

MECKLENBURG COUNTY

NORTH CAROLINA

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

**AGREEMENT FOR USE OF
SCHOOL ATHLETIC FIELDS AND GYMS**

This Agreement is made and entered into to be effective July 1, 2014, by and between The Charlotte-Mecklenburg Board of Education (the "Board") and the licensee named below (the "Licensee").

Licensee's Address: Town of Huntersville
P.O. Box 664
101 Huntersville-Concord Road
Huntersville, NC 28070
Attn.: Director, Parks and Recreation

Licensee's Primary Representative: Michael Jaycocks, Director, Parks and Recreation

Primary Representative's Address: P.O. Box 2879
105 Gilead Road, 3rd Floor
Huntersville, NC 28078

Primary Representative's Telephone No.: (W) (704) 766-2228

Licensee's Secondary Representative: Scott Treon, Assistant Director, Parks and Recreation

Secondary Representative's Address: P.O. Box 2879
105 Gilead Road, 3rd Floor
Huntersville, NC 28078

Secondary Representative's Telephone No.: (W) (704) 766-2226

Designated Board Representative: Guy Chamberlain
Associate Superintendent for Auxiliary Services
Charlotte-Mecklenburg Schools
3301 Stafford Dr.
Charlotte, NC 28208
980-343-6175

School Names and Addresses: **See Exhibit A attached hereto and incorporated herein by reference**

Facilities to be Used: **See Exhibit A attached hereto and incorporated herein by reference**

Use of Facilities: indoor and outdoor recreation, athletic programs and associated parking

Term of License: **July 1, 2014 through June 30, 2029. This Agreement shall automatically be renewed for one-year terms (July 1- June 30). Subject to the termination rights set forth in Section 6 below.**

In consideration of the mutual promises set forth in this Agreement, the parties agree as follows:

1. License to Use; Agreement to Improve and Maintain. The Board hereby grants to Licensee a license to use, on a priority-use basis, facilities described above (the "Facilities") at the identified schools (each, a "School") for the term stated above (the "Term"). The Licensee shall not pay any rent or license fee to the Board for the use of the Facilities except as noted in the next paragraph of this Section 1, but in lieu thereof the Licensee agrees that during the Term it will (i) pay for certain maintenance and improvements to the Facilities as more particularly described on Exhibit 1 attached hereto and incorporated herein by reference, and (ii) generally repair and maintain the Facilities (including improvements, including but not limited to pavement, irrigation systems and lighting) in accordance with, but only to the extent specified in, the specific repair and maintenance responsibilities described on Exhibit 2 attached hereto and incorporated herein by reference, all pursuant to the terms of the Agreement. All improvements to the Facilities shall be made in accordance with applicable law and in a workmanlike manner using materials, labor, etc. approved by the Designated Board Representative. All improvements, additions and alterations built, constructed or placed on the Facilities and School grounds by the Licensee shall become the property of the Board.

The Designated Board Representative and the Licensee's Primary Representative, may, but are not required to, agree from time to time to permit Licensee's Primary Representative, or approved designee, to have a key or pass codes to the facilities with appropriate safeguards satisfactory to both parties. Licensee shall also reimburse the Board for the actual cost incurred by the Board to pay overtime for custodians to open and close the indoor Facilities. The applicable hourly rate for this activity shall be \$17.00 per hour during the initial term of the agreement, and indexed to any rate changes approved by the Board for subsequent renewal terms. The scheduling of usage hours for the Schools agreed upon in Section 3 will be tracked by the CMS Community Use of Schools Office, and Building Services Department. The Board shall provide an invoice to Licensee quarterly and Licensee shall remit payment to the Board within thirty (30) days of the date of such invoice.

2. Use. Licensee agrees that it will use the Facilities for indoor and outdoor recreation, athletic programs and associated parking for those athletic league play events, and specifically for the use stated above.

3. **Obligations of the Board.** The Board agrees to do the following during the Term hereof:

(a) Reserve on a priority-use basis in the name of the Licensee the Facilities at the School identified herein in accordance with the Board's policy regarding Community Use of Schools. The Board and the School shall always have first priority for the use of the Facilities.

(b) Permit reservations of the Facilities by the Licensee to be made prior to any general public registration based on the scheduling agreement reached during the annual meeting or based on written requests otherwise made to the Designated Board Representative and the Community Use of Facilities Supervisor, all in accordance with the Board's policy regarding Community Use of Schools. Remaining blocks of time for use of the Facilities will be open to general public reservations.

(c) Participate in the joint planning and scheduling of annual maintenance and/or repair of the Facilities (i.e., cooperative efforts in aeration, re-seeding, infield replenishment, etc.). Conduct all routine maintenance except that designated as the responsibility of the Licensee and described in Exhibit 2 attached.

(d) Cooperatively plan for future improvement projects with the Licensee.

4. **Obligations of the Licensee.** The Licensee, in consideration of the above, agrees to do the following during the Term hereof:

(a) Keep and maintain the Facilities, including any improvements made in accordance with Section 1, in good, safe, and first-class condition through the Term of this Agreement. The Licensee shall be liable for all damages to the Facilities resulting from its use thereof, reasonable wear and tear excepted. All modifications or additions to the Facilities shall have written approval by the Designated Board Representative prior to implementation.

(b) Correct, in a timely manner, deficiencies in the performance of Licensee's obligations hereunder noted by the Designated Board Representative or the Principal.

(c) Make available the Facilities and ensure access to its athletic programs without regard to race, religion, color, ethnic group identification, sex, age, or physical or mental disability (except where discrimination is appropriate and permitted by law, e.g., age restrictions on participants); provided, however, that Licensee shall have no duty hereunder to make physical improvements to the Facilities except as expressly provided in Exhibit 2.

(d) Provide the Designated Board Representative and the Principal with the names and telephone numbers of at least two (2) representatives of the Licensee who can be called by the Board staff when emergency situations arise.

(e) Conform to and abide by all local, state and federal laws, rules, regulations and ordinances, and all procedures and policies of the Board. Licensee will be responsible for payment of any fines or penalties incurred as a result of their use of the Facilities.

(f) Exercise every reasonable means not to allow any loud, boisterous, or disorderly persons to remain about the Facilities during the use thereof by Licensee.

(g) Licensee will ensure that any sound equipment, music and public address systems brought onto the Facilities during Licensee's activities are used in a manner that, using a reasonable person standard and taking into consideration the day of week and time of day, are not unreasonably loud and disturbing to the quiet enjoyment and use of adjacent residentially occupied property. Sound shall not exceed the specified limits which are recommended by the local noise ordinance for commercial music venues which limit the decibel volume after 9 p.m. on Sunday – Thursday evenings and 11 p.m. on Friday and Saturday nights. Any temporary outdoor lighting shall be designed to provide the minimum lighting necessary to ensure adequate safety, night vision, and comfort, and not create or cause excessive glare onto adjacent properties and public street rights of way. Temporary and/or permanent lighting is to be shut off no longer than one hour after the completion of the event. Repeated light trespass and/or noise violations shall be cause for immediate suspension of this agreement. Agreement shall only be reinstated following the creation of a mutually acceptable light/noise plan.

(h) Not knowingly permit any illegal activities to be conducted on the Facilities.
GAMBLING AND THE USE OF OPEN FLAMES ARE PROHIBITED ON SCHOOL GROUNDS.

(i) Provide the security or police protection it determines to be necessary during, but only during, its use of the Facilities and only to the extent it reasonably deems such protection to be necessary.

(j) Not post any of its signs, banners or placards without the prior written approval of the Designated Board Representative. Advertising signs or banners of third parties will not be posted or displayed unless the Licensee has entered into a written agreement with the Board regarding the same.

(k) The Board reserves the right to use the concession facilities and to provide concessions during use of the Facilities by the Licensee; provided, if the Board grants the Licensee the right to use the concession facilities, the Licensee shall be authorized to provide/sell food and non-alcoholic beverages provided all necessary permits and insurance coverages are obtained and Health Department regulations, etc. are adhered to. **THE BRINGING, USING AND/OR SELLING OF ALCOHOLIC BEVERAGES AND TOBACCO PRODUCTS ON SCHOOL GROUNDS IS PROHIBITED.** Unless otherwise agreed to, the Licensee will retain all revenues derived from its food and beverage sales on the Facilities.

(l) Adhere to the hours of use and operation for the Facilities as reasonably determined by the Board.

(m) The Licensee will have a representative meet periodically with the Designated Board Representative to review the Licensee's performance under this Agreement. The Licensee shall also provide the Designated Board Representative with "seasonal" reports regarding leagues, participation, etc.

(n) Cooperatively plan for future improvement projects with the Designated Board Representative.

(o) The Licensee and the Board will cooperatively plan and implement semi-annual and annual maintenance projects such as fertilization, aeration and turf renovation.

(p) Within ten (10) days following the date hereof, prepare and deliver to the Designated Board Representative a complete list of the equipment and materials made available to the Licensee by the Board in connection with the Licensee's use and maintenance of the Facilities. For example, this list may include athletic equipment, bases, pitcher's rubbers, home plates, athletic field marker machines, etc. The Licensee shall be responsible for the loss of or damage to such equipment and materials, reasonable wear and tear as excepted.

(q) In regard to determining when athletic events must be canceled or suspended due to inclement weather, the decision shall be made in the Licensee's reasonable discretion; provided, however, the Licensee shall not permit athletic events on the Facilities when the fields are excessively wet and the use of the fields would cause extensive damage to the turf. Further, the Designated Board Representative, Building Services – Real Estate Office or the Principal may, at any time, suspend or cancel any use of the Facilities if such person determines that they are not in adequate condition for use.

5. Indemnification and Insurance.

(a) The Licensee agrees to indemnify, defend and hold harmless the Board, its agents, officers, employees, volunteers and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that it may sustain (i) arising from or connected with the Licensee's operations or use of the Facilities, (ii) arising out of the Licensee's failure to comply with any applicable law, rule, ordinance, or regulation, or (iii) arising directly or indirectly out of the Licensee's performance or lack of performance under this Agreement. The Licensee's duty to indemnify the Board shall survive the expiration or other termination of this Agreement.

(b) The Licensee certifies that it currently has and agrees to maintain at its own expense during its performance under this Agreement the following insurance from either an insurance company acceptable to the Board and authorized to do business in the State of North Carolina or the Interlocal Risk Financing Fund of North Carolina:

(i) Commercial General Liability - The Licensee shall maintain commercial general liability insurance that shall protect the Licensee from claims of bodily injury or property damage which arise from performance under this Agreement including the use of the Facilities. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate. This insurance shall also include coverage for broad form property damage liability.

Certificates of such insurance will be furnished by the Licensee to the Board and shall contain the provision that the Board be given thirty (30) days written notice of any intent to amend or

terminate by either the Licensee or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under this Agreement and shall be grounds for immediate termination of this Agreement.

6. Termination for Convenience; Default. Either party may terminate this Agreement, **as to all or a portion of the Facilities** at Bradley Middle School, Blythe Elementary School, Torrence Creek Elementary School and Alexander Middle School, for convenience with two (2) years advanced written notice to the other party.

If Licensee breaches this Agreement and such breach is not cured within ten (10) days after written notice thereof to Licensee, the Board may terminate this Agreement immediately without additional notice. Upon termination of this Agreement, Licensee shall not be permitted to use the Facilities and agrees to vacate the Facilities immediately.

7. Assignment. The Licensee may not assign any of its rights, duties or obligations under this Agreement without the prior written consent of the Board's Designated Representative.

8. Safety and Clean-Up. Licensee shall be responsible for ensuring that the Facilities remain in a safe condition during the use of the Facilities by it and its guests. Licensee also shall be responsible for the clean-up of the Facilities following each use of the Facilities by the Licensee and its guests.

9. Personal Property. The Board shall not be responsible for any theft or loss of or damage to personal property of the Licensee or its guests, and the Licensee agrees to indemnify the Board for any claims arising out of any such theft, loss or damage.

10. Utility Failure, etc. The Board shall not be responsible under any circumstances for any loss sustained by Licensee as a result of the failure of any of the utility systems that serve the Facilities or for any other conditions that render the Facilities unusable.

11. Designated Board Representatives. The Designated Board Representatives may be changed at the discretion of the Board by written notice to the Licensee. Licensee may also change its designated representative by written notice to the Board.

12. Conflict of Policies. The policies and procedures governing the use of school facilities by independent athletic associations are set forth in the Board's "Community Use of School Facilities" policy. In the case of any conflict between this Agreement and said policy, the "Community Use of School Facilities" policy shall control. The Board shall provide a copy of its "Community Use of School Facilities" policy to the Licensee upon request.

13. Counterparts. This Agreement shall be executed in duplicate counterparts, each of which shall be deemed to be an original and both of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Licensee and the Board have executed this Agreement on the day and year first written above.

LICENSEE
Town of Huntersville

Greg Ferguson 7/22/2014
Town Manager Date

~~This instrument has been preaudited in the manner required by
the Local Government Budget and Fiscal Control Act.~~ 7/31/14
Scott A. Brown
Finance Officer Date

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION


APPROVED AS TO FORM:



Kevin Bringewatt
School Board Attorney

8/22/14
Date

REVIEWED BY:



Guy Chamberlain
Associate Superintendent of Auxiliary Services

8/12/14
Date

REVIEWED BY:



Dennis LaCaria
Director, Facilities Planning & Real Estate

8/12/14
Date

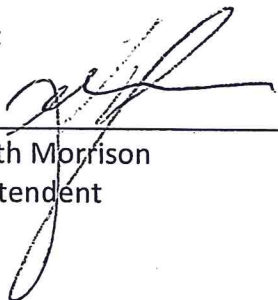
REVIEWED BY:



Division of Insurance & Risk Management

8/21/14
Date

ATTEST:



Dr. Heath Morrison
Superintendent

8-22-14
Date

Exhibit A

List of Schools and Facilities

- **Barnette Elementary School** - Gym;
13659 Beatties Ford Road
Huntersville, NC 2807
- **Bradley Middle School** – All outdoor fields;
13345 Beatties Ford Road
Huntersville, NC 28078
- **Huntersville Elementary School** – Gym and all outdoor fields;
200 Gilead Road
Huntersville, NC 28078
- **Blythe Elementary School** – Soccer fields;
12202 Hambright Road
Huntersville, NC 28078
- **Torrence Creek Elementary School** - Multi-purpose room and all outdoor fields;
14550 Ranson Road
Huntersville, NC 28078
- **J. M. Alexander Middle School** – Gym
12201 Hambright Road
Huntersville, NC 28078

Exhibit 1

List of Improvements to be Made by Licensee

None

Exhibit 2

On-Going Maintenance and Related Obligations of Licensee

- Maintenance of Detention and Water Quality Facilities. The Town shall be responsible for all maintenance with water quality and detention facilities at all CMBE schools used by the Town pursuant to this Agreement, in accordance with the requirements of applicable Town of Huntersville ordinances.

- Maintenance of outdoor fields. For all outdoor fields used by the Town pursuant to this Agreement, the Town shall be responsible for all ongoing maintenance of said outdoor fields including, but not limited to:
 - Keeping the grass cut to 2", up to three times a week if conditions require and permit this.
 - Edge and trim the grass once a week.
 - Police the grounds for trash and debris daily, keeping the areas free of trash.
 - Repair the irrigation system as needed.
 - Fertilize and herbicide four times per year.
 - Aerate the field if needed.
 - Over-seed the field if needed.
 - Operate sprinklers and mowers before 9:30 AM and after 2:45 PM during the school year.