



City of Jonesboro

Municipal Center
300 S. Church Street
Jonesboro, AR 72401

Meeting Agenda Public Services Council Committee

Tuesday, March 15, 2022

4:30 PM

Municipal Center, 300 S. Church

1. Call To Order

2. Roll Call by City Clerk April Leggett

ELECTION OF A CHAIR

3. Approval of minutes

MIN-21:081 MINUTES FOR THE PUBLIC SERVICES COMMITTEE MEETING ON SEPTEMBER 21, 2021

Attachments: [Public Services Minutes 09212021](#)

4. New Business

RESOLUTIONS TO BE INTRODUCED

RES-22:054 A RESOLUTION TO CONTRACT WITH THE JONESBORO BASEBALL BOOSTERS

Sponsors: Parks & Recreation

Attachments: [JBB 2022 Agreement 2-23-22](#)

RES-22:055 A RESOLUTION AUTHORIZING A FACILITY USAGE AGREEMENT WITH CHRISTMAS ATTRACTIONS, LLC FOR JOE MACK CAMPBELL PARK

Sponsors: Parks & Recreation and Finance

Attachments: [Christmas at the Park Agreement](#)

5. Pending Items

6. Other Business

7. Public Comments

8. Adjournment



City of Jonesboro

300 S. Church Street
Jonesboro, AR 72401

Text File

File Number: MIN-21:081

Agenda Date:

Version: 1

Status: To Be Introduced

In Control: Public Services Council Committee

File Type: Minutes

MINUTES FOR THE PUBLIC SERVICES COMMITTEE MEETING ON SEPTEMBER 21,
2021



City of Jonesboro

Municipal Center
300 S. Church Street
Jonesboro, AR 72401

Meeting Minutes Public Services Council Committee

Tuesday, September 21, 2021

4:30 PM

Municipal Center, 300 S. Church

1. Call To Order

2. Roll Call by City Clerk April Leggett

Present 5 - Joe Hafner; Bobby Long; Chris Gibson; Ann Williams and Brian Emison

3. Approval of minutes

[MIN-21:022](#)

Minutes for the Public Services Committee meeting on March 16, 2021

Attachments: [Minutes](#)

A motion was made by Councilperson Ann Williams, seconded by Councilperson Bobby Long, that this matter be Passed . The motion PASSED with the following vote.

Aye: 4 - Joe Hafner; Bobby Long; Ann Williams and Brian Emison

4. New Business

RESOLUTIONS TO BE INTRODUCED

[RES-21:167](#)

A RESOLUTION DECLARING JONESBORO, ARKANSAS, A PRO-LIFE CITY

Attachments: [Act392](#)
[email comments RES-21-167](#)
[hand delivered by Bobby Long 09212021](#)

Councilmember Bobby Long said, Chair, if you don't mind, I would like to do a couple of things. First of all, I would like to present this with the Clerk. It is eight signed copies of support (this was one sheet of paper with eight signatures in support of RES-21:167). And, also, if you would allow me, I would like to make a few comments. Chairman Chris Gibson said, we can't do that until we have a motion on the floor. Councilmember Long said, I move that this motion, I move that we accept this motion. Chairman Gibson asked, is that a motion to forward to full council? Councilmember Long said, it is a motion to forward to full council. Chairman Gibson said, I have a motion to forward to full council. Do I have a second? Do I have a second? Councilmember Long asked, I can't make comments before the motion is accepted prior to that? Chairman Gibson said, that is correct. Am I correct in that Mr. Parliamentarian? (Councilmember Chris Moore was in the audience.) Councilmember

Moore said, no, you cannot have discussion without a second on the motion on the floor. Chairman Gibson said, without a second, this resolution dies in committee.

Councilmember Bobby Long motioned to recommend RES-21:167 to the full council. No second was made on this motion. So, this item failed to make it out of the committee.

Failed for lack of Second

[RES-21:199](#)

RESOLUTION SUPPORTING HEALTHCARE FREEDOM AND CHOICE REGARDING VACCINE MANDATES

Attachments: [Healthcare Freedom Resolution](#)
[email comments RES-21-199](#)

Councilmember Bobby Long said, I motion to forward to full council. Chairman Chris Gibson said, I have a motion to forward to full council. Do I have a second? Do I have a second? Hearing none, the motion dies in committee.

Councilmember Bobby Long motioned to forward RES-21:199 to full council. No second was made on this motion. So, this item failed to make it out of the committee.

Failed for lack of Second

5. Pending Items

6. Other Business

7. Public Comments

8. Adjournment

A motion was made by Councilperson Bobby Long, seconded by Councilperson Joe Hafner, that this matter be Adjourned . The motion PASSED with the following vote.

Aye: 4 - Joe Hafner; Bobby Long; Ann Williams and Brian Emison



City of Jonesboro

300 S. Church Street
Jonesboro, AR 72401

Text File

File Number: RES-22:054

Agenda Date: 3/15/2022

Version: 1

Status: To Be Introduced

In Control: Public Services Council Committee

File Type: Resolution

A RESOLUTION TO CONTRACT WITH THE JONESBORO BASEBALL BOOSTERS

WHEREAS, the City of Jonesboro owns and maintains Joe Mack Campbell Park;

WHEREAS, the Jonesboro Baseball Booster are a non-profit 501 (C) 3 organization created for the purpose of administering youth baseball,

WHEREAS, The City of Jonesboro and the Jonesboro Baseball Booster desire to enter into a contract to provide baseball for youth at Joe Mack Campbell park;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1: The City of Jonesboro, Arkansas shall contract with the Jonesboro Baseball Boosters to provide youth baseball at Joe Mack Campbell Park.

Section 2. The Mayor, Harold Copenhaver, and City Clerk, April Leggett, are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate the agreements.

EXHIBIT A

FACILITY USAGE AGREEMENT FOR ASSOCIATION USE OF JOE MACK CAMPBELL PARK

JONESBORO BASEBALL BOOSTERS

This Agreement is made by and between JONESBORO BASEBALL BOOSTERS, Inc., an Arkansas not for profit corporation, (“JBB”) and the CITY OF JONESBORO PARKS AND RECREATION (“CITY”), on this 1st Day of March 2022 (the “Effective Date”).

WHEREAS, JBB is an Arkansas not for profit organization organized to promote youth sports activities through the operation of its youth baseball program; and

WHEREAS, the CITY is the owner of that certain public park amenities known as the "Joe Mack Campbell Park", and hereafter referred to as the "Facilities"; and

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

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

I. Term

The term of this Agreement is for a period of three (3) years commencing on the Effective Date and ending at midnight on the third (3rd) anniversary thereof. The agreement shall be automatically renewed for an additional three years at the end of the third year and each subsequent year unless otherwise terminated pursuant to the terms hereof.

II. Use of Facilities by JBB

- 1) During the period of March 1st to October 31st of each year during the Term of this Agreement. JBB shall have the primary right to use the CITY’S baseball Facilities and concession stands for JBB's regular spring and fall season, league playoffs, hosting Invitational Tournaments, the Baseball Jamboree, hosting District, State, Regional, World Series Tournaments, and make-up games. This period shall be referred to as the “Primary Usage Period.” CITY reserves the right to assign baseball fields to other parties. Provided however, from September 1st to October 31st the four (4) large fields used for the Wolf Cub Tackle Football program shall not be part of the primary usage period.

- 2) JBB understands and agrees that CITY will maintain a master schedule for the Facilities and JBB will provide schedules of games one week prior to the start of each baseball season during the Term of this Agreement. JBB understands that except for the Primary Usage Period the Facilities are available on a first-come first-serve basis.
- 3) JBB has the "primary right" to use concession stands for any and all games, tournaments, or events that take place at the Baseball Facilities during the "Primary Usage Period." If JBB 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. JBB understands and agrees that CITY will maintain a master schedule for the Facilities concession stands. JBB understands that except for the Primary Usage Period, CITY reserves the right to operate the concession stands.
- 4) JBB 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. JBB 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.
- 5) CITY shall make determinations on field closures due to weather. Determination will be made by 4:00 pm on weekdays and by 7:00 am on Saturdays, if possible. If necessary, weather will be monitored beyond the determination times.
- 6) CITY shall at all times have the right to inspect the Facilities being used by JBB and all JBB sponsored activities related to the use of the Facilities.
- 7) CITY shall issue key(s) to JBB for use of the Facilities. The keys may not be reproduced or duplicated by JBB. JBB agrees to return "seasonal use keys" to the CITY within two weeks after the conclusion of the term of the season. One key shall be issued to the President of JBB. Upon failure to return any of said keys a fee will be charged for the replacement of keys and locks. JBB 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) JBB understands and agrees that, except as provided in Article III below, no CITY maintenance equipment will be used by JBB to conduct games, tournaments, camps or other events. JBB will provide the equipment necessary to operate its own activities and events, and in doing so will keep equipment in the spaces designated by the CITY.
- 9) JBB understands and agrees that two (2) weekends shall be reserved for CITY administered baseball tournaments. In the event this occurs, JBB will appoint a Director to assist CITY in order to maintain USSSA relationship with both the

state director and the teams participating in tournament. Concessions will also operate through JBB in this instance in order to keep logistics and inventory issues in check.

- 10) If JBB should desire to use the CITY'S baseball Facilities for additional tournaments, special events or programs outside the Primary Usage Period, JBB shall complete an Application for Use of Facilities at the beginning of the season. Any and all additions, tournaments or special programs outside the Primary Usage Period 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 fall 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 and repair of similar CITY recreational facilities:
 - a) Maintain all fences and gates.
 - b) Maintain all turf areas on the fields to include mowing, weed control, fertilizing and herbicide spraying.
 - c) Perform all pre-season infield and turf maintenance to include spreading infield mix purchased by JBB and cutting infield arcs
 - d) Provide sand, soil, etc. to be used in leveling or backfilling low areas when deemed necessary.
 - e) Provide utilities for lighting fields, parking and walking track.
 - f) Provide and maintain parking lots.
 - g) Provide secured storage for JBB equipment.
 - h) Drag infields, shape mounds, stripe outfield lines and shape and chalk home plate daily, Monday through Friday.
 - i) Maintain all bleachers, benches and dugouts.
 - 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, dugouts, 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 JBB.
 - m) Maintain field irrigation system and watering schedules of turf areas.
 - n) Maintain adjacent park irrigation systems and the scheduling of watering turf areas.

- o) Maintain restroom facilities, including cleaning and stocking with toilet tissue.
 - p) Maintain, repair or replace parking areas.
- 2) Promote JBB's baseball program in the CITY'S brochure. Provide a meeting place for JBB Board meetings at no cost based upon availability and provided JBB makes reservations in advance. Take calls for information and refer interested parties to JBB when necessary.

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

IV. Obligations of JBB

JBB 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. 2022: \$18,000
 - b. 2023: \$18,000
 - c. 2024: \$18,000
 - d. The annual fee for each period shall be paid in full to the City of Jonesboro by the end of the calendar year.
- 2) Pay for the annual cost of infield mix material and Artificial Turf fill material shall be provided from a combination of sources including, but not limited to JBB, the CITY and the Advertising and Promotions Commission. CITY requests that any infield dirt be purchased in the fall prior to the start of the spring season so it can be applied in preparation for the spring season.
- 3) Be prohibited from performing any maintenance to any turf or field areas without written permission from the CITY.
- 4) 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 the 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 the CITY before being distributed to teams.

- 6) Schedule and meet with the CITY Supervisor 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 JBB. JBB 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) Be 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 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 in the JBB 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. JBB hereby consents to the exercise of such authority by CITY over its members, officials and agents.
- 14) Agree that all Facilities are intended to be game fields, but may be used as practice fields only if reserved through the CITY'S reservation system. Individual coaches must reserve fields for practice through the CITY's reservation system.
- 15) Agrees to be solely responsible for any and all damages related to and arising out of JBB's use of the Facilities during the term of the Agreement when the Facilities are being used by JBB. This includes, but is not limited to, any and all persons associated with JBB who use the Facilities during the terms of the Agreement. JBB 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 JBB's right to seek recourse against those persons causing the damage.

- 16) Agree to provide sufficient notice of all scheduled make-up game times.

- 17) 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:
 - a. No unauthorized vehicles may be driven up and parked at fields or sidewalks during activities.
 - b. No metal cleats may be worn on the walkways.
 - c. No metal cleats may be worn on the Artificial Turf.
 - d. No rollerblading, scooters, etc. are allowed inside the Concession Stand area.
 - e. No tobacco use (smoking or smokeless).
 - f. Only authorized vehicles may be driven on sidewalks.
 - g. Participant and spectator parking is allowed only in **PARKING LOTS**.
 - h. No dogs are allowed in the park.

- 18) Request in writing permission to hold any/all non-game activities which are league baseball related outside of the primary use period. Activities may include, but not be limited to camps, clinics, and registration.

- 19) Activity initiated by JBB Coach or director that occurs on fields that have been closed will result in a \$100 fee to JBB. This includes removing or tampering with "Field Closed" signs.

- 20) Prior to the commencement of each baseball season during the Term of this Agreement, JBB will provide to the CITY:
 - Current by-laws of JBB.
 - 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 JBB with addresses, phone numbers and e-mail (if applicable). JBB agrees to notify CITY of any changes in board members.

V. Default of JBB

a) If JBB defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from CITY, JBB 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 JBB 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 JBB defaults in performance of this Agreement, and after written notice from CITY, JBB 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 JBB, 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 the CITY defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from JBB, 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 JBB may, at its option perform the same for the account of CITY and any amount paid or expenses incurred by the JBB in the performance thereof shall be deducted from the amounts required to be paid by JBB to the CITY under Article IV.

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

VII. Escape Clause

1. Either party seeking to terminate this agreement may do so with a written letter of termination to the other party. Upon receipt of the letter of termination the contract shall be good for one (1) full year before becoming null and void.

IX. Assign ability and Exclusivity

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

X. 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.

CITY:
Danny Kapales; Director
CITY OF JONESBORO
Parks and Recreation
3009 Dan Avenue
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 representatives 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 where 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.

JONESBORO BASEBALL BOOSTERS

By: _____
Name: Cameron Campbell
Title: Board President
Date: _____

CITY OF JONESBORO

By: _____
Name: Harold Copenhaver
Title: Mayor
Date: _____

ATTEST

April Leggett, City Clerk, BS, MSE, CAMC, CMC



City of Jonesboro

300 S. Church Street
Jonesboro, AR 72401

Text File

File Number: RES-22:055

Agenda Date: 3/15/2022

Version: 1

Status: To Be Introduced

In Control: Public Services Council Committee

File Type: Resolution

A RESOLUTION AUTHORIZING A FACILITY USAGE AGREEMENT WITH CHRISTMAS ATTRACTIONS, LLC FOR JOE MACK CAMPBELL PARK

WHEREAS, Christmas Attractions, LLC intends to organize and conduct three (3) annual Christmas display events which are to be held from approximately the last week of November through the last week of December in years 2022, 2023, and 2024; and,

WHEREAS, Christmas Attractions, LLC has requested to conduct this event at Joe Mack Campbell Park, a facility owned by the City of Jonesboro, Arkansas; and,

WHEREAS, Christmas Attractions, LLC would pay a usage fee to the City of Jonesboro equal to ten percent (10%) of the admission fees, and comply with other provisions identified in the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS, THAT:

Section 1. That the City of Jonesboro approves the agreement for a period of three (3) years commencing on the Effective Date and ending January 31, 2025. The agreement shall be automatically renewed for additional three (3) year terms at the end of the initial term and each extension thereof, unless otherwise terminated pursuant to the terms of the agreement.

Section 2. The Mayor, Harold Copenhaver, and City Clerk, April Leggett, are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate the agreements.

**FACILITY USAGE AGREEMENT
JOE MACK CAMPBELL PARK**

This Facility Usage Agreement (“Agreement”) is made by and between CHRISTMAS ATTRACTIONS, LLC, an Arkansas limited liability company (“CA”), and the CITY OF JONESBORO (“CITY”), on this ___ day of _____, 20___ (the “Effective Date”).

WHEREAS, CA is a limited liability company organized under the laws of the State of Arkansas with its principal office located in Jonesboro, Arkansas; and

WHEREAS, the CITY is the owner of that certain public park known as “Joe Mack Campbell Park”, and hereafter referred to as the “Facilities”; and

WHEREAS, CA 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 CA for the purpose of organizing and conducting three (3) annual Christmas display events which are to be held from approximately the last week of November through the last week of December (subject to the discretion of CA) in years 2022, 2023, and 2024 at the Facilities, to be known as “Christmas at the Park” (hereinafter referred to individually as an “Event”, or collectively, as the “Events”), and the respective obligations of the parties regarding the use and maintenance of the Facilities.

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

I. Term

The term of this Agreement is for a period of three (3) years commencing on the Effective Date and ending January 31, 2025. This Agreement shall be automatically renewed for additional three (3) year terms at the end of the initial term and each extension thereof, unless otherwise terminated pursuant to the terms hereof.

II. Use of Facilities by CA

1) During the period beginning on the first day of the second week of November and ending on February 1st of each year during the Term of this Agreement, CA shall have the primary right to use the Facilities. This period shall be referred to as the “Primary Usage Period.”

2) CA understands and agrees that at times weather conditions may result in CITY denying the use of the Facilities during the Primary Usage Period. CA understands that the Park’s Director has the authority to deny use of the Facilities, but CITY agrees that use will not be unreasonably denied.

3) CITY shall at all times have the right to inspect the Facilities and all CA activities related to the use of the Facilities.

4) CITY shall issue key(s) to CA for use of the Facilities. The keys may not be reproduced or duplicated by CA. CA agrees to return the key(s) to the CITY within two weeks after the conclusion of the term of this Agreement. Upon failure to return any of said keys a fee will be charged for the replacement of keys and locks. CA 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.

5) CA understands and agrees that, except as provided in Article III below, no CITY maintenance equipment will be used by CA to conduct the Events. CA will provide the equipment necessary to operate its own activities and the Events, and in doing so will keep equipment in the spaces designated by the CITY.

6) CA shall maintain their own liability insurance for their program and provide a copy of said insurance policy to the Pool and/or Parks Director prior to the beginning of the Primary Usage Period.

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 and repair of similar CITY recreational facilities:
 - a) Maintain all fences and gates.
 - b) Provide and maintain parking lots.
 - c) Provide secured storage for CA equipment.
 - d) Haul off trash that has been deposited in trash receptacles as needed and delitter the grounds as needed.
 - e) Maintain structural integrity of restrooms and storage buildings, and concrete areas, including repair or replacements of damaged roofs, doors, and windows.
 - f) Maintain all area lighting systems. Repair or replace lights, poles, wiring fuses, transformers and other equipment related to the lighting of the Facilities, excluding the lighting provided by CA in its conduct of the Events.
 - g) Maintain restroom facilities, including cleaning and stocking with toilet tissue.
- 2) Promote the Events in the CITY'S Facebook page. Take calls for information and refer interested parties to CA when necessary.
- 3) Arrange for the availability of utilities (i.e. electricity) with City Water & Light for the Facilities during the Primary Usage Period.

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

IV. Obligations of CA

CA shall:

- 1) Pay a usage fee to the CITY. The usage fee shall be used to offset the cost for the CITY's obligations for the calendar year. The usage fee shall be equal to Ten and 00/100 percent (10%) of the admission fees, which CA will collect based on the number of vehicles entering the Facilities during the Primary Usage Period in each year of the term of this

Agreement or any extension thereof, provided that, the number of vehicles upon which the usage fee is calculated will not exceed 5,000 vehicles during each year of the term of this Agreement. The usage fee is due on or before March 1 of the following year.

- 2) Not make any permanent additions to the Facilities without written permission from the City. This includes, but is not limited to, signs, structures, concrete, and seating.
- 3) Schedule and meet with the Park's Director prior the commencement of each Event to discuss schedule and department guidelines.
- 4) Be responsible for any of its items stolen or damaged, during the Term of this Agreement.
- 5) Not discriminate against any person or persons because of race, color, religion, sex, disability or national origin.
- 6) Not engage in any business on the Facilities 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 Facilities based on conduct, which it determines in its discretion to be objectionable or contrary to CITY interests. CA hereby consents to the exercise of such authority by CITY over its members, officials and agents.
- 7) Agrees to be solely responsible for any and all damages related to and arising out of CA's use of the Facilities during the term of the Agreement when the Facilities are being used by CA. This includes, but is not limited to, any and all persons associated with CA who use the Facilities during the terms of the Agreement. CA agrees to be solely responsible for all repairs and costs of repairs to the Facilities for any and all damages. Nothing contained herein shall be construed to defeat or diminish CA's right to seek recourse against those persons causing the damage.
- 8) Prior to the commencement of each Event during the Term of this Agreement, CA will provide to the CITY a list of current managers of CA with addresses, phone numbers and e-mail (if applicable). CA agrees to notify CITY of any changes in managers.
- 9) Agrees to pay for electrical services related to the temporary light installation.

V. Default of CA

If CA defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from CITY, CA 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.

VI. Default of CITY

a) If the CITY defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from CA, 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 CA may, at its option perform the same for the account of CITY and any amount paid or expenses incurred by the CA in the

performance thereof shall be deducted from the amounts required to be paid by CA to the CITY under Article IV.

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

VII. Escape Clause

Either party seeking to terminate this agreement may do so with a written letter of termination to the other party. Upon receipt of the letter of termination this Agreement shall be good for one (1) full year before becoming null and void.

VIII. Assignability and Exclusivity

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

CITY:
Danny Kapales; Director
CITY OF JONESBORO
Parks and Recreation
3009 Dan Avenue Jonesboro,
Jonesboro, AR 72401

CA:
Adam Sartin, Manager
CHRISTMAS ATTRACTIONS, LLC
P.O. Box 17285
AR 72403

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 representatives 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 where 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 above.

CHRISTMAS ATTRACTIONS, LLC

By: _____
Name: Adam Sartin
Title: Manager

CITY OF JONESBORO

By: _____
Name: Harold Copenhaver
Title: Mayor

ATTEST

April Leggett, City Clerk, BS, MSE, CAMC, CMC