

# EXHIBIT A

## FACILITY USAGE AGREEMENT FOR ASSOCIATION USE OF DERAL BURROW BASEBALL PARK

### **Jonesboro City Stars Baseball and Softball Program**

This Agreement is made by and between Jonesboro City Stars Baseball and Softball Program (JCSBSP) and the CITY OF JONESBORO PARKS AND RECREATION ("CITY"), on this 2/22/2010 (the "Effective Date").

WHEREAS, JCSBSP is a 501 (c) 3 corporation is organized to offer free baseball and softball activities to the youth of the Jonesboro area; and

WHEREAS, the CITY is the owner of public park amenities known as the Deral Burrow Baseball Park; and

WHEREAS, JCSBSP is seeking to lease the Deral Burrow Baseball Park on an annual basis to provide free City Stars baseball and softball games and tournaments;

WHEREAS, JCSBSP and the CITY desire to enter this agreement for the purpose of evidencing the agreement of the parties with regard to use of the Facilities by JCSBSP and the respective obligations of the parties regarding the use and maintenance of the Facilities;

#### **I. Term**

- (a) The Initial Term. Unless otherwise terminated pursuant to the terms hereof, the initial term of this Agreement is for a period of three years (3) years commencing on the Effective Date and ending at midnight on the third (3rd) anniversary thereof.
- (b) Extended Term. Upon the expiration of the Initial Term of this Lease, the term of this Agreement shall automatically be extended for additional one (1) year periods (the "Extended Terms") unless either party hereto shall give the other notice in writing at least thirty (30) days prior to the expiration of the Term then in effect that it does not intend to extend the term of this Agreement. The Extended Term hereunder shall be subject to all the terms and conditions of this Agreement.

#### **II. Use of Facilities by JCSBSP**

1. During the period of March 1st to September 31<sup>st</sup> of each year during the Term of this Agreement. JCSBSP shall have the primary right to use the CITY'S baseball Facilities and concession stands for JCSBSP's regular spring and fall season, regular season make-up games and tournaments. This period shall be referred to as the "Primary Usage Period." City reserves the right to assign baseball fields to other parties when fields are not in use by JCSBSP.

2. JCSBSP understands and agrees that CITY will maintain a master schedule for the Facilities and JCSBSP will provide schedules of games one week prior to the start of each baseball season during the Term of this Agreement. JCSBSP understands that except for the Primary Usage Period the Facilities are available on a first-come first-serve basis.
3. JCSBSP has the "primary right" to use concession stands for any and all games, tournaments, or events that take place at the Facilities during the "Primary Usage Period." If JCSBSP elects not to provide concessions during any such event during the Primary Usage Period, then the organization holding the event may provide concessions outside of the concession stand. JCSBSP understands and agrees that CITY will maintain a master schedule for the Facilities concession stands. JCSBSP understands that except for the Primary Usage Period, CITY reserves the right to operate the concession stands.
4. JCSBSP understands and agrees that at times weather and/or field conditions may result in CITY denying the use of certain fields during the Primary Usage Period. JCSBSP understands that the Parks and Recreation Administration has the authority to deny use of the fields, but CITY agrees that use will not be unreasonably denied.
5. CITY shall at all times have the right to inspect the Facilities being used by JCSBSP and all JCSBSP sponsored activities related to the use of the Facilities.
6. CITY shall issue key(s) to JCSBSP for use of the Facilities. The keys may not be duplicated by JCSBSP. JCSBSP agrees to return "seasonal use keys" to the CITY within two weeks after the conclusion of the term of the season. Upon failure to return any of said keys a fee will be charged for the replacement of keys and locks. JCSBSP will be charged a fee of \$25 for each lock that has to be changed as a result of a key that is not returned to the CITY at the end of the season.
7. JCSBSP understands and agrees that, except as provided in Article III below, no CITY maintenance equipment will be used by JCSBSP to conduct games, tournaments, camps or other events. CITY may provide supplemental sports equipment necessary to administer activities and events.

### **III. Obligations of CITY**

CITY agrees to:

Provide the following maintenance and repairs, to the best of its ability given staff and budget, in a manner generally equal to normal CITY maintenance:

1. Maintain all fences and gates.
2. Maintain all turf areas on the fields to include mowing, weed control, fertilizing and herbicide spraying.

3. Provide sand, soil, etc. to be used in leveling or backfilling low areas when deemed necessary.
4. Provide infield mix to top dress the infields as budgeted.
5. Provide utilities for concession stands, lighting fields and parking.
6. Provide and maintain parking lots.
7. Maintain all bleachers, benches and dugouts.
8. Haul off trash that has been deposited in trash receptacles as needed and de-litter the grounds as needed.
9. Maintain structural integrity of concession stands, restrooms and storage buildings, bleacher covers, dugout covers and concrete areas, including repair or replacements of damaged roofs, doors, and windows.
10. Maintain all area and field lighting systems. Repair or replace lights, poles, wiring fuses, transformers and other equipment related to the lighting of each field to be used by JCSBSP.
11. Maintain heating, air conditioning units and utilities to the concession stands.
12. Reserve the right to utilize the baseball Facilities when JCSBSP league games are not scheduled.

It is understood and agreed the CITY's obligations under this Agreement will be performed as soon as, and to the extent that, budgeted funds are available for performance of its obligations. Expenses must be agreed upon by both parties. In no event shall CITY be obligated to JCSBSP for any monetary damages.

#### **IV. Obligations of JCSBSP**

JCSBSP shall:

1. Provide free youth baseball and softball for Jonesboro area youth. The program shall be a well administered program, of high quality with attractive uniforms and quality awards.
2. Shall be permitted to charge admission to the park for spectators, sell sponsorships of fields, facility structures and teams.
3. Shall be permitted to schedule fee based participation in a baseball or softball league and/or tournaments as long as the revenue is used to support a free league with 400 participants and the majority (greater than 50%) of the games are for the participants registered in the free City Stars program.
4. At no cost or expense to the CITY, provide daily field prep for JCSBSP games including dirtwork and striping.
5. Provide the City of Jonesboro one voting position on the organizational board.
6. JCSBSP shall not make any permanent additions to the Facilities without written permission from the City. This includes but is not limited to signs, structures, concrete, seating, goals, and fields.

7. Furnish to CITY a complete game schedule, participant database and rosters for the season. The complete game schedule shall be submitted at least one week prior to the first regular season game. The schedule may be adjusted as the season progresses and will serve as a guide for maintenance of the Facilities. Schedules must be approved by City before being distributed to teams. JCSBSP shall provide sufficient notice of all scheduled make-up game times (preferably a one-week notice).
8. Schedule and meet with CITY Director prior to the season to discuss schedule, field playability and department guidelines.
9. Operate its own concession stand at Facilities, and all revenues generated from such use shall belong to and be for the sole and exclusive use of the JCSBSP. JCSBSP agrees to abide by any and all health code requirements for food services. Storage of flammable, hazardous, or toxic substances in the concession stand is prohibited.
10. Storage of flammable, hazardous or toxic substances must be stored in approved containers and may be stored in the shed on site.
11. JCSBSP is responsible for any of their items stolen or damaged, during the course of the year.
12. Request approval by the CITY for placement of any and all additional concession stands and/or trailers and follow City, County and State Health Codes.
13. Not discriminate against any person or persons because of race, color, religion, sex, disability or national origin.
14. Establish procedures to ensure individuals with criminal histories that include drug charges, assault charges and sexual assault charges are not permitted to coach or work in the JCSBSP. JCSBSP shall maintain a list of approved coaches for one year.
15. Not engage in any business on the Facility or do anything in connection therewith which shall be in violation of any existing state or federal law or municipal ordinances, or use the same in such manner as to constitute a nuisance. CITY reserves the right to exclude any individual or group from the Facility based on conduct, which it determines in its discretion to be objectionable or contrary to City interests. JCSBSP hereby consents to the exercise of such authority by City over its members, officials and agents.
16. JCSBSP agrees to be solely responsible for damages due to negligence or inappropriate use of the facilities by paid representatives of JCSBSP. Repair of damage to facilities shall conform to City of Jonesboro Building Codes and require approval of the City Inspector. Nothing contained herein shall be construed to defeat or diminish JCSBSP's right to seek recourse against those persons causing the damage.
17. Follow rules that have been established by the CITY Parks and Recreation Planning and

Advisory Committee and City Staff concerning conduct at CITY fields. Examples of rules may include but are not limited to:

- Vehicles may not be driven up and parked at fields during activities.
  - No rollerblading, scooters, etc. are allowed inside the Concession Stand area.
  - No smoking in bleacher areas.
  - Only authorized vehicles may be driven on sidewalks.
  - Participant and spectator parking only in parking lots.
  - No pets
18. Complete a “Request To Use Facilities” form to hold any/all non-game activities which are in addition to the contract. Activities may include, but not be limited to camps, clinics and registration. This written request must be presented at least seven (7) days in advance in writing to the CITY Parks and Recreation Administration. Events that are not fund raising events for City Stars taking place at Northside Baseball Park outside of the primary use period may be subject to the regular rates established by the City of Jonesboro.
19. Activity initiated by JCSBSP Coach or director that occurs on fields that have been closed will result in a fine to JCSBSP that will be based on the cost of damage repair incurred by CITY as reasonably established by Jonesboro Parks and Recreation.
20. Prior to the commencement of each baseball season during the Term of this Agreement, JCSBSP will provide to the CITY:
- proof of insurance and indemnification
  - financial review of expenditures and revenues with CITY parks director and Mayor from previous year report
  - list of current officers and board members of JCSBSP with addresses, phone numbers and e-mail (if applicable). JCSBSP agrees to notify CITY of any changes in board members
  - bylaws and articles of incorporation
  - participant data base, team rosters and schedules

## **V. Default of JCSBSP**

a) If JCSBSP defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from CITY, JCSBSP fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then CITY may, at its option (but shall not be required to do so), perform the same for the account of JCSBSP and any amount paid or expenses incurred by the City in the performance thereof shall be deemed additional rent and payable when the next installment of rent shall become due.

b) Additionally, if JCSBSP defaults in performance of this Agreement, and after

written notice from CITY, JCSBSP fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then CITY may terminate this Agreement.

c) If the Facilities are abandoned by JCSBSP, the CITY may terminate this Agreement. "Abandonment" shall mean no competitive play taking place on allocated field(s) during one full priority use period.

d) Should such default occur JCSBSP shall not be permitted to use the City Stars name for any purpose including, but not limited to organizational name, tournament names marketing, advertising, sponsorship, fund raising, uniforms, and concessions.

## **VI. Default of CITY**

a) If CITY defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from JCSBSP, CITY fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then JCSBSP may, at its option (but shall not be required to do so), perform the same for the account of CITY but the CITY shall not be responsible for any costs incurred by JCSBSP.

b) Additionally, if CITY defaults in performance of this Agreement, and after written notice from JCSBSP, CITY fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then JCSBSP may terminate this Agreement.

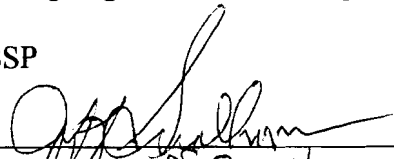
## **VII. Assignability and Exclusivity**

This Agreement is a privilege for the benefit of JCSBSP only and may not be assigned in whole or in part by JCSBSP to any other person or entity. Both parties understand that JCSBSP use of the Facilities is nonexclusive, except during the Primary Usage Period.

## **IX. Notices**

Unless otherwise provided herein, any notice, tender or delivery to be given hereunder by either party to the other may be effected by personal delivery with a signed receipt, in writing or by registered or e-mail, or certified mail, postage prepaid, return receipt requested. Notice shall be effective upon signing the date of the signing of the receipt.

JCSBSP

By:   
Name: Jeff Smallman  
Title: Director

CITY:  
Jason C. Wilkie; Director  
CITY OF JONESBORO  
Parks and Recreation  
1212 S. Church St.  
Jonesboro, AR 72401

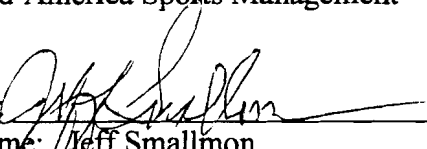
Any such notice shall be effective upon receipt if delivered in person or upon actual deposit in an official receptacle of the United States Postal Service, if mailed as aforesaid.

**X. Miscellaneous Provisions.**

- 1) No modification of this Agreement shall be effective unless it is made in writing and is signed by the authorized representative's of the parties hereto.
- 2) This Agreement shall be construed under and in accordance with the laws of the State of Arkansas and venue for any litigation concerning this Agreement shall be in Craighead County, Jonesboro, AR.
- 3) Nothing in this Agreement shall be construed to make the CITY or its respective agents or representatives liable in situations it is otherwise immune from liability.
- 4) In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 5) Each party represents to the other that the individual signing this Agreement below has been duly authorized to do so by its respective governing body, and that this Agreement is binding and enforceable as to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below.

Mid-America Sports Management

By:   
Name: Jeff Smallmon  
Title: Manager  
Date: 2-16-10