

# EXHIBIT A

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

### **Mid-America Sports Management**

This Agreement is made by and between Smallmon, Haynes and McGuire LLC doing business as Mid-America Sports Management ("MASM") and the CITY OF JONESBORO PARKS AND RECREATION ("CITY"), on this 19<sup>th</sup> of May, (the "Effective Date").

WHEREAS, MASM is an limited liability corporation organized to offer sporting activities to the youth of northeast Arkansas; and

WHEREAS, the CITY is the owner of that certain public park amenities known as the "Deral Burrow Baseball Park", and hereafter referred to as the "Facilities"; and

WHEREAS, MASM 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 MASM and the respective obligations of the parties regarding the use and maintenance of the Facilities;

WHEREAS, MASM is seeking a long-term lease for the Deral Burrow Baseball Park for baseball games and tournaments;

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

#### **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 two (2) years commencing on the Effective Date and ending at midnight on the second (2nd) 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 MASM**

- 1) During the period of March 1st to September 31<sup>st</sup> of each year during the Term of this Agreement. MASM shall have the primary right to use the CITY'S baseball Facilities and concession stands for MASM's regular spring and fall season,

regular season make-up games and four 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 MASM. CITY will notify City Water and Light of the priority dates subsequent to the signing of the contract each year.

- 3) MASM understands and agrees that CITY will maintain a master schedule for the Facilities and MASM will provide schedules of games one week prior to the start of each baseball season during the Term of this Agreement. MASM understands that except for the Primary Usage Period the Facilities are available on a first-come first-serve basis.
- 4) MASM 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 MASM 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. MASM understands and agrees that CITY will maintain a master schedule for the Facilities concession stands. MASM understands that except for the Primary Usage Period, CITY reserves the right to operate the concession stands.
- 5) MASM 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. MASM understands that the Park Supervisor for the Facilities has the authority to deny use of the fields, but CITY agrees that use will not be unreasonably denied.
- 6) CITY shall at all times have the right to inspect the Facilities being used by MASM and all MASM sponsored activities related to the use of the Facilities.
- 7) CITY shall issue key(s) to MASM for use of the Facilities. The keys may not be reproduced or duplicated by MASM. MASM 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. MASM 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.
- 8) MASM understands and agrees that, except as provided in Article III below, no CITY maintenance equipment will be used by MASM to conduct games, tournaments, camps or other events. MASM will provide the equipment necessary to administer its own activities and events.
- 10) If MASM should desire to use the CITY'S baseball Facilities for additional tournaments, special events or programs MASM shall complete an Application for Use of Facilities. Any and all additional, tournaments or special programs shall not be included in this Agreement, but shall require a separate written

agreement between the parties. All dates and conditions of the additional tournaments or special programs shall be finalized and furnished to CITY by the beginning of the season in which the additional tournament or special program is to be held.

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

CITY agrees to:

- 1) 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:
  - a) Maintain all fences and gates.
  - b) Maintain all turf areas on the fields to include mowing, weed control, fertilizing and herbicide spraying.
  - d) Provide sand, soil, etc. to be used in leveling or backfilling low areas when deemed necessary.
  - e) Provide utilities for lighting fields and parking.
  - f) Provide and maintain parking lots.
  - i) Maintain all bleachers, benches and dugouts (except for the initial repair performed by MASM as agreed between the parties prior to this agreement).
  - j) Haul off trash that has been deposited in trash receptacles as needed and de-litter the grounds as needed.
  - k) Maintain structural integrity of concession stands, restrooms and storage buildings, and concrete areas, including repair or replacements of damaged roofs, doors, and windows.
  - l) 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 MASM.
  - q) Maintain, repair or replace parking areas.
- 3) Reserve the right to utilize the baseball Facilities when MASM 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. If CITY is unable to fulfill its obligation due to budget constraints, MASM 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 MASM to CITY under Article IV. Expenses must be agreed upon by both parties. In no event shall CITY be obligated to MASM for any monetary damages.

### **IV. Obligations of MASM**

MASM shall:

- 1) Pay a usage fee to the CITY. The usage fee shall be used to offset the cost of materials for seeding, fertilizing, and weed control for the baseball complex for the calendar year according to the following schedule:
  - a. 2009: \$4,000
  - b. 2010: \$4,400
  - c. 2011: \$4,840
  - d. 2012: \$5,324
  - e. 2013: \$5,856
  - f. The annual fee for each period shall be paid to the City of Jonesboro on the anniversary of the contract each year.
- 2) Pay for the annual cost top dressing field dirt material. City of Jonesboro requests that any infield dirt be purchased as needed as agreed by MASM.
- 3) At no cost or expense to the CITY, provide initial maintenance to facilities as agreed upon by the CITY and MASM and daily field prep for MASM games.
- 4) MASM 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.
- 5) Furnish to CITY a complete game schedule 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. Game schedules must be approved by City before being distributed to teams. MASM shall provide sufficient notice of all scheduled make-up game times (preferably a one-week notice).
- 6) Schedule and meet with CITY Director prior to the season to discuss schedule, field playability and department guidelines.
- 7) 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 MASM. MASM 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.
- 8) MASM is responsible for any of their items stolen or damaged, during the course of the year.
- 9) Pay for utilities (i.e. electricity, water and telephone) for the concession stand during the Primary Usage Period.
- 10) 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.

- 11) Not discriminate against any person or persons because of race, color, religion, sex, disability or national origin.
- 12) 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 MASM Craighead/Poinsett Little League.
- 13) 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. MASM hereby consents to the exercise of such authority by City over its members, officials and agents.
- 14) MASM agrees to be solely responsible for any and all damages related to and arising out of MASM's use of the Facilities during the term of the Agreement when the Facilities are being used by MASM. This includes, but is not limited to, any and all persons associated with MASM who use the Facilities during the terms of the Agreement. MASM agrees to be solely responsible for all repairs and costs of repairs to the Facilities for any and all damages. Repair of damage to concessions stand 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 MASM's right to seek recourse against those persons causing the damage.
- 15) 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:
  - 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
- 16) 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, tournaments, clinics and registration. This written request must be presented at least seven (7) days in advance in writing to the CITY Director of Parks and Recreation for approval.
  - a. Events 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.

- 17) Activity initiated by MASM Coach or director that occurs on fields that have been closed will result in a fine to MASM that will be based on the cost of damage repair incurred by CITY as reasonably established by Jonesboro Parks and Recreation.
- 18) Prior to the commencement of each baseball season during the Term of this Agreement, MASM 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 MASM with addresses, phone numbers and e-mail (if applicable). MASM agrees to notify CITY of any changes in board members
  - schedule of games including teams, date, time and field

#### **V. Default of MASM**

a) If MASM defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from CITY, MASM 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 MASM 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 MASM defaults in performance of this Agreement, and after written notice from CITY, MASM 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 MASM, the CITY may terminate this Agreement. "Abandonment" shall mean no competitive play taking place on allocated field(s) during the entire Term of the agreement.

#### **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 MASM, 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 MASM 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 MASM in the performance thereof shall be deducted from the

amounts required to be paid by MASM to CITY under Article IV.

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


**VII. Assignability and Exclusivity**

This Agreement is a privilege for the benefit of MASM only and may not be assigned in whole or in part by MASM to any other person or entity. Both parties understand that MASM 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.

MASM

By:   
Name: Jeff Smallmon  
Title: MASM

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.**

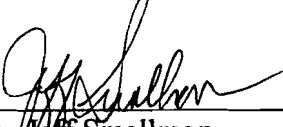
- 1) No modification of this Agreement shall be effective unless it is made in writing and is signed by the authorized representative's of the parties hereto.
- 2) This Agreement shall be construed under and in accordance with the laws of the State of Arkansas and venue for any litigation concerning 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: Director MASM  
Date: 5-19-2009