

DRAFT
AGREEMENT

Jonesboro City Stars Booster Club

This Agreement is made by and between JONESBORO CITY STARS BOOSTER CLUB, Inc. an Arkansas 501 (c) 3 corporation, ("JCSBC") and the CITY OF JONESBORO PARKS AND RECREATION ("CITY"), on this first day of January 2004 (the "Effective Date").

WHEREAS, JCSBC is an Arkansas not for profit organization operating exclusively for charitable purposes by providing positive and active moral support and assistance for the benefit of the City Stars Youth Sports Program of Jonesboro, Arkansas, and by providing sound financial assistance through fund raising activities and by the acceptance of donations for the City Stars Program; and to do all things incidental to or desirable in connection with the foregoing.

WHEREAS, the CITY is the owner and operator of certain public park amenities known as the Earl Bell Community Center, Parker Community Center, Allen Park Community Center, Joe Mack Campbell Park, Allen Park, Parker Park, hereafter referred to as the "FACILITIES"; and

WHEREAS, the CITY is the administrator of free recreational youth programs known as "City Stars."

WHEREAS, JCSBC and the CITY desire to enter this agreement to evidence the agreement of the parties with regard to the administration of the City Stars free recreational youth programs.

NOW, THEREFORE in consideration of the promises and the mutual covenants and obligations contained herein, the parties agrees as follows:

I. Term

- a. Unless otherwise terminated pursuant to the terms hereof, the term of this Agreement is for a period of five (5) years commencing on the Effective Date and ending at midnight on the fifth (5th) anniversary thereof.

III. Mutual understandings and agreements

- a. CITY and JCSBC understand and agree that CITY and JCSBC have a mutual goal of providing youth athletics at no cost for Jonesboro youth.
- b. CITY and JCSBC understand and agree that JCSBC and the CITY shall work together to achieve the goal stated herein.
- c. CITY and JCSBC understand and agree that CITY officials may be JCSBC officers and members of JCSBC and may perform duties that benefit both the CITY and the JCSBC while under the employment of the CITY.

- d. CITY and JCSBC understand and agree that CITY officials and JCSBC officers and members may mutually administer programs, events and concessions to the benefit, financial or otherwise, of the CITY, JCSBC and City Stars.
- e. CITY and JCSBC understand and agree that booster club funds that are held in custody for the booster club by the city shall be administered according to CITY finance policies and procedures.

IV. Use of Facilities

- a. CITY and JCSBC understand and agree that no fee shall be charged the JCSBC for use of FACILITIES.
- b. CITY and JCSBC understand and agree that the CITY shall schedule and administer the City Stars youth athletic practices, games and events at or in CITY FACILITIES and at or in other locations approved by the CITY.
- c. CITY and JCSBC understand and agree that the CITY shall schedule and administer athletic leagues, programs and events in CITY FACILITIES or at other locations approved by the CITY to the benefit, financial or otherwise, of CITY, JCSBC and City Stars.
- d. CITY and JCSBC understand and agree that CITY maintenance equipment may be used by JCSBC to conduct games, tournaments, camps or other events to the benefit, financial or otherwise, of CITY, JCSBC and City Stars.
- e. CITY and JCSBC understand and agree that CITY will maintain a master schedule for the FACILITIES and JCSBC will schedule meetings and events through the CITY. JCSBC understands that except for the "Primary Usage Period," defined in other CITY agreements, the FACILITIES are available on a first-come first-serve basis.
- f. CITY and JCSBC understand and agree that JCSBC has the right to use concession stands and/or kitchens for any and all programs, games, or events that take place at the FACILITIES. If JCSBC elects not to provide concessions during any such event then another organization may provide concessions outside of the concession stand. JCSBC understands and agrees that CITY will maintain a master schedule for the FACILITIES concession stands. JCSBC understands that the CITY reserves the right to operate the concession stands.
- g. CITY and JCSBC understand and agree that at times weather and/or field conditions may result in CITY denying the use of certain fields. JCSBC understands that the Supervisor for the FACILITIES has the authority to deny use of the fields, but CITY agrees that use will not be unreasonably denied.
- h. CITY and JCSBC understand and agree that the CITY shall at all times have the right to inspect the FACILITIES being used by JCSBC and all JCSBC sponsored activities related to the use of the FACILITIES.
- i. CITY and JCSBC understand and agree that the CITY may issue key(s) to JCSBC for use of the FACILITIES. The keys may not be reproduced or duplicated by JCSBC. JCSBC 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. JCSBC 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.

V. Obligations of CITY

- a. CITY shall donate \$5,100 per year for five years beginning in 2004 from funds generated from the Coca Cola Sponsorship of the Iron Will Endurance Series. These funds consist of the \$10,500 donated for the annual sponsorship of the Iron Will Endurance Series and the initial lump sum payment of \$15,000 to start the Iron Will Endurance Series.
- b. CITY agrees to provide the following maintenance and repairs in a manner generally equal to normal CITY maintenance and repair of similar CITY recreational FACILITIES:
 - 1) Maintain all fences and gates.
 - 2) Maintain all turf areas on the fields to include mowing, weed control, fertilizing and herbicide spraying.
 - 3)
 - 4) Provide sand, soil, etc. to be used in leveling or backfilling low areas when deemed necessary.
 - 5) Provide utilities for lighting fields, parking and walking track.
 - 6) Provide and maintain parking lots
 - 7) Provide secured storage for JCSBC equipment.
 - 8) Maintain all bleachers, benches and dugouts.
 - 9) Haul off trash that has been deposited in trash receptacles as needed and de-litter the grounds as needed
 - 10) Maintain structural integrity of concession stands, restrooms and storage buildings, dugouts, and concrete areas, including repair or replacements of damaged roofs, doors, and windows.
 - 11) 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.
 - 12) Maintain all scoreboards and control systems
 - 13) Maintain field irrigation system and watering schedules of turf areas.
 - 14) Maintain adjacent park irrigation systems and the scheduling of watering turf areas.
 - 15) Maintain restroom FACILITIES, including cleaning, stocking with paper towels and toilet tissue.
 - 16) Maintain, repair or replace parking areas.
 - 17) Promote City Stars program in the CITY'S brochure.
 - 18) Provide a meeting place for JCSBC Board meetings at no cost, based upon availability, and provided JCSBC makes reservations in advance.
 - 19) Take calls for information and refer interested parties to JCSBC when necessary.
- c. 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. If CITY is unable to fulfill its obligation due to budget constraints, JCSBC may, but shall not be obligated to perform CITY's duties and shall be entitled to deduct the cost from the payments required to be made by JCSBC

to CITY under Article IV. In no event shall CITY be obligated to JCSBC for any monetary damages.

VI. Obligations of JCSBC

a. JCSBC shall:

- i. Contract with individuals for the purpose administering City Stars refereeing, score keeping and field direction.
- ii. Contract with individuals for the purpose of administering CITY programs, activities and events that, financially or otherwise, benefit the CITY and/or JCSBC (i.e. The Crag, Youth Tackle Football, Iron Will Endurance Series, etc).
- iii. Ensure that contracted individuals have liability insurance and/or are aware of the liability risks associated with the activity in which they are contracted for.
- iv. JCSBC 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.
- v. 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 JCSBC. JCSBC agrees to abide by any and all health code requirements for food services. Storage of flammable, hazardous, or toxic substances at the FACILITIES is prohibited.
- vi. JCSBC is responsible for any of their items stolen or damaged, during the course of the year.
- vii. Request approval by the CITY for placement of any and all additional concession stands and/or trailers. Additional concession stands and/or trailers must follow City, County and State Health Codes.
- viii. Not discriminate against any person or persons because of race, color, religion, sex, disability or national origin.
- ix. Not engage in any business on the FACILITIES or do anything in connection therewith which shall be in violation of the JCSBC charter, existing CITY contracts, any 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 FACILITIES based on conduct, which it determines in its discretion to be objectionable or contrary to City interests. JCSBC hereby consents to the exercise of such authority by City over its members, officials and agents.
- x. JCSBC shall follow rules that have been established by the CITY Parks and Recreation Board and City Staff concerning conduct at CITY fields. Examples of rules may include but are not limited to:
 1. Vehicles may not be driven up and parked at fields during activities.
 2. No metal cleats may be worn on the walkways. No rollerblading, scooters, etc. are allowed inside the Concession Stand area.
 3. No smoking in bleacher areas.
 4. Only authorized vehicles may be driven on sidewalks. Participant

and spectator parking only in parking lots.

5. No pets

xi. Upon signing this agreement JCSBC will provide to the CITY:

1. current by-laws of JCSBC

2. financial review of expenditures and revenues from previous year with CITY parks director, assistant director for programs and Mayor

3. annual financial review from a third party auditor

4. list of current officers and board members of JCSBC with addresses, phone numbers and e-mail (if applicable). JCSBC agrees to notify CITY of any changes in board members

VII. Default of JCSBC

a. If JCSBC defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from CITY, JCSBC 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 JCSBC and any amount paid or expenses incurred by the Landlord in the performance thereof shall be deemed additional rent and payable when the next installment of rent shall become due.

b. Additionally, if JCSBC defaults in performance of this Agreement, and after written notice from CITY, JCSBC 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.

VIII. 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 JCSBC, 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 JCSBC may, at its option (but shall not be required to do so), perform the same for the account of CITY and any amount paid or expenses incurred by the JCSBC in the performance thereof shall be deducted from the amounts required to be paid by JCSBC to CITY under Article IV.

b. Additionally, if CITY defaults in performance of this Agreement, and after written notice from JCSBC, 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 JCSBC may terminate this Agreement.

IX. Assignability and Exclusivity

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

VIII. 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.

City Stars Booster Club

By: Duce O'Brien
Name: Duce O'Brien
Title: President