of any incident, accident, occurrences and/or claims made in connection with the Event.
16. If default occurs on the part of the Applicant in fulfillment of any of the terms, covenants or conditions, including the timely submittal of all documents set forth in Section B, of this License Agreement, the County may terminate this License Agreement and decline to issue any and all permits necessary for the Event. In such case, the rent, taxes, fees, deposits and any other charges hereunder, whether accruing before or after such termination, shall be considered part of and inclusive of the County’s damages resulting from Applicant’s default. Applicant’s default hereunder shall be considered a default of any and all agreements by and between Applicant and the County, and any amounts due Applicant under its other agreements with the County may be used by the County to remedy Applicant’s defaults hereunder. Any remedy granted in this License Agreement to County shall be in addition to all other remedies available to County in law or equity, and not exclusive of such remedies.
17. In the event that the Applicant cancels all or any time or portion of the Premises reserved for the Event, the County must receive written notice. Applicants may be entitled to a refund according to the following schedule:
- (a) Cancellation prior to fourteen (14) days from the date of each tournament of the License Agreement Duration will receive a refund equal to 100% of the payment collected under Exhibit B.
 - (b) Cancellation prior to Five (5) business days from the date of each tournament of the License Agreement Duration will warrant a cancellation fee of \$250, the remainder of the balance paid for the tournament will be refunded or applied to the next tournament date.
 - (c) Cancellation due to inclement weather or acts of god will infer no cancellation fee and the paid amount will be refunded or applied to the next tournament as requested by the Applicant.
18. In the event that the Premises or any part thereof, or adjacent premises required for access thereto, should be so damaged or destroyed by fire or other cause, without the fault of Applicant, as to prevent the use of the Premises for the Events, then this License Agreement shall terminate. In such event,

the County shall be paid for all items of expense incurred by it under this License Agreement and any rental accrued prior to such destruction or damages, but Applicant shall be relieved of paying rent accruing thereafter. For purposes of this paragraph, causes or events not within Applicant's control shall include, without limitation, acts of God, floods, earthquakes, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within Applicant's control, and thus not falling within this Section 12, shall include, without limitation, Applicant's financial inability to perform or comply with the terms and conditions hereof, economic hardship, a featured act's failure or refusal to perform or appear, and misfeasance, malfeasance or nonfeasance by any of Applicant's directors, officers, employees, contractors, or agents.

- (a) In the event any part of the Ballfields are damaged or unsafe for use to due to a hurricane, fire, water, or any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of the Agreement by the County impossible for the event, the County shall refund all fees to the Applicant.
19. Applicant acknowledges receipt of and agrees to comply with the Parks' Rules and Regulations which are attached hereto as Exhibit C and incorporated by reference.
20. Applicant assumes all risks of damages to and loss by theft or otherwise of the furniture, appliances or other property of Applicant or Applicant's employees, invitees, licensees, contractors, assignees, performers, exhibitors, contestants and those otherwise contracting with Applicant, and Applicant hereby expressly releases and discharges County from any and all liability for any such loss and agrees to defend, indemnify and hold County harmless from all claims and actions for damages as to such losses, including attorney's fees.
21. County and Applicant retain all television, film, recording and licensing rights as to any Event that takes place in or on the Premises, provided such is permitted within the Artist Contract. County will coordinate such recordings with Applicant's marketing representative. In the event of artist recording restrictions, Applicant shall request the right to allow the County to take generic production and still photographs of the Event.
22. Unless excused by impracticability or impossibility of performance or other lawful contractual defense, any attraction, act, or person contracted to appear during the Event as an entertainer shall appear at the published time or within one hour thereafter. Applicant shall not advertise or permit any advertising that a particular performer will appear for the Event until after a contract for the performer's appearance has been executed and a copy thereof has been provided to the County; otherwise, the County may terminate this License Agreement and cancel the Event.
23. No exception or waiver of any provision of this License Agreement shall be effective unless in writing signed by the Deputy County Administrator. No such waiver shall be held to waive the same provision on a subsequent occasion or be construed to constitute a waiver of any other provision of this License Agreement. This License Agreement contains the entire agreement between the parties, unless modified or amended by a subsequent written agreement executed by the parties. This License Agreement shall be governed by the laws of the State of Florida, and venue for the resolution of disputes hereunder shall be in a court of law in Indian River County, Florida.

24. When applicable, at least 14 days prior to each Event Date, Applicant shall submit proof of application for a “Special Events & Tent Sales Inspection Permit” from the Indian River County Fire Prevention Bureau pursuant to Florida Fire Prevention Code: NFPA 1, Chapter 25, NFPA 101 & 102 and IRC Ordinance Section 208.11.
25. All of the Applicant’s subcontractors shall have all of the necessary local, state and federal licenses for the services provided at the Event.
26. All deadlines falling on a weekend or holiday shall be accelerated to the prior business day.
27. Animals will not be permitted onto the Ballfields during an event unless they are considered a Service Animal. The Americans with Disabilities Act (ADA) 2010 Regulations define a service animal as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.” C.F.R. § 35.104 and § 36.104 (2010). Indian River County Code of Ordinances also states: “*Dogs prohibited.* No dogs are allowed in any park or recreational facility unless specifically posted as allowable by the department. (205.3 paragraph 22).
28. Any notice, request, instruction, demand, consent or other communication required or permitted to be given under this License Agreement shall be in writing and shall be given in writing and delivered by email or US Mail, Certified – Return Receipt Requested, to the following:

Indian River County Parks, Recreation and Conservation Department
 Attn: Gustavo Vergara, Assistant Director
 1590 9th Street SW
 Vero Beach, FL 32962

Applicant:
Name:
Address:
Email:

29. Applicant acknowledges that the County makes no guarantees to Applicant, express or implied, as to any pecuniary gain that Applicant may have intended to result from the Event.
30. The recitals and WHEREAS clauses are true, accurate and correct and are hereby incorporated herein by this reference.
31. Services Provided by the County:
 - (a) County reserves the right to determine the adequacy of outside services procured by the Application under Section B as a condition of the Permit.

IN WITNESS WHEREOF, the parties, by and through their authorized representatives' signatures below, do hereby execute this License Agreement on this 9th day of January, 2024.

APPLICANT:

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY, FLORIDA

By: _____
Person, Affiliation/Position

By: _____
Susan Adams, Chairman

Approved by BCC: _____, 2024.

ATTEST:

By: _____
Ryan L. Butler
Clerk of Court and Comptroller

Approved as to form and legal sufficiency:

William K. DeBaal, County Attorney