



4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
dunwoodyga.gov | 678.382.6700

MEMORANDUM

To: Mayor and City Council

From: Brent Walker, Parks Director

Date: September 11, 2018

Subject: **Approval of a Usage Agreement with Dunwoody Senior Baseball**

ITEM DESCRIPTION

With the relocation of the baseball fields to Brook Run Park an updated facility usage agreement with Dunwoody Senior Baseball is required.

BACKGROUND

The City values the programs that Dunwoody Senior Baseball offers in our park facilities and wishes to continue that partnership within the new facility at Brook Run Park. The new fields are an improvement over the facilities at Dunwoody Park and offer new opportunities for programming and also additional needs for upkeep and maintenance. Due to this, additional language is needed in the usage agreement.

RECOMMENDATION

Staff recommends the City approve the updated a Facility Usage Agreement with Dunwoody Senior Baseball to provide youth baseball programs within the Brook Run Park Baseball Facilities. A proposed agreement is attached.

Denis Shortal Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Riticher City Council Post 2
Tom Lambert City Council Post 3

Terry Nall City Council Post 4
Lynn Deutsch City Council Post 5
John Heneghan City Council Post 6

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STATE OF GEORGIA
CITY OF DUNWOODY

FACILITY USAGE AGREEMENT

THIS AGREEMENT by and between the **City of Dunwoody, Georgia**, a municipal body politic and corporate, hereinafter designated "CITY" and **Dunwoody Senior Baseball** PO Box 88923, Atlanta, GA 30356, a private nonprofit organized under the laws of the State of Georgia, hereinafter designated "DSB".

WITNESSETH:

WHEREAS, CITY owns and operates BROOK RUN PARK BASEBALL FIELDS located at 4665 Barclay Drive, Dunwoody, Georgia, (hereinafter designated as "Facilities"), for the purpose of serving the residents of the City of Dunwoody by locating and housing therein various public and private companies, corporations, and organizations capable of and willing to provide their services with the residents of the City of Dunwoody; and

WHEREAS, the undersigned DSB desires to operate a baseball program for the benefit of residents of the City of Dunwoody and agrees to utilize space in the Facilities in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. CITY does hereby grant usage to DSB 7.46 acres of space delineated on the Layout attached hereto as Attachment B and by reference made a part hereof (hereinafter referred to as "Space") consisting of the fields, field house, parking lot adjoining the fields, the PCMS parking lot according to the IGA with DeKalb County BOE and surrounding areas in accordance with DSB's provision of its programs delineated herein.
2. This Agreement, beginning on _____ is for an initial term expiring on December 31, 2018. This Agreement shall terminate absolutely and without further obligation on the part of the City on December 31, 2018 and on December 31st of each succeeding and renewed year, as required by O.C.G.A. § 36-60-13, as amended, unless terminated by either Party no later than ninety (90) days prior to the conclusion of the initial or any renewal term. This Agreement may be automatically renewed on an annual basis for an additional twelve-month term upon the same terms and conditions, as provided for in this Agreement, unless previously terminated.
3. The City's governing authority may unilaterally terminate this Agreement on or before October 1st of each year in which the Agreement is in force.
4. This Agreement may be automatically renewed for an additional twelve-month term, subject to the following conditions:

- (a) DSB shall provide written notice to CITY at least sixty (60) days prior to the expiration date of this lease exercising the option to extend or renew or to engage in a process of amending and revising the agreement.
 - (b) DSB shall continue to perform its services and to coordinate its performance with that of other users and CITY.
 - (c) DSB shall comply with the conditions of this Agreement.
5. Either party shall have the right to terminate this Agreement for any reason at any time during the original term of this lease or any extension or renewal thereof by giving written notice to DSB of its intention to terminate at least ninety (90) days prior to the effective date of termination. Should this lease be terminated by the CITY prior to the expiration date set forth hereinabove or prior to the expiration date of any extension or renewal of this lease, CITY reserves the right to terminate and cancel this Agreement or any extension or renewal thereof at any time DSB fails or refuses to fulfill the terms and conditions set forth herein. DSB, upon termination of this Agreement or any renewal thereof, or cancellation thereof by CITY, shall vacate and deliver up the Space peaceably, quietly, and in good order and condition.
6. For the purpose of this Agreement, all notices to be given hereunder shall be in writing and shall be deemed given when deposited in the United States Mail, postage prepaid, certified, and addressed as follows:
 - (a) CITY: City of Dunwoody
4800 Ashford Dunwoody Rd
Dunwoody, Georgia 30338
Attention: Parks & Recreation
 - (b) Dunwoody Senior Baseball, Inc.:
P.O. Box 88923, Dunwoody, Georgia 30356
7. CITY does hereby designate the Parks & Recreation Department as its representative in all matters pertaining to this lease. All requests and issues arising from use of the Space described herein should be addressed to the Parks & Recreation Department through its Parks Director. The Parks Director or their designee shall be the primary contact to DSB. The Parks Director is authorized to establish such administrative procedures he or she deems appropriate to carry out and enforce the terms of this Agreement.
8. The CITY and DSB shall provide services in accordance with Attachment A, which is attached hereto and by reference made a part hereof, during the term of the lease. DSB agrees to provide CITY with appropriate information about its program activities, including program operating hours, in order to facilitate operation of the Facility and coordination by the CITY.

- 9 DSB shall at all times exonerate, indemnify, and hold harmless the CITY from and against all claims or actions, and all expenses incidental to the defense of any such claims, litigation, and actions, based upon or arising out of damage or injury (including death) to persons or property (i) caused by, or (ii) sustained on the Space in connection with the performance of this Agreement or any extension or renewal thereof or conditions created thereby and shall assume and pay for, without cost to the CITY, the defense of any and all claims, litigation and actions, suffered through any act or omission of the DSB, or anyone directly or indirectly employed by or under the supervision of any of them, or in any way arising out of the use and occupancy of the space.
- 10 Except as otherwise consented to in writing by CITY, DSB shall maintain in force during the life of this Agreement or any extension or renewal thereof comprehensive general public liability and property damage insurance, in the minimum amount of \$100,000.00 with respect to each person, and in the sum of \$300,000.00 with respect to each accident or occurrence, and in the sum of \$100,000.00 for injury or damage to property, and CITY shall be named as an additional insured under such policy or policies of insurance.
- 11 Except as otherwise consented to in writing by CITY, DSB shall furnish to the CITY within thirty (30) days after execution of this lease, a certificate or certificates evidencing such insurance coverage in companies doing business in Georgia and acceptable to CITY covering:
 - (a) The location and the operations to which the insurance applies
 - (b) The expiration date of policies
 - (c) An agreement that the policies certified will not be changed or canceled without thirty (30) days prior notices to CITY, as evidenced by return receipts of registered or certified letters. Prior to ten (10) days before the expiration of any such certificate, DSB shall deliver to the CITY a certificate renewing or extending the terms for a period of at least one (1) year, or a certificate acceptable to CITY evidencing the required insurance coverage.
- 12 DSB shall comply with the provisions of the Code of the City of Dunwoody, Georgia and Official Code of Georgia annotated and all appropriate statues and regulations governing the services it furnishes and, when applicable, with the standards of its profession. DSB acknowledges their responsibility to report child abuse under O.C.G.A 19-7-5 as may be amended in the future and they accept responsibility to adhere to it, including all paid employees and volunteers and that failure to do so shall constitute a material breach of this Agreement.
- 13 The occupancy and use by DSB of the Space and rights herein conferred upon DSB shall be subject to rules and regulations as are now or may hereinafter be prescribed by CITY.
- 14 Both parties agree that the provisions of this Agreement or any extension or renewal thereof, are not intended to be nor should they be construed as in any way creating or establishing a relationship between the parties hereto other than that of Owner and User, and at all times during the term of this Agreement or any extension or renewal thereof, DSB is to be and shall remain as an independent contractor.

- 15 This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.
- 16 This Agreement shall be deemed to have been made and performed in the City of Dunwoody, Georgia. For the purpose of the venue, all suits or causes of actions arising out of this Agreement shall be brought in the appropriate courts within DeKalb County, Georgia.
- 17 Any amendment or modification of this Agreement shall be set forth in writing as an Amendment to this Agreement, duly executed by the parties, but shall not become effective until thirty (30) days after the execution and delivery of such writing.
- 18 DSB shall at the termination of this Agreement or any extension or renewal thereof surrender up the Space in good order and condition, reasonable use and ordinary wear and thereof excepted. CITY shall be entitled to all rights and remedies provided by law including, without limitation, the dispossessory rights and remedies provided in O.C.G.A. § 44-7-49, *et seq.* as may be amended in the future.
- 19 Should any provision or term of this Agreement be determined by a court of competent jurisdiction to be unenforceable, all other provisions and terms shall remain in full force and effect.
- 20 This Agreement constitutes the sole agreement between the parties. No representations oral or written not incorporated herein shall be binding on the parties. No amendment or modification of this Agreement shall be enforceable unless approved in writing by the City of Dunwoody.
- 21 In the event of a conflict between this agreement and any exhibit contained herein or any previous agreements, the provisions of this agreement shall govern.
- 22 Without regard to any designation made by the person or entity entering this Agreement, the City of Dunwoody considers all information submitted in relation to the Agreement to be a public record that will be disclosed upon request pursuant to the Georgia Open Records Act O.C.G.A. § 50-18-70 *et seq.* as may be amended in the future, unless a court order is obtained to the contrary.
- 23 The headings of sections and paragraphs, if any, to the extent used herein are for convenience and reference only, and in no way define, limit or describe the scope or intent of any provision hereof, and therefore will not be used in construing or interpreting the provisions hereof.
- 24 Contractor (DSB) and Subcontractor Evidence of Compliance

Pursuant to O.C.G.A. § 50-36-1(e), City contracts within the state of Georgia shall include the following provisions on the attached Affidavit Verifying Status:

1. Provide at least one secure and verifiable document, as defined in Code Section 50-36-2;

2. Execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States, which affidavit shall state:
 - i. The applicant is a United States citizen or legal permanent resident 18 years of age or older;
or
 - ii. The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title [8 U.S.C., 18](#) years of age or older lawfully present in the United States and provide the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency.

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three counterparts, each to be considered as an original by their authorized representative, on this _____ day of _____, 20__.

DSB: Dunwoody Senior Baseball.

CITY: City of Dunwoody, Georgia

By: _____
Signature

City Manager
City of Dunwoody, Georgia

Name (Typed or Printed)

Title

Federal Tax I.D. Number

ATTEST:

ATTEST:

Signature

City Clerk

Name (Typed or Printed)

Title

APPROVED AS TO FORM:

City Attorney Signature

**Affidavit Verifying Status
for City Public Benefit Application**

By executing this affidavit under oath, as an applicant for a City of Dunwoody, Georgia Business License or Occupation Tax Certificate, Alcohol License, Taxi Permit or other public benefit as referenced in O.C.G.A. Section 50-36-1, I am stating the following with respect to my application for a City of Dunwoody license/permit for:

1) _____ I am a United States citizen **(Must include copy of either Georgia Driver’s License, Passport, or Military ID)**

OR

2) _____ I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States.* **(Must include either a copy of your Permanent Resident Card or Employment Authorization Card as well as another form of government issued identification such as Georgia Driver’s License, Military ID, or Passport)**

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of Code Section 16-10-20 of the Official Code of Georgia.

Signature of Applicant: _____ **Date:** _____

Printed Name: _____

***Alien Registration number for non-citizens:** _____

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE _____ DAY OF _____,
20____

Notary Public: _____ My Commission Expires: _____

*Note: O.C.G.A. § 50-36-1(e)(2) requires that aliens under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, provide their alien registration number. Because legal permanent residents are included in the federal definition of “alien”, legal permanent residents must also provide their alien registration number. Qualified aliens that do not have an alien registration number may supply another identifying number below:

I. OBLIGATIONS OF THE CITY

The City agrees to:

- a. Allow the non-exclusive use of the Facilities to the Association under expressed terms and conditions set forth by the City for the purpose of conducting Baseball Programs; the use of the Facilities shall be limited to practices, games, meetings, clinics and demonstrations for the promotion of the sport, community interest and welfare, which may include opening day activities, tournaments and special events.
- b. The Association and City agree to terms for the use of the Facilities for such other activities, such use or uses shall be governed by separate agreement or agreements. The City will maintain the facility scheduling for these activities and collect all fees for the activities. The City will provide “first right of refusal” to DSB for any baseball related programs that are presented to the City.
- c. The Association shall be able to utilize the Facilities and the parking lot at Peachtree Charter Middle School during the Academic School Year Monday-Friday from 4:00pm-11:00pm and Saturday-Sunday from 7:00am-11:00pm. During the Non-Academic School Year the Association shall be able to utilize the Facilities and the parking lot at Peachtree Charter Middle School on Sunday-Saturday from 7:00am-11:00pm.
- d. Provide fields at the beginning of the Association’s operating season, field lights, field electrical outlets, watering systems, park buildings and structures as needed.
- e. Clean restrooms not less than one (1) time daily.
- f. Provide general, standard and customary maintenance of the Facilities, as defined in Attachment C, Maintenance Policy.
- g. Provide for the Association’s use of the building (hereinafter “Field House”) on the Facilities property for use in conjunction with provision of its programs under this Agreement, including use of said building for purposes of concessions during the times the Association uses the Facilities for games and practices in accordance with the provisions of this Agreement.
- h. Provide monies within the City budget for the Association to apply on an annual basis for funds to be used towards facility improvements and appropriate maintenance of the facilities. These funds can only be used for facility capital projects and not for any programming or operational costs, such as, but not limited to, baseballs, uniforms, insurance and umpires. The City Council will determine on a yearly basis which projects it wishes to fund and at what amount. The City and DSB would jointly manage the projects and all funds will remain with the City.
- i. Allow for the baseball field names to be maintained as “Sadler Field” and “Crawford Field”. If DSB chooses to rename the fields after the execution of this document, it must be done so through the City’s park naming policy.

II. OBLIGATIONS OF THE ASSOCIATION

The Association agrees to:

- a. Provide a baseball program in accordance with all guidelines set forth by the City. The Association agrees that all of its members, whether paid or volunteer, must undergo a criminal background check prior to being allowed to participate in any activities on City Property.
- b. Comply with all statutes, ordinances, rules, orders, regulations and requirements of federal, state, county and city governments where applicable.
- c. Maintain the playing fields to include placing bases appropriately, raking crumb rubber at the pitcher's mound between games, repairing pitcher's mound as needed and any other playing field maintenance to ensure a proper safe playing surface as defined in Attachment C, "Maintenance Policy".
- d. It is the responsibility of the Association to ensure that all facility rules are followed, failure to do so shall constitute a material breach of this Agreement.
- e. Pay all power utility bills on athletic fields and facilities. The power utility bill will be prorated for activities administered by the City or other entities affiliated with the City and payment made to DSB for that use.
- f. Protect, defend, indemnify and hold harmless the City, its Mayor, Council members, officers, employees, successors, assigns, and agents from and against any and all claims, suits, losses, liabilities, damages, deficiencies, expenses, or costs (including, without limitation, reasonable attorney's fees, investigative and/or legal expenses, and costs of judgment, settlements, and court costs) (hereinafter "Claims") suffered or incurred by such parties whether arising in tort, contract, strict liability, or otherwise and including, without limitation, personal injury, negligence, wrongful death, or property damage, regardless of the outcome of any such action, proceeding, or investigation caused by, related to, based upon, or arising out of the Association's use of the Facilities, provision of Athletic Programs or activities, or otherwise, excluding Claims caused by the sole negligence of the City. The language of this indemnification clause shall survive the termination of this Agreement, even if the City terminates this Agreement for convenience.
- f. The Association shall further either (a) require each of its Subcontractors to procure and to maintain during the term of his subcontract Subcontractor's public liability and property damage and vehicle liability insurance of the type and in the same amounts as specified in the preceding paragraphs, or (b) insure the activities of the Association's Subcontractors in the Association's own insurance policy.
- g. If the Association chooses to use the portion of the Field House designated for concessions, the Association shall provide its own food and clean-up the area after each use to replicate

its appearance prior to each use. The Association must obtain all required health certificates to serve said food and shall be responsible in accordance with subsection (d) above for any liability as a result of providing these concessions. No alcohol may be sold and/or served at any game, function or event on the Property and no alcohol may be possessed by anyone during the times the Association uses said Facilities.

- h. The Association shall maintain a schedule of all functions at the facility and shall submit a report of all recorded functions of the previous year to the City each January to include date, use and number of participants.
- i. The Association may not charge individual gate fees to Dunwoody residents for practices, games, meetings, clinics and demonstrations.
- j. The Association must provide a succession plan for its organization and annually report to the City its current board members and term limits.
- k. The Association must provide the City with documentation and the schedule of all tournament rentals and must provide a facility attendant to be present through the entirety of the tournament to ensure that all facility rules and regulations are followed by the participants and spectators.
- l. Beginning January 1, 2019, the Association must pay the City 10% of net revenues generated by tournament rentals fees if the net annual revenue is less than \$100,000 per year. The amount will increase to 15% of annual net revenues if the amount exceeds \$100,000 per year. The Association is also entitled to make contributions towards capital improvements to the Facility. The annual fee will be the will be the greater of the two. These funds will be used towards repair and replacement costs for the facility. Payment will not be rendered until December 15, 2019 and then each subsequent year on that date.
- m. Adhere to all other provisions contained in this agreement.

III. THE ASSOCIATION'S MAINTENANCE RESPONSIBILITIES

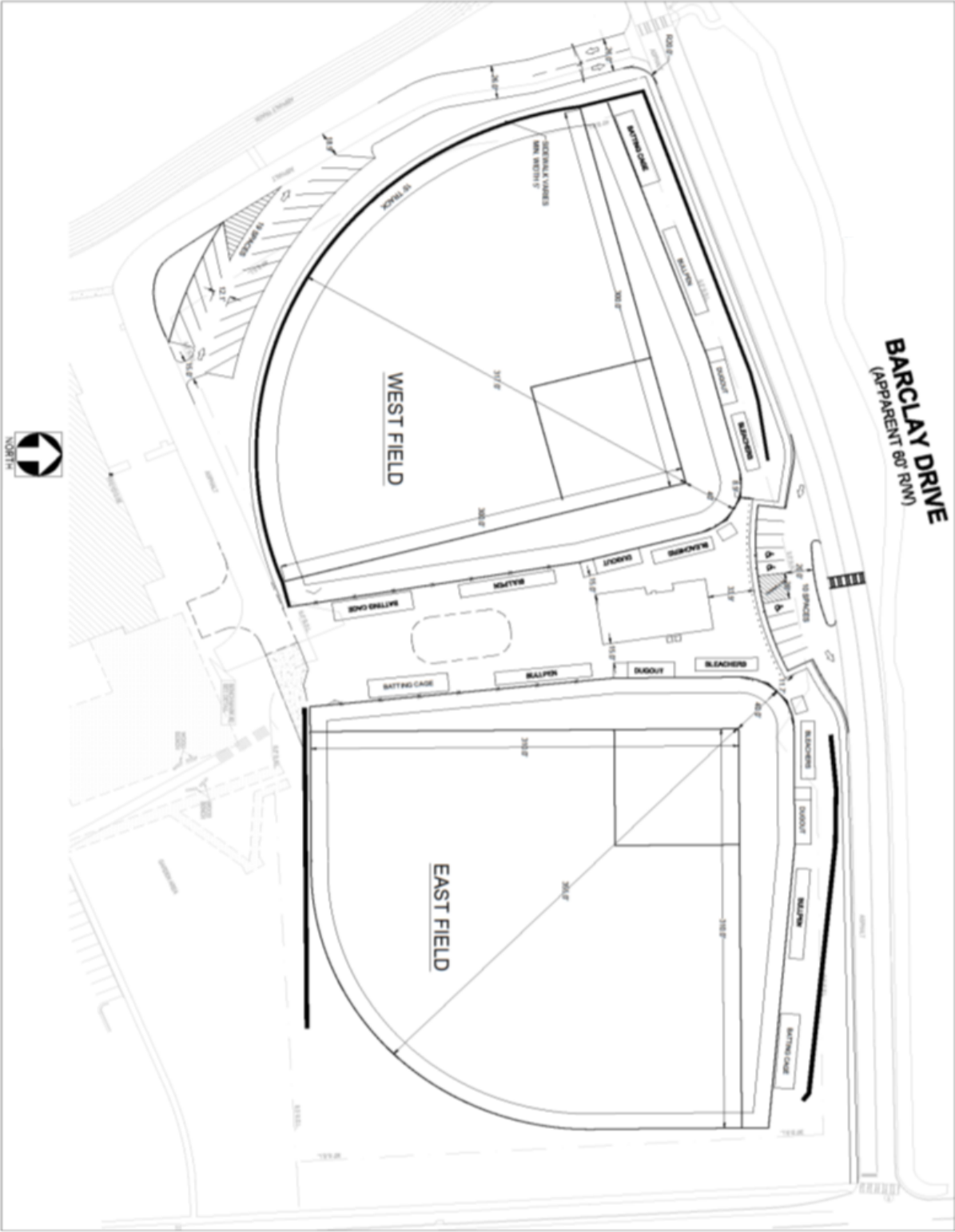
- a. The Association is responsible for daily clean-up, placing litter in proper containers prior to leaving the Facilities after each function (games and practices).
- b. The concession facility must be maintained in a clean and orderly fashion. The facility and all equipment and materials used by the Association shall at all times be clean and sanitary and free from rubbish, refuse, food scraps, garbage, dust, dirt and other offensive or unclean materials. All trays, dishes, glassware, utensils and other equipment shall be cleaned

immediately after each use and shall be kept clean until reused. Grease traps and connection lines servicing the facility shall be cleaned and maintained in proper working condition by the Association. All floors within the concession area must be swept and mopped after each daily use. Kitchen exhaust fans, hoods and ducts shall be cleaned at least every ninety (90) days.

- c. The Association shall obtain the prior written approval and consent from the City before making any repairs, improvements, additions or alterations to said premises, and all improvements, additions or alterations which may be approved shall become the property of the City and remain upon said premises and be surrendered with the premises at the termination of this agreement. Failure to obtain prior written authorization from the City can constitute cause for the immediate termination of this agreement.
- d. The Association will maintain any and all improvements that, in the opinion of the City, are for the primary benefit of the user.
- e. The Association is responsible for reporting all acts of vandalism to the facility or Association property to the City and the local Police Department. A copy of the police report must be filed with the City Department of Parks and Recreation.
- f. The Association shall not use the said premises for any purpose other than that of baseball practices, games, meetings, clinics, tournaments and demonstrations for the promotion of the sport, community interest and welfare.
- g. The Association agrees to take any action necessary to prevent or correct any nuisance or other grievances upon, or in connection with, said premises during the terms of this Agreement.
- h. The City or any of its agents or employees shall have the right to enter upon the said premise at any time during the term of this Agreement to examine, inspect or supervise as deemed necessary.

IV. THE ASSOCIATION'S SAFETY PRECAUTIONS

- a. The Association agrees to administer activities at the said facility in a safe and professional manner, having a sufficient number of adults present to supervise all scheduled activities, from the time the first person arrives until the last person departs.
- b. The City has the right to cancel any scheduled activity on an athletic field during inclement weather when it is determined that such activity would damage the field. Persistent damage to the City facilities by the Association will result in the Association being prohibited from using the City facilities.
- c. In the event of lightning, for the safety of the participants, all play shall be suspended until the danger has passed. When the field is cleared of participants, all children should be directed either inside a building or inside an automobile.



Brook Run Park Baseball Field Maintenance

Task	Frequency	Responsible party
Indoor concessions - Deep cleaning	Twice Yearly	DSB
Raking crumb rubber into mound, basepath and high traffic field positions	Between games	DSB
Field sweeping debris removal/ high traffic areas	Daily/ during game days	DSB
Trash Removal -umpire locker room	Daily/ as needed	DSB
Bathroom cleaning -umpire locker room	Daily / as needed	DSB
Meeting room cleaning	weekly / as needed	DSB
Meeting room trash removal	weekly / as needed	DSB
Cleaning of umpire locker room	weekly / as needed	DSB
Indoor concessions- Grease trap cleaning	Quarterly / as needed	DSB
Maintaining and cleaning of DSB dugout storage	Monthly	DSB
Litter pick up from PCMS parking area and all associated walkways and grounds.	Daily/ during game days	DSB
Task	Frequency	Responsible party
Field Sweeping/full field	Twice a Month / Dependent on usage	City of Dunwoody
Field grooming /full field	Twice a Month/ Dependent on usage	City of Dunwoody
Concrete, debris blow off	Once Daily	City of Dunwoody
Indoor concessions - Cleaning inspection	Quarterly	City of Dunwoody
Public Outdoor Trash Removal	Once Daily / As Needed	City of Dunwoody
Pressure wash concrete, facility	Yearly/ as needed	City of Dunwoody
Public Restroom cleaning	Once Daily / As Needed	City of Dunwoody
Outdoor garbage removal	Once Daily / As Needed	City of Dunwoody
Playground Maintenance	As needed	City of Dunwoody