



## SANDY SPRINGS

GEORGIA

TO: John McDonough, City Manager

FROM: Michael Perry, Director of Recreation and Parks

DATE: February 5, 2019

ITEM: Inter-Governmental Agreement (IGA) between the City of Sandy Springs and the Fulton County Board of Education (FCBE).

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### ***Recommendation:***

Approval of an Inter-governmental Agreement with The Fulton County Board of Education for use of Sandy Springs Middle School, Lake Forest Elementary School and Ison Springs Elementary School, subject to rights to non-renew, and to authorize the City Manager to execute same.

### ***Background:***

The City has current IGA's with Dunwoody Springs Elementary School and Spalding Drive Elementary School for use of school properties after school hours. Many of the City's Recreation and Parks programs are conducted at these and other FCBE properties.

This item was presented to City Council during a workshop session on May 15, 2018.

### ***Discussion:***

IGA's with three schools; Sandy Springs Middle School, Lake Forest Elementary School and Ison Springs Elementary School have expired. Staff has worked with the principals at these schools and representatives of the school board to re-establish IGA's for the benefit of the schools and the citizens of Sandy Springs through Recreation and Parks Department programs.

### ***Financial Impact:***

For certain capital improvements to school outdoor spaces and facilities, the City will receive priority for programming space as well as waiver of rental fees. Contract terms vary in length based on the amount of capital funding provided and the needs of each



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school. Program staffing as well as athletic field maintenance costs will be the responsibility of the City.

IGA terms and funding of capital improvements to each school:

Sandy Spring Charter Middle School	5 years	\$105,000
Lake Forest Elementary School	15 years	\$245,000
Ison Springs Elementary School	15 years	\$245,000

### **Alternative:**

If these agreements are not executed, the City would pay the established hourly rental fee provided school space is available and not contracted by other program providers.

# ISON SPRINGS E.S.

## INTERGOVERNMENTAL AGREEMENT FOR THE USE OF FACILITIES

THIS INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) is made and effective this \_\_\_ day of \_\_\_\_\_, 2019, by and between the **FULTON COUNTY BOARD OF EDUCATION**, a political subdivision of the State of Georgia, acting by and through its authorized official signing below (hereinafter referred to as “**FCBE**”) and the **CITY OF SANDY SPRINGS**, a municipality organized under the laws of the State of Georgia, acting by and through its authorized official signing below (hereinafter referred to as “**City**”).

### WITNESSETH:

WHEREAS, FCBE owns a certain improved school property located at 8261 Ison Road NE, Sandy Springs, Fulton County, Georgia 30350 (the “**School Property**”) on which FCBE operates a school, known as Ison Springs Elementary School (the “**School**”); and

WHEREAS, City is a municipality providing city-sponsored youth activities to local youth including soccer, golf, lacrosse, basketball, kickball, and a summer sports camp through its Recreation and Parks Department (the “**Program**”); and

WHEREAS, City desires to use the non-stadium multi-purpose field (the “**Play Field**”), gymnasium, classroom, and cafeteria area located on the School Property for the Program;

WHEREAS, pursuant to the Georgia Constitution, Article 9, § 3, ¶ 1, both the City and FCBE are authorized to enter into an Intergovernmental Agreement for the joint use of facilities for recreation; and

WHEREAS, FCBE and City desire to enter into this Agreement to provide for the joint use of the School Facilities by FCBE and City.

NOW, THEREFORE, for and in consideration of the Premises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, FCBE and City mutually covenant and agree as follows:

- 1. Agreement for Use.** FCBE does hereby agree to allow City to enter and use, solely for the purpose of the Program, that certain portion of the School Property designated by FCBE, as depicted on **Exhibit “A”** attached hereto (the “**Field**” or the “**Premises**”); along with the non-exclusive use of the common areas necessary for or associated with the use of the Field (e.g., parking lot, sidewalks) on and subject to the terms and conditions contained herein.

Notwithstanding any other provision of this Agreement, if FCBE shall from time to time desire to use the Premises or any part thereof during any period provided for City’s use in Paragraph 2 hereof in connection with the conduct of any curricular or extracurricular activities of any Fulton County school at the School Property, then upon not less than thirty (30) days’ written notice to City, City’s rights of use shall be suspended during the period or periods specified in such notice to City.

Additionally, City acknowledges and agrees that the Principal of the School (the “Principal”) shall have first priority for the use of the Premises superseding any scheduled or non-scheduled activity or event of City during either the academic School year or non-academic School year if and as needed as a result of or due to any emergency, evacuation and/or any other unexpected event, activity and/or occurrence. Reasonable costs of required repairs and renovations undertaken by City resulting from such use by FCBE and which are mutually agreed upon by City and FCBE will be reimbursed to City by FCBE within thirty (30) days of submittal of a written invoice and documentation of such costs. City shall submit such written invoice and documentation of costs to FCBE within fifteen (15) days of completion of such repairs or renovations.

2. **Term; Hours of Use.** The term of this Agreement shall be fifteen (15) years, beginning on \_\_\_\_\_, 20\_\_\_\_, and ending at 11:59 p.m. on the date that is fifteen years thereafter (the “Term”), unless sooner terminated under the terms of this Agreement. City shall be permitted to enter and use the Field only during those days and hours set forth on **Exhibit “B”** attached hereto and incorporated herein by this reference.

FCBE expressly retains the right to use the Premises for School activities during all other hours. In the event that City’s scheduled activities do not occupy all of the hours during which City is permitted the use of the Premises as aforesaid, FCBE shall, after consultation with City, have the exclusive use of the Premises during the unoccupied hours. FCBE shall in all events have the use of the remainder of the School Property.

3. **Consideration.** The parties agree that City’s installation of certain improvements on the School Property and City’s maintenance of the Field, all as set forth in Section 5 hereof, are the consideration for the City’s use of the Premises. As such, no rent shall be payable by City for the use of the Premises. City covenants and agrees that it shall timely undertake the maintenance and make the improvements and contributions as described in this Agreement within the timeframes set forth herein.
4. **Utilities.** City shall reimburse FCBE for all water usage for the Field, including those charges associated with the irrigation system, during the Term of this Agreement. Such payment shall be due and payable to FCBE thirty (30) days from the date of FCBE’s written invoice to City. FCBE shall submit written utilities invoices to City for reimbursement at a minimum of twice a year based on meter readings. City shall be responsible for providing such meter readings to FCBE by taking a photograph of the water meter on July 1 of each year, December 1 of each year, and on the final day of the Term, and sending such photographs to FCBE, within twenty-four hours of each such reading, via e-mail to [utilities@fultonschools.org](mailto:utilities@fultonschools.org) with a copy to [landmanagement@fultonschools.org](mailto:landmanagement@fultonschools.org). If electricity is submetered for the Field, then the requirements of this Section 4 shall also apply to electricity usage.
5. **Maintenance, Irrigation, Improvements and Contributions.**
  - a. Throughout the Term, City shall maintain the Field in a good and safe condition at City’s sole cost and expense. Such maintenance shall include all activities required per **Exhibit “C”** attached hereto and incorporated herein by this reference. Unless otherwise expressly stated herein, the required maintenance and repairs shall not include any areas of the School Property other than the Field.

- b. City shall maintain and repair the irrigation system for the Field at its sole cost and expense, and agrees to keep the irrigation system in good working order and in compliance with all local codes throughout the Term. The existing and any new irrigation system installed by City shall be and remain the property of FCBE. Any water meter installed by City shall be and remain the property of FCBE. City shall submit a complete set of drawings to FCBE for written approval thirty (30) days prior to any improvements being performed on the Field.
- c. City shall provide certain improvements and maintenance as set forth in **Exhibit "D"** attached hereto and incorporated herein by this reference.

**6. Self-Reporting Requirement.** City shall, on each anniversary of the Effective Date during the Term, provide an annual report to FCBE, in writing, summarizing the following for the twelve (12) months immediately preceding such anniversary:

- a. The contributions made by City to the School in accordance with **Exhibit "D"** hereof;
- b. Number and description of items and equipment donated in accordance with **Exhibit "D"** hereof, and monetary value thereof;
- c. Records of City's maintenance and any repairs and improvements of the Field in accordance with **Exhibits "C"** and **"D"** hereof;
- d. Records of City's maintenance and any repairs of the irrigation system for the Field; and
- e. Current Certificate(s) of Insurance evidencing compliance with the insurance requirements of this Agreement.

**7. Other Maintenance and Repair.**

- a. FCBE and its agents or employees may perform periodic inspections of the Field conditions and improvements made by City. FCBE shall notify City of any problems determined (and origin thereof, if identifiable) and City shall make the appropriate repairs and/or corrections to the Field within thirty (30) days of FCBE's notice.
- b. City shall provide routine custodial services following each use of the Field that shall include without limitation, the collection of litter and debris from the Field and surrounding areas, and following each use, removal of the contents of City's trash receptacles and recycling bins. City has the obligation to furnish its own trash receptacles and recycling bins for use on the Premises.
- c. City shall keep the Premises in good condition and repair, and shall use reasonable care to prevent damage to the Premises, throughout the Term.
- d. Any damage done to the Premises by FCBE or its designee(s), including but not limited to damage to irrigation pipes, turf, meters, clocks, etc., will be repaired or replaced at the cost of FCBE, subject to City providing written notice to FCBE within ten (10) days of occurrence of such damage in order for FCBE to confirm who was responsible for such damage.

- e. At the expiration or earlier termination of this Agreement, City shall leave the Premises in as good condition and repair as existed at the beginning of the Term, reasonable wear and tear excepted.

**8. Use Restrictions; Covenants.** City's use of the Premises shall be subject to the following restrictions and covenants:

- a. City and its invitees shall vacate the Premises within thirty (30) minutes after the conclusion of the final event of each day.
- b. City shall lock all exterior gates (where applicable) on completion of each event.
- c. City shall provide responsible adult supervision at all times during use of the Premises by City and its invitees.
- d. City shall keep all motorized vehicles off all grassed areas in the vicinity of the Field and may park only in areas designated by the Principal; provided, however, that, City and its authorized third party independent contractors may operate motorized vehicles on grassed areas in the vicinity of the Field solely for the purpose of improvements, maintenance and repair to the Field, or set-up and clean-up for the Program.
- e. City shall not permit the consumption of any alcoholic beverages or use of tobacco products or weapons by its employees, participants, volunteers or invitees on or about the Premises.
- f. City shall comply with all applicable laws, ordinances, rules and regulations related to City's use of the Premises.
- g. City and its designees shall perform all construction, maintenance and repair activities expeditiously and in a good, safe and workmanlike manner and in strict accordance with all applicable laws, ordinances, rules and regulations, as well as any procedures reasonably provided by FCBE to City, such as hours of work. Such work shall be carried out in such a manner so as to, to the extent reasonably practicable, avoid any disruption to the operations of FCBE.
- h. City shall be solely responsible for obtaining, at City's sole expense, all permits and approvals required to improve, maintain and repair the Field; provided, however, that to the extent FCBE's signature or other input is required in the permitting and approval process due to FCBE's status as the owner of the School Property, FCBE agrees to cooperate in good faith with such process.
- i. City shall not bring or store, or allow to be brought or stored on the School Property, any Hazardous Materials (as defined below). City shall be solely responsible for any and all claims, costs, losses, expenses, demands, action, or causes of action, and all liabilities, including attorney's fees and costs, arising out of or in connection with the cleanup or restoration of the School Property arising from the use or handling, storage or other management of Hazardous Materials (as defined below) by City or its employees, agents, contractors, licensees or invitees. As used herein, "**Hazardous Material**" means any toxic or hazardous substance, material or waste, which is regulated or becomes regulated by any

federal, state, or local governmental authority. The term "Hazardous Material" includes, without limitation, any substance or material (i) containing petroleum, crude oil or any fraction thereof; (ii) containing polychlorinated biphenyls (PCBs); (iii) containing asbestos; (iv) which is radioactive; (v) which is infectious; (vi) defined as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317); (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 47 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601); or (ix) defined as a "hazardous substance," "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" or similar term under any other environmental, health or safety law, rule, regulation or policy. The obligations of this Section shall survive the expiration or earlier termination of this Agreement.

- j. City shall at all times during the Term comply with Fulton County Board of Education KG Operating Guideline, as amended from time to time; which Operating Guideline in its current form is set forth in **Exhibit "E"** attached hereto and incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and the KG Operating Guideline, the Operating Guideline shall control.

**9. Default; Termination/Expiration.**

- a. FCBE shall have the right to terminate this Agreement immediately for cause, or upon default by City, and may demand immediate possession of the Premises, seek damages or equitable relief, or pursue any cause of action available at law or in equity to enforce its rights hereunder, or any combination of the foregoing. City shall be in default for failing to cure, after ten (10) days' written notice from FCBE, the non-performance or breach of any provision of this Agreement, including but not limited to a failure to make the required contributions and maintenance as set forth herein. In the event that FCBE terminates the Agreement due to default by City, FCBE shall have the right to recover all reasonable expenses actually incurred in enforcing the terms of the Agreement, including but not limited to reasonable attorney's fees and court costs.
- b. Either party shall have the right to terminate this Agreement without cause upon ninety (90) days' prior written notice to the other party. In the event of the City's termination without cause, FCBE shall have no obligation to compensate or reimburse City, including any compensation for any unamortized value of any improvements, and all fixed and permanent improvements upon the School Property shall remain the property of FCBE, free and clear of all liens and encumbrances. If FCBE elects to terminate this Agreement prior to the end of the term, FCBE shall repay City for the cost of the improvements prorated by the yearly depreciation amount of \$16,333 per year after construction of the improvements is complete for each year remaining in the Agreement, excluding the final three years of the Agreement.
- c. Upon expiration of the Term, FCBE shall have no obligation to compensate or reimburse City, including any compensation for any unamortized value of any improvements, and all fixed and permanent improvements upon the School

Property shall remain the property of FCBE, free and clear of all liens and encumbrances.

- d. Upon expiration of the term or termination, City may remove portable improvements placed on the Premises by City. A listing of all portable improvements shall be prepared by City and approved by FCBE prior to the removal of said improvements. Except in connection with repairs or replacements, City covenants not to destroy or remove any improvements constructed (other than portable improvements) or equipment placed upon the School Property, pursuant to this Agreement or otherwise, without the written consent of FCBE. Upon expiration of the Term, or in the event of termination, City's use and occupancy rights shall terminate; however, City shall remain obligated to perform all obligations hereunder through the date of expiration or termination, unless waived in writing by FCBE.

**10. Indemnity.** To the extent allowable by law, City hereby releases and agrees to protect, indemnify, defend, save, and hold harmless FCBE and its agents, officers, employees, board members, licensees, representatives, and volunteers (collectively, "**FCBE Parties**") and each a "**FCBE Party**") from any and all claims, costs, losses, expenses, demands, actions, and causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by any FCBE Party, or for which any FCBE Party may be liable, which arise from any injury or damage to person (including death) or property and caused by or resulting from the access to, use or occupancy of the Premises by City, or its employees, agents, contractors or subcontractors, except those which arise solely from the gross negligence or willful misconduct of a FCBE Party. City hereby expressly acknowledges that the foregoing obligation to indemnify, defend, and hold harmless includes but is not limited to any such claim asserted by a third party coming onto or about the Premises and alleging injury as a result of such use of the Premises (subject to the exception concerning the gross negligence or willful misconduct of FCBE). This Section 10 expressly survives the expiration or earlier termination of this Agreement.

**11. Insurance.** The following are the minimum insurance and limits that City or any third party using or performing work on any portion of the School Property on behalf of City, including any contractor or subcontractor (each a "**Third Party**") must maintain throughout the Term. If the City or Third Party maintains higher limits than the minimums shown below, FCBE requires and shall be entitled to the coverage and for the higher limits maintained by the City or Third Party. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be made available to FCBE.

City shall maintain at a minimum all of the following:

(a) Commercial General Liability Insurance, including contractual liability, personal injury, bodily injury (including death), abuse and molestation, property damage and Damage to Premises Rented to You, with limits of not less than \$1 million Each Occurrence / \$2 million General Aggregate or the limits listed on the Declarations page of such insurance policy, whichever is greater.

(b) Automobile Liability Insurance with limits not less than \$1 million Per Accident involving bodily injury (including death) and property damage for all owned, non-owned and hired vehicles.



(c) Umbrella Liability Insurance with limits of liability in excess of Employer's Liability, Commercial General Liability, and Automobile Liability in the amount of not less than \$5 million.

Fulton County Schools shall be named as Additional Insured on the aforementioned policies. The address of the School Property shall be listed on the policy and shown on the face of the certificate of insurance as the covered premises. City shall also maintain Statutory Workers' Compensation Insurance in compliance with the applicable Workers' Compensation Act(s) of the state(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statutes. Employer's Liability Insurance, with limits of liability of not less than \$1,000,000 per accident for bodily injury or disease. The policy shall provide a waiver of subrogation in favor of FCBE.

Any Third Party using or performing work on any portion of the School Property shall be required to maintain at a minimum all of the following:

(a) Commercial General Liability Insurance, including contractual liability, personal injury, bodily injury (including death), abuse and molestation, property damage and Damage to Premises Rented to You, with limits of not less than \$1 million Each Occurrence / \$2 million General Aggregate or the limits listed on the Declarations page of such insurance policy, whichever is greater.

(b) Automobile Liability Insurance with limits not less than \$1 million Per Accident involving bodily injury (including death) and property damage for all owned, non-owned and hired vehicles.

(c) Umbrella Liability Insurance with limits of liability in excess of Employer's Liability, Commercial General Liability, and Automobile Liability in the amount of not less than \$5 million. All umbrella policies will be at least as broad as the underlying insurance.

Both FCBE and City shall be named as Additional Insureds on the aforementioned policies. The address of the School Property shall be listed on the policy and shown on the face of the certificate of insurance as the covered premises. Any Third Party shall also maintain Statutory Workers' Compensation Insurance in compliance with the applicable Workers' Compensation Act(s) of the state(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statutes. Employer's Liability Insurance, with limits of liability of not less than \$1,000,000 per accident for bodily injury or disease. The policy shall provide a waiver of subrogation in favor of FCBE.

Prior to entering onto the School Property, City and any Third Party shall submit proof of insurance by submitting a Certificate of Insurance to FCBE's Risk Management Department for approval at:

Attn: Lucious Rounsaville  
Risk Management Department  
Fulton County Schools  
6201 Powers Ferry Rd, NW  
Atlanta, GA 30339

Insurance provider(s) for City and any Third Party shall be licensed to do business in the state of Georgia and shall have an A.M. Best rating of A or greater, and A.M. Best's Financial Size Category of not less than VII.

The obligations of City and any Third Party to procure and maintain insurance shall not be construed to waive or restrict other obligations and it is understood that insurance in no way limits any liability or indemnification obligations of the City or Third Party, whether or not the same is covered by insurance.

FCBE reserves the right to reasonably modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances, by providing City with notice of the same.

12. **Assignment; Subletting.** City may not assign its rights and obligations hereunder or sublease the Premises.
13. **Liens.** No encumbrances, charges or liens against the School Property shall exist because of any action or inaction by City. City shall discharge by bond or otherwise within ten (10) days of written notice by FCBE of any lien, encumbrance or other charge.
14. **Notices.** Any and all notices permitted or required to be given under this Agreement shall be in writing, and except as otherwise provided herein, shall be delivered personally, by commercial overnight courier, or by registered or certified mail, return receipt requested, to the other party at the address set forth below or at such other address as may be supplied by notice thereof given pursuant to this provision. Notices may be given by or to the attorneys for either party as may be listed herein. The date of personal delivery or the date of deposit with a commercial courier or with the U.S. Postal Service shall be the date such notice shall be deemed to have been given, whether or not actually received, if properly addressed.

For the purpose of this Agreement, the address of FCBE is:

Fulton County Schools  
6201 Powers Ferry Road NW  
Atlanta, Georgia 30339  
Attn: William C. Boyajan  
Director of Land Management

With a copy to:

Nelson Mullins Riley & Scarborough LLP  
201 17<sup>th</sup> Street NW, Suite 1700  
Atlanta, Georgia 30363  
Attn: Cheryl V. Shaw, Esq.

And the address of City is:

The City of Sandy Springs  
7840 Roswell Road, Building 500  
Atlanta, Georgia 30350

Attn:

Notices or notifications to the Principal that are required or permitted under this Agreement shall be sent via email to Sara White, Principal, at whitesara@fultonschools.org\_ with a hard copy to the FCBE at the address above.

Either party may change its address or contact person(s) for notices by providing the other party with notice of such change in accordance with this Section 14.

**15. Estoppel.** At any time and from time to time, City, on or before the date specified in a request therefor made by FCBE, shall execute, acknowledge and deliver to FCBE and to such assignee, secured party or other party as may be designated by FCBE, a certificate (in a form to be reasonably required by FCBE) setting forth the expiration date of the Term and the current amount of rent, if any, payable hereunder, and stating whether or not: (i) this Agreement is in full force and effect; (ii) this Agreement has been amended or modified in any way; (iii) there are any existing events of default on the part of any party hereunder to the knowledge of such party and specifying the nature of such events of default, if any; and (iv) the date through which any amounts owed hereunder have been paid. Any such assignee, secured party or other party may rely upon the certificate delivered by City hereunder.

**16. Miscellaneous.**

a. If either party is delayed, hindered or prevented from performing any act or thing required hereunder by reason of strikes, lock-outs, labor troubles, casualties, inability to procure labor or materials or financing, failure or lack of utilities, governmental laws and regulations, riots, insurrection, war, acts of God, inclement weather, or other causes beyond the reasonable control of either party ("**Force Majeure**"), the delayed party shall not be liable, and the period of performance of any such act shall be extended for a period equivalent to the period of such delay, provided such party provides written notice of such occurrence to the other party within ten (10) days of such occurrence. The foregoing is inapplicable to the payment of money unless such delay is due to an act arising after a party's mailing which affects the physical delivery of the payment.

b. This Agreement constitutes the sole and entire agreement between the parties hereto as of the date hereof, and no modification of this Agreement shall be binding unless made in writing and signed by FCBE and City. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Notwithstanding the foregoing, any agreement entered into for the use of indoor space through FCBE's "SchoolDude" system (or other similar facility rental system maintained by FCBE) shall be fully binding on the parties. Any breach or default of such agreement shall constitute a breach of this Agreement.

c. Time is of the essence for each and every provision and obligation of this Agreement.

d. City shall provide to FCBE within sixty (60) days of execution of this Agreement a "Safety Plan" describing City's proposed means and methods of crowd, fan, coach, and player control for City's Program at the Premises.

- e. City acknowledges that pursuant to State law, as well as FCBE's policies, any person listed on the Georgia Violent Sex Offender Registry maintained by the Georgia Bureau of Investigation is prohibited from being within 1,000 feet of the Premises. City shall comply with all relevant laws, rules regulations, including without limitation, the aforementioned state law, in the performance of City's activities on the Premises.
- f. The section headings in this Agreement are inserted only as a matter of convenience and are not to be given any effect whatsoever in construing this Agreement. Nothing contained in this Agreement shall constitute or be deemed or construed to create a partnership or joint venture, or any agency relationship, between FCBE and City. Neither this Agreement nor any memorandum or short form thereof shall be recorded in the public real estate records.
- g. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, and specifically including O.C.G.A. § 51-1-53. The parties agree to submit to the jurisdiction of, and that venue is proper in, the state or federal courts in Atlanta or Fulton County, Georgia, in any dispute arising out of this Agreement.
- h. If any clause or provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, then such terms shall be stricken from the Agreement and the unaffected terms and provisions shall remain in full force and effect. Each covenant, agreement, obligation, or other provision of this Agreement on City's part to be performed shall be deemed and construed as independent covenants of City, not dependent on any other provisions of this Agreement.
- i. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party drafting or causing the Agreement to be drafted. City has carefully read this Agreement and understands it. City executes this Agreement as a voluntary act after having consulted with counsel of its choosing concerning the same, or having voluntarily chosen not to consult with counsel concerning the same.
- j. Each individual executing this Agreement on behalf of City represents and warrants that he or she is duly authorized to execute this Agreement on behalf of City, and that City has full right and authority to execute and deliver this Agreement.
- k. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The execution of this Agreement may be confirmed by the exchange of signature pages as electronic versions in PDF or JPEG format which shall have the same force and effect as an original.

**17. Special Stipulations. The following Special Stipulations shall apply to this Agreement, if checked:**

- a. [Check if applicable]: \_\_\_\_ City shall furnish and maintain its own goals (i.e., soccer goals, lacrosse goals, etc.) as may be needed for use during the Term at City's sole cost and expense, which goals shall remain the property of City.

- b. [Check if applicable]: \_\_\_\_ Upon approval by the Principal, City shall furnish and maintain its own portable lighting system for the Field at City's sole cost and expense, which portable lighting system shall remain the property of City. The portable lights must be turned off thirty (30) minutes following the conclusion of Field use by City as in accordance with **Exhibit "B"**, Hours of Use. City shall provide to FCBE, within sixty (60) days of execution of this Agreement, City's proposed environmental and safety measures for portable lighting.

City may use the City-furnished portable lights on the Field during the months of February, March, September, October, November, and December. The portable lights shall be no more than ten (10) feet high, and shall not be visible outside of the immediate area of the Field. No lights shall be used on weekends.

- c. [Check if applicable]: \_\_\_\_ City shall furnish and maintain portable toilets for the Premises during the Term and shall have them cleaned on a regular basis, all at City's sole cost and expense. The portable toilets shall be placed in a location approved by the Principal, and shall be removed by City at the expiration or earlier termination of this Agreement, all at City's sole expense. City shall maintain an adequate level of sanitary supplies as mutually agreed upon by City and Principal, at City's sole cost and expense.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, FCBE and City have executed this Agreement effective on the day and year first above written.

**FCBE:**  
FULTON COUNTY BOARD OF EDUCATION

By: \_\_\_\_\_ Date \_\_\_\_\_  
Name: Cindy Loe, Ed.D.  
Title: Superintendent

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**CITY:**  
THE CITY OF SANDY SPRINGS

By: \_\_\_\_\_ (Seal)                      \_\_\_\_\_  
Name:    Date  
Title:

ATTEST:

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A  
Premises (Field)



DENOTES PLAY FIELD



Exhibit B



## CITY'S HOURS OF USE\*

### Fall Season (August, September, October, November)

#### Non-Stadium Field

Monday, Tuesday, and Thursday — Youth Soccer (2:30pm-4pm)

Monday, Wednesday, Thursday, and Friday — Youth Lacrosse (6:00pm-7:30pm)

Tuesday — Youth Golf (6:00pm-7:30pm)

### Winter Season (November, December, January, February)

#### \*\*Gymnasium, Elementary School

Monday, Tuesday, Wednesday, and Thursday — Youth Basketball (5:30pm-7:30pm)

### Spring Season (March, April, May)

#### Non-Stadium Field

Monday, Tuesday, and Thursday — Youth Soccer (2:30pm-4pm)

Monday, Wednesday, Thursday, and Friday — Youth Lacrosse (6:00pm-7:30pm)

Tuesday — Youth Golf (6:00pm-7:30pm)

### Summer Season (June, July)

#### \*\*Gymnasium, Elementary School

Monday-Friday — Summer Sports Camp (7:30am-6:00pm)

#### \*\*Classroom

Monday-Friday — Summer Sports Camp (7:30am-6:00pm)

#### Non-Stadium Field

Monday-Friday — Summer Sports Camp (7:30am-6:00pm)

#### \*\*Cafeteria

Monday-Friday — Summer Sports Camp (7:30am-6:00pm)

\* School functions take priority over Recreation usage

\*\* The Hours of Use for interior School Facilities are proposed above but are not approved in final by FCBE. City must submit all requests for use of interior School Facilities through SchoolDude. FCBE will review and respond to each such requested use by and through its SchoolDude process.

**All requirements listed are ongoing, annual obligations**

**Fertilization:**

Early Spring	Crabgrass pre-emergent, broadleaf weed controls are applied to control infestations of annual grasses along with phosphorus and potassium fertilizers to encourage root and cell wall development. Grassy weed control as needed.
Late Spring	Additional Crabgrass pre-emergent for extended control. A high rate of slow release nitrogen fertilizer balanced with phosphorus and potassium designed to build renew roots, tillers and grass plants. Iron for outstanding color and broadleaf weed control for spring and early summer annual weeds.
Summer	A high rate of slow release granulated nitrogen fertilizer balanced with phosphorus and potassium. This treatment continues to improve turf density, drought tolerance and color. Broadleaf weed control will be applied as needed.
Mid Summer	A high rate of slow release granulated nitrogen fertilizer balanced with phosphorus and potassium. This treatment maintains color and growth, while storing carbohydrates for winter. Broadleaf weed control will be applied as needed.
Mid Fall	Potassium is applied to protect the grass plant from the damaging effects of cold weather along with pre-emergent weed controls. This pre-emergent prevents any unsightly winter annual weeds such as poa annua. Broadleaf weed control is applied as needed.
Late Fall	Dolomitic Pelletized limestone is applied to correct any PH deficiencies. Broadleaf and grassy weed controls are applied as needed.

\*\*\*\*\*Chemicals will only be applied when the field will not be in use for a minimum of 24 hours.

**Mowing:**

Growing season (April, May, June, July, August) — mow Field three times weekly  
Play season (September, October, March, April) — mow Field once weekly  
Dormant season — mow Field as needed

**Aeration:**

May, June, July, August and September  
Core aeration — plugs 2" deep, pull, remove, drag  
Sand/top-dress in June and July

**Irrigation:**

Growing season (April, May, June, July, August) — minimum 3 times weekly, 30 minutes per zone  
Play season (September, October, March, April) — 2-3 times weekly, 20 minutes per zone  
Dormant season — off  
\*\*\*Water may be increased in time of new or additional sod

**Renovation:**

Sod dead/heavy worn spots as needed (yearly, depending on wear/tear)  
Top dress/over-seed every 2 years in growing season  
Responsible for nets and condition of goals and other equipment on field

**Trash Removal:** City to come by weekly to empty receptacles and make sure Field is picked up.

**Reporting:** City shall provide quarterly reports to FCBE of existing Field conditions and Field maintenance performed.

Improvements: (As depicted on **Exhibit “D-1”**)

- install concrete pad multi-play area
- install benches with shade structure
- install water fountains with concrete pad near outdoor play area
- install 1/2 mile walking trail with fitness stations
- install irrigation system
- reforestation
- mulch existing playground
- dumpster enclosure
- install additional fencing

Landscape Maintenance – All items to be Ongoing Obligations during the Term

A. Mowing

1. Weekly mowing is required for all turf areas during the growing season. March 1st through November 30<sup>th</sup>, annually.
2. Grass to be mowed at a height of 1.5”

B. Fertilization

1. Fertilize turf with 10 pounds per 1000 square feet annually in March.
2. Fertilize turf with 3 pounds per 1000 square feet of ammonium nitrate and 36 pounds per 2500 square feet of Milorganite annually in April.
3. Fertilize with 3 pounds per 1000 square feet of ammonium nitrate annually in June.
4. Fertilize with 3 pounds per 1000 square feet of ammonium nitrate annually in August.
5. Fertilize trees and shrubs with 6 pounds per 1000 square feet of 16-4-8 fertilizer annually in March and June.

C. Pre and Post-emergent herbicide

1. Annually on March 1 apply pre-emergent herbicide to all turf and planting beds
2. First week of April annually apply pre-emergent herbicide and broad leaf herbicide to turf area.
3. Mid-May annually apply pre-emergent herbicide and broad leaf herbicide as necessary.
4. End of June annually apply pre-emergent herbicide and broad leaf weeds in turf and planting beds.

Contact Landscape Manager two business days prior to application of herbicide and/or fertilizer.

D. General Site Maintenance

1. String trim under bleacher and against fences.

E. Additional Requirements

1. Aerate annually in July with 1/2 " plug unit.
2. Treat the fields for fire ants annually starting March 1st. Provide chemical control of insects and diseases as needed on turf.
3. Install, set, maintain, and control the irrigation system to provide proper moisture requirements for turf.

Estimated Value of Services:

1/2 mile walking trail w/fitness stations -	\$50K
Concrete pad multi-play area -	\$25K
Benches w/shade structure -	\$65K
Reforestation -	\$15K
Mulch existing playground -	\$10K
Water fountains w/concrete pad -	\$5K
Fencing -	\$20K
Dumpster -	\$15K
Design fee -	\$20K
Irrigation system -	\$20K
	<b>Total: \$245K</b>

Estimated value of Landscape Maintenance and Specifications at Ison Springs Elementary:  
 \$10,000.00 per year X 15 year IGA: \$150,000.00

All installations, improvements and contributions will be the property of Fulton County Board of Education, and will remain the property of Fulton County Board of Education after termination or expiration of this Agreement.

EXHIBIT D-1



EXHIBIT E  
KG OPERATING GUIDELINE

Book  
Operating Guidelines

Section  
K - General Public Relations

Title  
Use of School Facilities

Number  
KG

Status  
Active

Adopted  
July 1, 1986

Last Revised  
October 19, 2017

Last Reviewed  
October 19, 2017

The Operating Guidelines for School Facilities are intended to provide an overview of the usage of school facilities, the facilities available for use by outside organizations, the types of organizations eligible to use the facilities, how to apply for facility usage, the facility usage approval process and the conditions, terms and rules for using FCS facilities.

1. School and District Use of School Facilities

The primary purpose of the district's school facilities is to provide a suitable setting in which to educate Fulton County students. Therefore, school-sponsored activities, curricular and extracurricular programs and any other activity undertaken by and in the name of the school, shall always take priority over any other use of school facilities. The principal is responsible for approving and scheduling school-sponsored activities. While 'facility use fees' do not apply for school-sponsored activities, any fees incurred as a result of necessary personnel services, such as custodial or Fulton County School's police officer, must be paid.

Individual schools may request use of another school's facilities for school-sponsored activities. When using another school for a school-sponsored activity any additional fees incurred by the hosting school shall be paid by the user. Beyond school programs, district sponsored activities, school related support groups and employee organizations will have priority use of school facilities over the use by outside organizations. School-related support groups are defined as organizations devoted exclusively to the support of the school and school-sponsored activities, such as PTAs, school and district foundations. Employee organizations are defined as recognized professional or employee organizations whose membership is limited to Fulton County School district personnel.

When a school hosts a district event the school shall be reimbursed by the district for the expenses associated with the event. School-related support groups and employee organizations are not required to pay 'facility use fees' for meetings and activities that directly benefit Fulton County Schools and that have the principal's advance approval.

2. Outside Organizations

The Board of Education recognizes that school facilities represent a significant investment on the part of the district's residents. Therefore, the Board encourages community use of school facilities when such use will not interfere with the district's educational mission. Pursuant to the procedures in this guideline and policy, the principal may initially approve an outside organization to use the school facilities during normal school hours. Objective factors that may be considered by the Principal, prior to approval, include, but are not limited to, impact to district programs, facility availability, terms of lease, and any prior violations of policies, rules, procedures, or agreements. For organizations using school facilities, the principal has the authority to revoke or suspend their activities if the principal concludes that the group's use would interfere with school-sponsored activities.

Priority for use of Fulton County school facilities shall be given to outside organizations located within Fulton County.

The following outside organizations shall be eligible to apply for use of Fulton County School district facilities:

- organizations with whom district schools have entered into formal partnerships per [Policy LEI – Partnerships in Education](#);
- non-profit organizations serving district residents;
- public government agencies serving district residents;
- for-profit businesses, on a case-by-case basis when there is judged to be a substantial benefit to the district

For requests for the use of facilities by production companies, including movie, television, theatrical, and/or commercial, the district, on a case by case basis, may approve the use request and shall retain the right to review artistic content, including script and production schedule for appropriate use in a school setting.

Individuals are not eligible to apply for use of school facilities.

### 3. Types of Facilities Available

School facilities that are available for use by outside organizations are: gymnasiums, cafeterias/cafeteriums, classrooms, kitchens (provided district cafeteria staff is used with the approved use of kitchen equipment), playing fields and athletic fields, auditoriums, theaters, concession facilities, media centers, conference rooms and common areas.

Requests to use teaching museums, professional learning centers or other district facilities will be considered on a case by case basis by the Facility Rental Department in consultation with the local building administrator (LBA).

### 4. Lease Agreements for Fulton County School District Facilities

Outside organizations including public government agencies requesting to establish an agreement, either through an intergovernmental agreement for public government agencies or through a lease agreement for other outside organizations, of one year or more which will be of benefit to Fulton County Schools should submit a proposal to the principal. Objective factors that may be considered by the Principal, prior to approval, include, but are not limited to, impact to district programs, facility availability, terms of lease, and any prior violations of policies, rules, procedures, or agreements. Proposals will be considered by the Principal in consultation with Area Superintendent, and appropriate central district staff such as school nutrition/athletic leaders. Proposals approved by the principal and Facility Rental Department will be recommended to the Superintendent and Board with a summary of the proposed terms for approval. Examples of programs that would benefit schools and the community include sports and recreational activities, senior citizen activities and educational programs.

Outside organizations may not sublease, transfer, or assign the use of school facilities to third-party program providers, including but not limited to other organizations or individuals unless there are special provisions for this in the intergovernmental agreement. Special provisions establish that third-party program providers be subject to the following vetting requirements:

- Criminal background checks
- E-Verify for work authorization
- Obtain Certificate of Insurance

The intergovernmental agreement will also require that a list of third-party program providers be submitted annually to the district.

### 5. Applying for Use of School Facilities

Fulton County Schools uses an online reservation, web-based system, called SchoolDude to create and approve a facility use request. Prior to making an initial facility rental request, organizations seeking to use FCS facilities must become registered users. This process is online and can be accessed through FCS's website.

All facility use applications shall be submitted through SchoolDude directly to the school. The application shall be submitted at least 25 district operational days prior to the requested use date. The school designee will review the initial application and upon approval, the principal shall relay the facilities use request to the Facility Rental Department for final approval.

The average approval time is 15 district operational days once all of the required information is received from the outside organization. User registration and facility use requests are available through the Facility Rental Department website [Facility Rental Department Homepage](#). The application must be signed by the representative of the outside organization who will be responsible for the activity or event. Please see the Facility Rental Process Flowchart below for additional information.

#### A. Facility Use Application Review

The following factors will be considered in reviewing an application for facilities use:

1. the type of activity or event;
2. its potential impact on the facility;
3. the duration and frequency of the activity or event;
4. the availability of adequate district personnel to oversee the facility during the activity or event;
5. the number of participants expected;
6. safety and security concerns;

7. previous experience with the organization;
8. potential interference with other activities at the facility;
9. the need for a rest period for the facility or grounds; and
10. other needs or interests of the school or the district.

If an outside organization wants to charge an admission fee, it must state the amount of the fee in the application and obtain prior approval, which will be reflected in the facility use agreement.

#### B. Facility Use Agreement

Per the facility use agreement, at least one authorized representative of the organization shall be present during the activity or event.

The organization must agree to indemnify the district for any claim of loss, injury or damage resulting from the organization's use of the school facility.

Except for use agreements involving substantial improvements and/or contributions to school property, the maximum term of a use agreement is one year.

#### C. Cancellation of Facility Use Agreement

The district reserves the right to deny an outside organization's application or cancel the organization's use agreement when it deems such action to be in the best interest of the district or a school. The outside organization is responsible for providing timely notification to its members or other participants of a cancellation. When schools are closed because of adverse weather or other emergencies, all use of school facilities is canceled.

#### D. Fees for Outside Organizations

1. To comply with Georgia law, outside organizations must pay certain operating recovery fees resulting from their use of school facilities, including utilities, security, supervision, clean-up, maintenance, depreciation, overtime and any other costs to the district. The fee schedule can be obtained from the Facility Rental Department website [Facility Rental Department Homepage](#). Fees may be changed from time to time to reflect current costs.
2. If fees are not paid in full at least five (5) district operational days in advance of the activity or event, permission to use the school facility may be withdrawn or a ten (10) percent penalty fee may be added.
3. Payment should be made to the Fulton County Board of Education and mailed to the Facility Rental Department at Administration Center, 6201 Powers Ferry Road, NW, Atlanta, GA 30339. At the discretion of the Facility Rental Department, payment may be requested in the form of a cashier's check or money order. The district does not accept cash payment.
4. A custodial fee for clean-up will be assessed if the organization does not leave the facility and grounds clean.
5. The Facility Rental Department, in consultation with the principal may require the organization to pay for or to provide Fulton County School's police protection or security personnel.
6. If an activity is canceled at least five business days in advance of the activity or event, any prepaid user fee will be refunded, less any costs the district has incurred.

#### 7. In-Kind Contributions

In-kind contributions may be considered as an offset to the hourly facility use rental fee paid by outside organizations. Principals must submit requests for approval of in-kind contributions with the corresponding approved facility use proposal to the Facility Rental Department.

In-kind contributions for consideration by the district shall improve the overall performance of school facilities or eliminate maintenance cost. Any personnel staffing fees for custodial, Fulton County School's police officer, security and food services are required to be paid by the outside organization and may not be replaced by in-kind contributions or waived by the principal.

#### 8. Fee Waiver Requirements

Requests by organizations wishing to have FCS rental fees waived must meet the following requirements:

1. The organization must provide goods and services free of charge.
2. The types of services provided must be for students and relate to counseling, tutoring and/or mentoring.
3. Organizations must be classified as a non-profit 501-C3.
4. The proposed event or activities must be approved by the Principal, Area Superintendent and Director of Land Management.



5. The Fee Waiver request must be submitted and approved by the Board.

#### E. Insurance

In order to protect the school district, outside organizations are required to obtain liability insurance covering the event or activity as referenced on the rental application, lease agreement, and contract. The organization's insurance certificate must be provided to the Facility Rental Department in order for the organization to be approved to use any facility.

#### F. Deposits

1. At the discretion of the Facility Rental Department, outside organizations may be required to pay a deposit for activities involving large groups or activities that may result in damage to school property. Failure to pay a required deposit will result in the cancellation of the event.
2. If school facilities are used on an ongoing basis (monthly, weekly, etc.), a deposit of not less than one month's fee may be required in advance along with the fee for the first month. The deposit will be held by the Facility Rental Department and will be returned at the end of the approved use period, less any deductions for damage, unpaid fees or other costs resulting from the use, or may be applied to the facilities use fees incurred by the organization.

#### G. Fundraising by Outside Organizations

1. Fundraising by outside organization must meet the requirements outlined in [Policy KEB – Fundraising](#).
2. Tax-exempt organizations must provide a copy of their IRS determination letter and establish their legitimacy to the satisfaction of the Facility Rental Department before any fundraiser will be allowed.
3. Outside organizations may not use school facilities for any fund-raiser that includes gambling or games of chance. Please see [Policy KEB – Fundraising](#) for additional information.

#### H. Concessions

Arrangements for the sale of concessions by outside organizations must be made through the ~~local~~ school principal.

#### I. Political Meetings

Political forums held on school property must comply with Policy [Policy KIA - Political Campaign Activities](#) .

#### J. Additional Rules Governing Use of School Facilities by Outside Organizations

1. An outside organization shall not unlawfully restrict participation in an activity or event taking place at a school facility because of an individual's race, color, religion, sex, national origin, age or disability.
2. A school custodian and/or other district employee, as designated by the principal, must be present during interior events or activities, and their attendance may be waived by the principal and Facility Rental Department for exterior activities or events. District employees are not permitted to give their building keys to an outside organization.
3. Signs, banners, pennants, etc. limited to promoting the event may be erected on school property during the facility rental period only if the permission of the principal is obtained in advance and only if such displays do not deface school property.
4. Appropriate supervision, as approved by the Facility Rental Department and the principal, must be present for activities involving children.
5. Parking is permitted only in designated parking areas.
6. The number of attendees may not exceed the number authorized and must be in compliance with local fire codes.
7. Approved users and their participants must stay in their assigned area at all times. Entry into other areas of the facility will be considered trespassing.
8. Any use of a facility beyond the time specified in their use agreement is subject to additional fees charged in quarter hour increments.

9. All activities must be orderly and lawful and must comply with all federal, state and local laws.
10. Use of lighted athletic fields must end by 10:30 p.m. Lights may remain on until all participants and attendees have safely left the fields.
11. School buildings are not designed to meet the codes of or permitted for residential occupancy so activities with planned sleep periods (e.g., sleepovers) are not allowed, except as necessitated by emergency.
12. Food and beverages are allowed inside school buildings and on the school grounds only if approved by the principal in compliance with school nutrition rules and processes set out in [Policy EEE - Wellness Policy](#) and [Policy EED - Sales of Food on School Premises](#).
13. Alcohol, illegal drugs, weapons or explosives are not allowed in school facilities or on school property.
14. The use of tobacco products is prohibited in school facilities and on school property. Any use of district facilities must comply with [Policy KMA - Public/Employee Use of Tobacco Products](#).
15. Outside organizations may use tables and chairs if requested in advance. A set-up fee shall be charged. Requests to use public address systems or audio visual equipment will be considered on a case by case basis by the principal. A fee will be charged and district personnel must be used to operate such equipment. The following types of district equipment may not be used by outside organizations: musical instruments, athletic equipment, computers, and technical or laboratory equipment.
16. Outside organizations may not make any unapproved modifications to school facilities in order to accommodate their use of the facility. This includes modifications to the electrical, heating, cooling, ventilation or plumbing systems or to the structure or grounds of the facility.
17. School facilities shall not be used for anything other than the use(s) approved in the use agreement.

Cross References: [Policy KG - Use of School Facilities](#)