

**FIELD USE AND MAINTENANCE AGREEMENT  
FOR Pineville Elementary School**

**THIS USE AGREEMENT** ("Agreement"), made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between

**MECKLENBURG COUNTY**  
referred to herein as the  
**"COUNTY"**

**AND**

**The Town of Pineville**  
referred to herein as  
**"TOWN"**

**WITNESSETH:**

**WHEREAS**, the COUNTY has a license Agreement for Construction and use of School Athletic Fields and Parking Lot with The Charlotte-Mecklenburg Board of Education which allows the COUNTY to use property at Pineville Elementary School on which to construct one youth baseball field and two tee ball fields ("CMS License Agreement") which is attached as **Exhibit A**; and

**WHEREAS**, the Board of County Commissioners is authorized to enter into use agreements for the operation of COUNTY property for recreation and leisure pursuits, provided that the COUNTY reserves appropriate controls to assure public use of such Park and Recreation property; and

**WHEREAS**, a use agreement for Pineville Elementary School providing for youth practice, games and tournaments in return for maintenance services at this Park by the Town of Pineville is consistent with said purposes; and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions set forth herein, the parties do agree as follows:

**1. PREMISES**

- 1.01 Premises.** The COUNTY hereby enters into this Agreement with the TOWN for one youth baseball field and two tee ball fields at Pineville Elementary School and the School Grounds as defined in the CMS License Agreement (the "Premises") as shown on the exhibit A-1 attached to **Exhibit A**, and the right to use parking lots at

the School in connection with use of the athletic fields.

- 1.02** Use. The Premises shall be used only and exclusively for youth baseball and tee ball practice, league games, tournaments, and such other purposes as are related, and for no other purposes whatsoever, unless prior written approval is granted by the COUNTY. COUNTY reserves the right to reserve the Premises when Premises are not used by the TOWN. **The TOWN acknowledges that execution of this Agreement does not grant exclusive use of the Premises.**
- 1.03** Condition of Premises. The TOWN acknowledges personal inspection of the Premises and the surrounding area and evaluation of the extent to which the physical condition will affect the use and operation of athletic facilities. The TOWN acknowledges the possible existence of easements for roadway, sewer and water lines on the Premises. **The TOWN accepts the Premises in its present condition and acknowledges that COUNTY has made no representations or warranties as to the condition of the Premises or its fitness for the use intended hereunder. The TOWN agrees that it will make no demands upon the COUNTY for any improvements or alterations thereof, except for any denoted in Section 3.02.** Notwithstanding anything to the contrary herein, should a pre-existing defect be discovered after execution of this Agreement which cannot be corrected, contained, repaired, eliminated, or otherwise made safe for public recreation uses within a reasonable cost to the COUNTY if COUNTY funds are available for that purpose at that time by the COUNTY, this Agreement may be terminated by the TOWN or COUNTY.
- 1.04** Warranty of Title. COUNTY warrants that its only property interest in the Premises is a license from The Charlotte-Mecklenburg Board of Education, which "Agreement for Construction and Use of School Athletic Fields and Parking Lot" ("CMS License Agreement") is attached as **Exhibit A**, and incorporated herein. TOWN agrees that it will comply with the provisions of the CMS License Agreement.
- 1.05** Quiet Enjoyment. Subject only to the terms of this Agreement, so long as the TOWN complies with its obligations, the COUNTY shall secure to the TOWN the quiet and peaceful enjoyment of the Premises as provided herein without objection or interference from the COUNTY or any party claiming under COUNTY.
- 1.06** Operation of Premises. Notwithstanding the foregoing, COUNTY reserves the right to temporarily suspend or terminate this Agreement for the TOWN's use of the Premises when it is deemed to be in the best interest of the COUNTY to provide equitable use and access to other sports and athletic activities. COUNTY agrees to work diligently with the TOWN to resolve any equitable use and access to other sports and athletic activities issues prior to considering exercising COUNTY's right to suspend or terminate the Agreement.
- 1.07** Inspection by COUNTY. The TOWN agrees that it will at all times permit the

COUNTY access to the Premises when necessary for inspection and compliance. The TOWN agrees that the COUNTY reserves the rights to install, rearrange, and/or maintain facilities at the Premises as necessary to ensure the safety of park patrons if funding is available to make such installation, rearrangement or maintenance.

## 2. TERM

**2.01** Term. The term of the Agreement shall be for a period, commencing on the date of execution of this Agreement through June 30, 2040 ("Initial Term"), **BUT ONLY AS LONG AS THE CMS LICENSE AGREEMENT IS IN EFFECT**. If this Agreement has not been terminated before the end of the Initial Term, this Agreement shall be automatically renewed annually for additional one-year terms (July 1 – June 30) after the end of the Initial Term provided the CMS License Agreement regarding the Premises is renewed for such time periods.

## 3. The TOWN and COUNTY's BASIC SERVICE OBLIGATIONS

### 3.01 Duties of the TOWN

- A. The TOWN will be authorized to provide full organization, administration, and supervision of athletic competition, including organization of leagues, scheduling of games/practices, facilitation and/or organization of tournament play, and instructional programs and clinics as provided herein for the TOWN'S athletic program at the Premises.
- B. The TOWN shall have the right to use the Premises on a "first right of reservation" basis for actual practice, game, and tournament dates and times. For scheduling purposes, the TOWN will submit a schedule of events no later than February 1 and again by August 1 of each year. The COUNTY will respond to the TOWN within two (2) weeks with a confirmation of the dates and times requested. This process will not preclude TOWN from making additional requests during the calendar year, which COUNTY will endeavor to grant. COUNTY will endeavor to provide a minimum of One Hundred Twenty (120) days notice to the TOWN should COUNTY desire to utilize the Premises. No requests from third parties will be entertained until after the TOWN and COUNTY activities have been scheduled. Remaining blocks of time will be open to general public reservations as deemed appropriate by the COUNTY;

The order of priority is:

- 1. The TOWN games, practices, clinics, and programs;
- 2. COUNTY games, practices, clinics, and programs;
- 3. General Public use;

Note, COUNTY reserves the right to block out periods of times for the purpose of hosting regional or national level tournaments. COUNTY will endeavor to give the TOWN 120 days' notice of such events.

The TOWN is hereby permitted to sub-lease or re-book any reservations to the Pineville Community Athletic Association (PCAA.) The sub-lease or re-booking of any reservations to any other group or entity requires prior written approval by the COUNTY.

- C. The TOWN agrees to provide all equipment including commercial grade turf equipment, labor, and materials necessary to adequately meet minimum service requirements at its own expense. This inventory shall include, but is not limited to all equipment for the sports listed in Section 1.02, field marking supplies/materials and any and all equipment.
- D. The TOWN at its sole expense agrees to keep and maintain the field proper, structures, and utility systems (existing or future installation) including the portion of the irrigation systems as provided in **Exhibit B** in good, safe, and first class working condition by COUNTY approved contractors or qualified staff through the term of the Agreement, providing for such repairs, general maintenance, and modifications or additions that may be for the TOWN's use only. All such repairs, maintenance, and modifications or additions to the facility requiring expenditures over \$25,000 must be in accordance with the facility master plan and also must have written approval by the Director of Park and Recreation, or his/her designee prior to implementation. Recognizing the TOWN's limited capacity to execute or fund significant repairs, the COUNTY agrees to consider assisting the TOWN at their request in such matters. In addition, should additional improvements be made to the Pineville Elementary School property in future phases of construction, such as the addition of field lighting and a restroom/concession building, as provided in the CMS License Agreement, the TOWN shall be responsible for maintenance of such additional improvements using COUNTY approved contractors.
- E. The TOWN at its sole expense agrees to correct, in a timely manner any deficiency and/or safety hazard noted or that might develop as a result of use by the TOWN or noted during monthly maintenance inspections performed by the COUNTY. COUNTY inspections are visual and informal however the results of the inspections may be documented and forwarded to the TOWN.
- F. The TOWN agrees to provide athletic field maintenance services at its sole expense including field preparation and marking, trash collection and including but not limited to the obligation to mow in accordance with County's mowing policy, edge, trim, seed, over seed, fertilize, aerate, irrigate, and renovate turf areas as denoted in **Exhibit B** for Bermuda grass for County standards, as well as to provide weed, disease and pest control maintenance if a rodent problem develops, and provide any

necessary maintenance to any structures and equipment associated with Premises in accordance with maintenance standards as agreed upon (subject expectations shall be defined by **Exhibit B** of this Agreement). General turf areas shall be maintained by the TOWN as denoted in **Exhibit C**, Mecklenburg County Park and Recreation General Turf Maintenance Standards. Pesticides must be applied by a North Carolina licensed professional agent. Furthermore, the TOWN shall comply with all State, federal, or local laws, ordinances, codes, rules or OSHA regulations, minimum wage and hour regulations as set forth in the Fair Labor Standards Act, and National Fire Protection Association regulations. The TOWN shall provide the COUNTY with a Certificate of Insurance annually from any contracted service provider listing "Mecklenburg County" and "**The Charlotte-Mecklenburg Board of Education**" as additional insureds as provided in Section 9.01. The TOWN may elect to share maintenance responsibilities with PCAA provided all work performed by, or under the direction of, PCAA is in accordance with the terms of the Agreement including all requirements and applicable Exhibits.

- G. The TOWN shall work cooperatively with the COUNTY to plan and coordinate monthly, semi-annual, and annual turf maintenance programs such as fertilization, aeration, and turf renovation further described in **Exhibit B**.
- H. The TOWN shall identify one (1) responsible member as the official point of contact for this Agreement;
- I. The TOWN shall agree to meet quarterly or as needed with a representative of the COUNTY to inspect the Premises, review quarterly maintenance and discuss open issues for resolution.
- J. The TOWN agrees to properly dispose of all refuse and leave the Premises and the parking lots clean and free of all trash after each use by the TOWN.
- K. The TOWN at its expense will maintain liability insurance against loss by theft, vandalism, catastrophic event, etc. on all TOWN-owned materials, equipment, supplies and capital improvements to the Premises where permissible to mitigate the extent of financial loss.
- L. The TOWN shall at its own expense install, maintain and repair benches and scoreboards, at the Premises for use during practice, games, league play and tournaments. The TOWN agrees to submit plans and specifications to the COUNTY for review and approval prior to installation. The TOWN agrees to make no demands to the COUNTY to install any additional utility services to support the TOWN's use of the Premises.
- M. Upon request from COUNTY, the TOWN shall promptly provide a detailed roster of registered players which includes names, addresses, and ages of all athletic participants.

- N. The TOWN will pay to the COUNTY Three Hundred Thousand Dollars (\$300,000) to be used by the County to help pay for construction of the one youth baseball field and two tee ball fields within thirty (30) days after full execution of this Agreement.

**3.02 Duties of COUNTY**

- A. COUNTY shall reserve the Premises upon receipt of written request from the TOWN, on a priority use basis for practices, games and tournaments per section 3.01.B.
- B. COUNTY agrees to meet quarterly with a representative of the TOWN to inspect the Premises, discuss open issues, evaluate maintenance and capital improvement activities, and review expense reconciliations as provided in 3.01.I. A written report of such inspections shall be recorded, establish action plan, and retained for reference by both parties. The inspections will be established and agreed upon jointly by both parties.
- C. The COUNTY reserves the right to open and close fields as it deems necessary due to field conditions. The COUNTY reserves the right to reserve the Premises when not used by the TOWN.
- D. COUNTY agrees to construct on the Premises one youth baseball field and two tee ball fields.

**4. PAYMENT FOR FIELD USE**

- 4.01** The TOWN shall have the option of operating and maintaining any/all concessions, in accordance with federal, State, **Charlotte-Mecklenburg Board of Education**, local and COUNTY regulations, within the Premises as defined and shall retain all revenues generated from such operations.

**5. OPERATING RESPONSIBILITIES**

- 5.01 Compliance with Laws.** The TOWN shall conform to and abide by all Municipal and COUNTY ordinances, and all State and federal laws and regulations, insofar as the same or any of them are applicable, including any COUNTY Park Ordinances; and where permits and/or licenses are required for operations and/or any construction required or authorized, the same must be first obtained from the regulatory agency having jurisdiction.
- 5.02 Disorderly Persons.** The TOWN agrees not to allow any loud, boisterous or disorderly persons to remain about the Premises during any TOWN activity.
- 5.03 Illegal Activities.** The TOWN shall not knowingly permit any illegal activities or

violation of any COUNTY park ordinances to be conducted upon the Premises during a TOWN activity. The TOWN shall obtain and review a copy of the COUNTY's park ordinance.

- 5.04** Signs. The TOWN shall not post signs upon the Premises or improvements thereon, unless prior written approval is obtained from the COUNTY and the **Charlotte-Mecklenburg Board of Education**. Designation of any athletic fields or facilities with any signs of a commercial or advertising nature is expressly prohibited and COUNTY reserves the right to remove any and all unauthorized signs from the Premises. Use and display of banners must conform with the TOWN code, rules of **The Charlotte-Mecklenburg Board of Education**, and the COUNTY's Park and Recreation Facilities Ordinance. The TOWN / PCAA may post sponsorship signage for the purpose of revenue generation as long as such postings are in compliance with local codes, all stipulations above and herein and, as long as the CMS License Agreement is in effect.
- 5.05** Public Use. By working jointly, the TOWN and the COUNTY shall each use its best efforts to maximize the public use of the Premises and the facilities thereon.
- 5.06** Employees / Volunteers. The TOWN shall maintain an adequate and proper number of employees, volunteers and/or contracted labor to provide the services required within this Agreement. The COUNTY may at any time give the TOWN written notice to the effect that the conduct or action of a designated volunteer or employee of the TOWN is, in the reasonable belief of the COUNTY, detrimental to the interest of the public patronizing the Premises. Following the COUNTY's written notice, the TOWN shall: (1) terminate such volunteer or employee's work assignment at the Premises; or (2) the TOWN shall meet with representatives of the COUNTY to consider the appropriate action with respect to such a matter and the TOWN shall take reasonable measures under the circumstances to assure the COUNTY that the conduct and activities of the TOWN volunteers or employees will not be detrimental to the interest of the public patronizing the Premises.
- 5.07** Emergency Services. The TOWN will at the execution of this Agreement provide the COUNTY with the names and telephone numbers of at least two (2) qualified members who can be called by COUNTY representatives when emergency conditions occur during hours when the TOWN normal volunteer or employed work force is not present. The COUNTY shall call for such assistance only in the event of a genuine emergency.
- 5.08** Safety. The TOWN shall immediately correct any unsafe practices by its volunteers, employees, or patrons. The TOWN shall obtain emergency medical care for any member of the public who is in need because of illness or injury occurring on the Premises during any times that the TOWN has scheduled use of the Premises. The TOWN shall cooperate fully with the COUNTY in the investigation of any injury or death occurring on the Premises; including making a prompt report to the COUNTY.

- 5.09** Use of Facilities: Restrictions. The TOWN shall obtain the COUNTY's prior written approval of any events or activities not otherwise specifically provided for and authorized herein. The PCAA annual "Spring Fling Kick-Off" is an approved event as long as this Agreement and the CMS License agreement is in effect.
- 5.10** Reporting. The TOWN or its representative shall meet with a COUNTY Representative quarterly or at such time(s) as may be required by the COUNTY to review the TOWN's performance under this Agreement and to conduct a site inspection to review and discuss any problems or matters as determined by the COUNTY or the TOWN.
- 5.11** Equipment and Trade Fixtures. The TOWN, at its own expense, shall provide and install any additional fixtures, equipment, etc. that are required for operation of the Premises. During the last thirty (30) days preceding the termination of this Agreement, the TOWN shall remove same from the Premises, other than for those items which have been furnished by the COUNTY or so affixed that their removal cannot be accomplished without damage to the realty or approved in writing by COUNTY to remain. Should the TOWN fail to remove said fixtures and equipment within said thirty (30) day period, the TOWN shall lose all right, title and interest and the COUNTY may elect to keep same upon the Premises or to sell, remove or demolish same.
- 5.12** Habitation. The Premises shall not be used for human habitation.
- 5.13** Advertising and Promotional Materials. The TOWN shall not distribute any advertising or promotional materials regarding the Premises unless prior approval is obtained from COUNTY. This approval shall not be unreasonably withheld or delayed and shall be deemed to be given if no objection is made within five (5) working days following the request for approval. Such materials include, but are not limited to advertising in newspapers, magazines and trade journals, and radio and/or television commercials, Websites, social media, and signage. This does not include TOWN program promotion such as league sign-ups, etc.
- 5.14** Credit in Promotional Materials. The TOWN agrees that any advertising or promotional materials for the Premises will recognize Mecklenburg County Park and Recreation via placement of Department logo, COUNTY's written partnership statement or other method approved by the COUNTY. Advertising and promotional materials include all websites, electronic or printed materials including all banners and signs.
- 5.15** Non-TOWN Activities. Notwithstanding anything to the contrary herein, during all times in which the Premises are being used for other than activities, programs and other TOWN -related activities, the TOWN shall have no responsibility to monitor or supervise such uses or to provide volunteers or staff in any capacity with respect to



such uses. If the COUNTY deems such services and personnel as necessary for such uses, the COUNTY shall provide such services and personnel at its expense.

- 5.16 Naming. The TOWN may name and post the athletic fields on the Premises in honor of Laddie Whetstone, John Rea and Reid Osborne. Any other naming or renaming will require written approval from the COUNTY and the Charlotte Mecklenburg Board of Education.

## **6. CONSTRUCTION BY THE COUNTY AFFECTING PREMISES**

- 6.01 Future COUNTY Construction. In the event the COUNTY shall construct or cause to be constructed a new facility on the Premises after construction of the one youth baseball field and the two tee ball fields, the TOWN agrees to cooperate with the COUNTY by vacating and removing items of inventory, trade fixtures, equipment and furnishings for such periods as are reasonably required for the construction of such new facilities.
- 6.02 Resumption of Operations. Following completion of any new facility constructed pursuant to Section 6.01, the TOWN shall resume operations within thirty (30) days of written notice from the COUNTY that the Premises are tenantable. COUNTY agrees to negotiate in good faith an alternate location if construction of a new facility results in the Premises becoming unsafe or unusable.
- 6.03 Partial or Total Closure. The aforementioned provisions of this section shall also be applicable in the event of performance of work on the Premises that requires a partial or total closure.

## **7. LICENSEE**

- 7.01 Licensee. This Agreement is by and between the COUNTY and the TOWN as its licensee, and is not intended, and shall not be construed, to create the relationship of agent, tenant, servant, employee, partnership, joint venture or association.

## **8. HOLD HARMLESS AND INDEMNIFICATION**

- 8.01 TOWN Indemnification. The TOWN agrees to indemnify, defend and save harmless the COUNTY, its agents, officers and employees from and against any and all liability, expense (including defense costs and legal fees) and claims for damages including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with the TOWN's operations or its services hereunder, including any Worker's Compensation suits, liability or expense, arising from or connected with services performed on behalf of the TOWN by any person pursuant to this Agreement. The TOWN's duty to indemnify the COUNTY shall survive the expiration or other termination of this Agreement.

## 9. INSURANCE

**9.01 INSURANCE:** Throughout the term of this contract, the TOWN will comply with the insurance requirements described in this section. In the event that the TOWN fails to maintain required insurance, COUNTY shall be entitled to terminate or suspend the Agreement immediately.

The TOWN agrees to purchase at its own expense and maintain the following insurance coverage during the life of the Agreement:

- A) **Automobile Liability**  
Insurance with a limit of not less than \$1,000,000 per occurrence combined single limit each occurrence for bodily injury and property damage liability covering all owned, non-owned, and hired vehicles.
- B) **Commercial General Liability**  
Insurance with a limit not less than \$1,000,000 per occurrence/aggregate including coverage for bodily injury, property damage, products and completed operations, personal/advertising injury liability and contractual liability.
- C) **Workers' Compensation**  
Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and, Employers' Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

COUNTY and **The Charlotte-Mecklenburg Board of Education** shall be named as an additional insured under the commercial general liability insurance for operations or services rendered under this Agreement.

COUNTY and **The Charlotte-Mecklenburg Board of Education** shall be designated insureds under the auto liability policy.

The TOWN shall not commence any activity in connection with the resulting Agreement until it has obtained all of the types of insurance set forth in this section and furnished the athletic coordinator or division director with proof of insurance coverage by certificates of insurance accompanying the Agreement. The TOWN shall be responsible for notifying COUNTY of any material changes (including renewals) to or cancellation of the insurance coverages required above. Notice to COUNTY must be completed in writing within 48 hours of the changes.

The TOWN shall not allow any subcontractor to commence work on Premises until all such subcontractors have obtained the same insurance coverages as described above.

All insurance policies shall be written by insurers qualified to do business in the State of North Carolina. If any of the coverage conditions are met by a program of self-insurance, the TOWN or subcontractor must submit evidence of the right to self-insure as provided by the State of North Carolina.

COUNTY shall be exempt from, and in no way liable for any sums of money that may represent a deductible or self-insured retention in any insurance policy. The payment of the deductible/retention shall be the sole responsibility of the TOWN and/or subcontractor.

The TOWN's insurance shall be primary of any self-funding and/or insurance otherwise carried by COUNTY for all loss or damages arising from the TOWN'S operations under this Agreement. The TOWN and each of its subcontractors shall and does waive all rights of subrogation against COUNTY and each of the Indemnitees.

- 9.02** Breach of Contract. Failure on the part of the TOWN to procure or maintain required insurance shall constitute a breach of contract upon which the COUNTY may immediately terminate this Agreement.
- 9.03** Commencement of Operations. Conduct of operations shall not commence until the TOWN has complied with the aforementioned insurance requirements. Further, said operations, in whole or in part, shall be subject to suspension by the COUNTY during any period that the TOWN fails to maintain said policies in full force and effect.
- 9.04** No Cancellation. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the TOWN to furnish insurance during the term of this Agreement. No less than thirty (30) days prior to the expiration of any such policy, a signed and complete certificate of insurance coverage has been renewed or extended shall be filed with the COUNTY.
- 9.05** Waiver of Subrogation. The COUNTY and the TOWN agree that in the event any part or parts of the Premises or property upon, in, or about the Premises are damaged or destroyed by fire or other casualty, or in the event of any damage or injury to persons or other property interests, the rights or claims of either party, its agents, successors or assigns against the other with respect to such liability for any loss, destruction, damage or injury resulting there from, including loss or injury suffered as a result of the negligence of either party or its agents, are hereby released and discharged to the extent such loss, destruction, damage or injury is covered by insurance, and any and all subrogation rights or claims under any insurance coverage's insuring the Premises and any property upon, in or about the Premises, and/or the parties hereto are hereby waived to the extent such loss, destruction, damage or injury is covered by insurance. All policies of fire, liability and/or other insurance covering the Premises, property upon, in, or about the Premises, and/or the parties hereto shall contain a clause or endorsement providing, in substance, that the

insurance shall not be prejudiced if the insured have waived any rights of recovery or subrogation against any person or persons prior to the date of such loss, destruction, damage or injury.

- 9.06** Increase in Insurance Coverages. The TOWN agrees to increase the insurance limits of its policies from time to time over the term of this Agreement consistent with sound risk management practices.

**10. [RESERVED]**

**11. TRANSFERS**

- 11.01** No Assignment. The TOWN shall not assign, hypothecate, or mortgage this Agreement or lease or license any portion of the Premises. Any attempted assignment, hypothecation, mortgage, lease or license without the express written consent of the Board of County Commissioners or designee shall render this Agreement null and void.

**12. NON-DISCRIMINATION AND CIVIL RIGHTS COMPLIANCE**

- 12.01** Use. The TOWN hereby certifies and agrees that it will comply with the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, where applicable, Title 43, part 17 of the Code of Federal Regulations Subparts A and B, and laws of the State of North Carolina, to the end that no persons shall, on the grounds of race, creed, national origin, political affiliation, marital status, sex, age or handicap, be subjected to discrimination under the privileges and use granted by this Agreement or under any project, program or activity supported by this Agreement.
- 12.02** Employees. The TOWN certifies and agrees that all persons used with respect to the Premises are and shall be treated equally without regard to or because of race, religion, color, national origin, political affiliation, marital status, sex, age or handicap and in compliance with all federal and State laws and regulations prohibiting discrimination in employment.
- 12.03** Contractors. The TOWN certifies and agrees that with respect to the Premises, it will obtain COUNTY's approval prior to using any subcontractors, bidders and vendors and shall select any subcontractor, bidder and vendor without regard to or because of race, religion, color, national origin, political affiliation, marital status, sex, age or handicap.
- 12.04** Records. All records of the TOWN with respect to the Premises shall be open for inspection at any reasonable time during the term of this Agreement for the purpose of verifying the practice of non-discrimination by the TOWN in the areas described.

**12.05** Violations. If the COUNTY finds that any of the above provisions of this Section 12 have been violated by the TOWN with respect to the Premises, such violations shall constitute a breach of contract upon which the COUNTY may determine to cancel, terminate, or suspend this Agreement. While COUNTY reserves the right to determine independently that the nondiscrimination provisions of this Agreement have been violated, in addition, a determination by the Equal Employment Opportunity Commission that the TOWN has violated State or federal non-discrimination laws or regulations shall constitute a finding by the COUNTY that the TOWN has violated the non-discrimination provisions of this Agreement.

### **13. EASEMENTS**

**13.01** Reservation of Right to Grant Easement. The COUNTY reserves the right to establish, grant or utilize easements or rights-of-way over, under, along and across the Premises for utilities and/or public access to the Premises provided COUNTY shall endeavor to exercise such rights in a manner as will avoid any substantial interference with the operations to be conducted.

### **14. CANCELLATION OF AGREEMENT**

**14.01** Default. Upon the occurrence of any one or more of the events of default hereinafter described, this Agreement shall be subject to cancellation. As a condition precedent, the COUNTY shall give the TOWN twenty-one (21) days' notice by registered or certified mail of the date set for cancellation, and that an opportunity to be heard by the County Manager will be afforded the TOWN on or before said date, if request is made.

**14.02** Possession. Upon cancellation after any default of as provided herein, the COUNTY shall have the right to take possession of the Premises, including all improvements, equipment, and inventory located thereon, and use same for the purpose of satisfying and/or mitigating all damage arising from a breach of this Agreement.

**14.03** Remedies Cumulative. Action by the COUNTY to effectuate a cancellation and forfeiture of possession shall be without prejudice to the exercise of any other rights provided or by law to remedy a breach of this Agreement.

**14.04** Termination. COUNTY or the TOWN may terminate this Agreement at any time by giving a minimum of one year's written notice to the other.

### **15. EVENTS OF DEFAULT**

**15.01** Abandonment. The abandonment, vacation or discontinuance of operation of the Premises for more than twenty-one (21) consecutive days shall constitute abandonment.

- 15.02** Failure to Operate. The failure of the TOWN to operate in the manner required by this Agreement, where such failure continues for more than twenty-one (21) days after written notice from the COUNTY to correct the condition therein specified.
- 15.03** Failure to Perform other Covenants. The failure of the TOWN to keep, perform and observe all other promises, covenants, conditions and agreements set forth in this Agreement, where such failure continues for more than twenty-one (21) days after written notice from the COUNTY for correction, provided that where fulfillment of such obligation requires activity over a period of time and the TOWN shall have commenced to perform whatever may be required to cure the particular default within twenty-one (21) days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the COUNTY.
- 15.04** Filing of Bankruptcy. The filing of a voluntary or involuntary petition in bankruptcy by the TOWN; the adjudication of the TOWN as a bankruptcy, the appointment of any receiver of the TOWN's assets; the making of a general assignment for the benefit of creditors; a petition or answer seeking an arrangement for the reorganization of the TOWN; the occurrence of any act which may operate to deprive the TOWN permanently of the rights, powers and privileges necessary for the proper conduct and operation of the Premises; the levy of any attachment or execution which substantially interferes with the TOWN's operation(s) under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.
- 15.05** Discrimination. An act of discrimination has been practiced by the TOWN with respect to any use or proposed use of the Premises in violation of State and/or federal laws.

## **16. WAIVER**

- 16.01** Waiver Not Subsequent Waiver. Any waiver by the COUNTY of any breach of any one (1) or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of the COUNTY to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or stopping the COUNTY from enforcing the full provisions.
- 16.02** Delay Not Waiver. No delay, failure, or omission of the COUNTY to re-enter the Premises or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in

such default or as a relinquishment of any right.

**16.03** Time of Essence. No notice to the TOWN shall be required to restore or revive "time of the essence" after the waiver by the COUNTY of any default.

**16.04** Remedies Cumulative. No option, right, power, remedy or privilege of the COUNTY shall be construed as being exhausted by the exercise in one (1) or more instances. The rights, powers, options, privileges and remedies given the COUNTY by this Agreement shall be cumulative.

## **17. RIGHT OF ENTRY**

**17.01** Failure to Perform Obligations. Should the TOWN be deemed deficient in satisfying its obligations under this Agreement, as determined by the COUNTY, upon notice duly given of its obligation required, the COUNTY, in addition to all other available remedies may, but shall not be so obliged, to enter upon the Premises and correct the TOWN's deficiencies using COUNTY forces, equipment and materials on the Premises suitable for such purposes or by employing a separate private contractor

**17.02** Abandonment. In the event of an abandonment, vacation or discontinuance of operations for a period in excess of twenty-one (21) days, the TOWN hereby irrevocably appoints the COUNTY as an agent for continuing operation of the services granted and in connection therewith authorizes the officers and employees to: (1) take possession of the Premises, including all improvements, equipment and inventory thereon; and (2) remove any and all persons or property on said Premises and place any such property in storage for the account of and at the expense of the TOWN; and (3) lease the Premises; and (4) after payment of all expenses of such leasing or licensing apply all payments realized to the satisfaction and/or mitigation of all damages arising from the TOWN's breach of the Agreement. Entry by the officers and employees of the COUNTY upon the Premises for the purpose of exercising the authority conferred as agent of the TOWN shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

## **18. SURRENDER**

**18.01** Vacate Premises. Upon expiration of the term hereof, or cancellation as herein provided, the TOWN shall peaceably vacate the Premises and any and all improvements and deliver the same to the COUNTY in a reasonably good condition, ordinary wear and tear excepted, subject to the right of the COUNTY to demand removal to the extent that Section 17 may be applicable.

## **19. INTERPRETATION**

**19.01** Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of North Carolina.

**19.02** Captions. The heading herein contained is for convenience and reference only and are not intended to define or limit the scope of any provision.

**19.03** Defined Terms. The following words as used shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

"COUNTY": Mecklenburg County, North Carolina

"State": The State of North Carolina

"Town": The Town of Pineville, North Carolina

## **20. ENFORCEMENT**

**20.01** Director. The Director of the Mecklenburg County Park and Recreation Department shall be responsible for the enforcement of this Agreement on behalf of the COUNTY and shall be assisted by those officers and employees of the COUNTY having duties in connection with the administration of this Agreement.

**20.02** Other COUNTY Officials. Any officers and/or authorized employees of the COUNTY may enter upon the Premises at any and all reasonable times for the purpose of determining whether or not the TOWN is complying with the terms and conditions, or for any other purpose incidental to the rights of the COUNTY within the Premises.

## **21. NOTICE OF NON-COMPLIANCE**

**21.01** Notice to Correct Deficiencies. If the COUNTY determines that there are deficiencies in the TOWN's performance as authorized and required, the COUNTY will provide, as specified in Section 3, a written notice to the TOWN to correct said deficiencies within specified time frames.

**21.02** Failure to Correct. In the event that the TOWN fails to correct the deficiencies within the aforementioned time frames the COUNTY may, at its option and as appropriate exercise its rights as outlined in Section 17.

## **22. NOTICES**

**22.01** Delivery of Notice. Any notice required to be given under the terms of this Agreement or any law applicable may be: (1) delivered by personal service; or (2) placed in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, return receipt requested, and deposited in a post office, mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained by the



United States Postal Service.

The address to be used for any notice served by mail upon the TOWN shall be:

Town of Pineville  
Attn: Town Manager  
P.O. Box 249  
Pineville, NC 28134

or such other place as may hereafter be designated in writing to the COUNTY by the TOWN. Any notice served by mail upon the COUNTY shall be addressed to:

Director  
Mecklenburg County Park and Recreation Department  
5841 Brookshire Boulevard  
Charlotte NC 28216

and to

County Manager  
Mecklenburg County Government  
Charlotte-Mecklenburg Government Center  
600 East Fourth Street  
Charlotte, North Carolina 28202

or such other place as may hereafter be designated in writing to the TOWN by the COUNTY. Service by mail shall be deemed complete upon receipt in the above-mentioned manner.

## **23. ENTIRE AGREEMENT**

**23.01 Exhibits.** The following are marked as Exhibits to this Agreement and are incorporated by reference as if fully set forth herein:

**Exhibit A** – “Agreement for Construction and Use of School Athletic Fields and Parking Lot between Mecklenburg County and The Charlotte-Mecklenburg Board of Education”

**Exhibit B** – Annual Bermuda Athletic Field Routine Maintenance Schedule

**Exhibit C** – Mecklenburg County Park & Recreation General Turfgrass Maintenance Standards


**23.02 Inconsistencies.** In the event of inconsistencies between any Exhibit and this Agreement the terms of the Agreement shall govern and control.

**23.03** Entire Agreement. This document and the Exhibits attached plus others to be added constitute the entire Agreement between the COUNTY and The TOWN. All other agreements, promises and representations with respect thereto, other than eventually contained herein, will be expressly revoked, as it will have been the intention of the parties to provide for a complete integration within the provisions of this document, and the Exhibits attached hereto, the terms, conditions, promises and covenants relating to the operation of the Premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

**23.04** Modification. This document may be modified only by further written agreement between the two (2) parties. Any such modification shall not be effective unless and until executed by the TOWN and COUNTY.

In WITNESS WHEREOF, the parties have duly executed this Contract as of the date first above written.

**TOWN OF PINEVILLE:**

  
\_\_\_\_\_  
Town of Pineville Representative Signature

Mayor Jack Edwards  
\_\_\_\_\_

**MECKLENBURG COUNTY:**

\_\_\_\_\_  
County Manager

THIS INSTRUMENT AS BEEN PREAUDITED  
IN THE MANNER REQUIRED BY THE LOCAL  
GOVERNMENT BUDGET AND FISCAL  
CONTROL ACT. \_\_\_\_\_

Finance Director

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

APPROVED AS TO INSURANCE  
REQUIREMENTS:

\_\_\_\_\_  
Director, Charlotte-Mecklenburg Division  
Of Insurance Risk Management

\_\_\_\_\_  
Director / Deputy Director Mecklenburg County  
Park and Recreation Department

## **EXHIBIT A**

[Will insert executed “Agreement for Construction and Use of School Athletic Fields and Parking Lot between Mecklenburg County and The Charlotte-Mecklenburg Board of Education” as Exhibit A]

## **EXHIBIT B**

### **ANNUAL BERMUDA GRASS ATHLETIC FIELD MAINTENANCE**

#### **ROUTINE MAINTENANCE SCHEDULE**

##### **January/February**

Apply initial application of lime (if needed)  
Apply initial application of post-emergent herbicide (clean-up winter weeds)

##### **February/March**

Apply initial application of pre-emergent herbicide before soil temperatures reach 54-58 degrees  
F

##### **March/April**

Begin mowing by mid-March or early April and continues once a week through May

##### **May**

Initial application of fertilizer (well balanced with relatively high nitrogen content-1.5 lbs./1,000  
SF)

Apply Bermuda seed as needed (suggested rate – 2 lbs./1,000 SF); Sunstar, Sahara, Yukon,  
Princess 77 or other County approved turf quality improved varieties

Aerate field in two (2) different directions during the last week of the month

Top dress field with sand/compost

Continue mowing once a week

Note: Aeration will allow soil temperatures to rise and allow water and air to penetrate down  
into the root zone. This process along with a good shot of fertilizer will stimulate Bermuda grass  
growth significantly.

##### **June**

Apply a slow release, well balanced fertilizer (1 lb. nitrogen per 1,000 SF)

Apply post emergent, broad spectrum herbicide as needed

Increase reel mowing to twice per week

Consider applying Primo growth regulator to control and enhance growth

##### **July/August**

Apply fertilizer (relatively uniform analysis- 1 lb. nitrogen per 1,000 SF)

Apply post emergent, broad spectrum herbicide as needed

Aerate field in two (2) different directions

Top dress field with sand/compost

Continue mowing twice a week

If using Primo growth regulator, a second application may be required as each application  
normally lasts 4-6 weeks.

Note: Aeration will again relieve soil compaction and allow water and air to reach the root zone.  
Fertilizer application will stimulate new and healthy growth.

### **August**

Apply fertilizer (well balanced analysis at 1 lb. nitrogen per 1,000 SF)

### **September**

Apply fertilizer (1 lb. nitrogen per 1,000 SF. with high concentration of potassium) near the middle to end of month

If over-seeding with ryegrass, the optimum timeframe is the last two weeks of September through the first two weeks of October. However, proceed with extreme caution with this application as there are significant issues to consider along with the benefits. While rye grass will offer some protection to the dormant Bermuda from excessive wear, the fields should be closed for at least three (3) weeks after the application to allow for a proper grow-in period. Over the winter, the irrigation systems will be shut down and therefore the rye grass will not be watered except by natural sources. More important is the longer term effect on the Bermuda grass. Rye grass will compete for nutrients and water thereby inhibiting growth of Bermuda in the spring. Rye grass may also limit the full recovery of Bermuda by remaining in dense patches which will result in short and less mature root systems for new Bermuda grass going into the winter months leaving it more susceptible to damage from play time and a difficult growth recovery next summer. Reel mowing frequency should start slowing to one mow per week and continue through

### **October/November/December/January**

Complete soil testing/analysis in preparation for developing maintenance plan for the following year

Note: 48 mows typically occur during the season March-October. Schedule varies year to year but the outline presented above is reasonable with normal weather conditions in this area.

## **ATHLETIC FIELD IRRIGATION MAINTENANCE**

The TOWN will be responsible for maintaining the irrigation systems as it relates to the fields proper. This maintenance will include all the heads and piping within the field and the valves running along the perimeter of the fields controlling the zones associated with operation of those sprinkler heads.

The controller and mainline piping will be the responsibility of the COUNTY.

The TOWN may use its own, county approved irrigation contractor for the purpose of this agreement or hire the irrigation contractor, under contract with the COUNTY, to maintain and make necessary repairs to the field proper irrigations systems as described above. All such requested maintenance and repairs are the sole responsibility of the TOWN and may not be billed to the COUNTY.

## ANNUAL BERMUDA GRASS ATHLETIC FIELD MAINTENANCE

### STRATEGY FOR REQUIRED FIELD MAINTENANCE

**January/February** – Bermuda grass is dormant so nothing should be done to the grass until the spring months. Excellent time to apply lime per soil tests taken in Nov./Dec. Safely apply Roundup to eliminate winter weeds but take caution to avoid harming the Bermuda grass.

**February/March** - Soil temperatures will be reaching upper 40 to low 50 degrees F. Need to apply pre-emergent weed control for goosegrass and crabgrass as they will germinate when soil temperatures reach approximately 54 to 58 degrees F.

**May** - Bermuda coming out of dormancy. Aeration will allow soil temperatures to rise and allow water and air to penetrate down into the root zone. Aeration along with a good shot of fertilizer will stimulate Bermuda growth tremendously.

**June** - Routine fertilizer application. Fertilizer should be a slow release, well balanced product. Primo growth regulator has proven to not only slow upright growth, but promotes vigorous lateral growth and density. This helps prevent turf damage caused from athletic field use and also allows for faster coverage of turf when damage has occurred.

**June/July** - Any weeds emerging can be eliminated at this time with a broad spectrum herbicide and not harm the Bermuda.

**July/August** - Aeration will again relieve soil compaction and allow water and air to reach the root zone. Fertilizer applications near the beginning of July and again at the first of August will stimulate new and healthy Bermuda growth as well as maintain optimum growth during these hot months.

**July/August** – Another application of Primo may be required as each application normally lasts from 4-6 weeks.

**September** - Final fertilizer application for the season. Product should be high in potassium in order to strengthen plant cells as much as possible which will help the plant to "over-winter" safely.

**November/December** - Soil tests taken now will be accurate due to lack of fertilizer applications since September. Test results during this time will allow planning of January lime applications prior to scheduled fertilizer applications in the spring.

## **EXHIBIT C**

### **Mecklenburg County Park & Recreation General Turfgrass Maintenance Standards**

#### Fertilizer

- One application per year at a rate of one pound of nitrogen per 1000 sq. feet.
- Product should be of turf quality and the analysis should be well balanced
- Spring application for warm season turf species and fall application for cool season turf species

#### Lime

- Once every 3 years at a rate of one ton per acre

#### Aerification

- one time per year
- Fescue should be aerified in the fall
- Bermuda should be aerified in the spring

#### Herbicide

- As needed, to be determined by the County representative

#### Initial Seeding:

- Fescue should be applied in the fall at a rate of 5 pounds per 1000 sq. feet (a light application of wheat straw should be evenly distributed when seeding cool season species – approx. 30 to 40 bales per acre)
- Bermuda should be applied in the spring at a rate of 2 pounds per 1000 sq. feet for improved varieties and 4 pounds per 1000 sq. feet for common Bermuda

#### Over Seeding

- Typically not practiced for general turf areas under control of Mecklenburg County. If deemed necessary by County representative, the rate and timing of the over seeding will be determined by the representative based on current turf condition and established best practices.

#### Mowing

- All glass, paper, limbs, trash or other hazards must be removed prior to mowing. General park turf shall be mowed to a height of 3 ½" to 4". The County reserves the right to determine the interval between mows and to alter the height of the cut at their discretion. This interval shall be based on established turfgrass management practices, species of turf being mowed, weather and other factors that could affect the quality of turf. Mowing will begin each year in late March or early April and continue through the first part of November, depending on current weather conditions, growth rate, etc. Under normal conditions, mowing will be done weekly and adjusted as needed by the Representative of the County.