

**Interlocal Agreement for the Renovation and Joint Use of
the Softball Field at Campus Hills Park**

This Interlocal Agreement is made and entered into this 6th day of May 2013, pursuant to North Carolina General Statute 160A-460, et sec, by and between the CITY OF DURHAM, a municipal Corporation of the State of North Carolina, (hereinafter “City”), and NORTH CAROLINA CENTRAL UNIVERSITY (hereinafter “NCCU”), a public university existing in the State of North Carolina. The City and NCCU together shall hereinafter be known as “the Parties.”

Background. This interlocal agreement is for the renovation and joint use of the Softball Field and its immediate surrounding areas at Campus Hills Park, as shown on Attachment A, hereby made part of this agreement (hereinafter “the Premises”). The City desires to improve the ball field in Campus Hills Park, located at 2000 S. Alston Ave., Durham, to serve both the residents of the City of Durham and the NCCU softball team, and NCCU is willing to perform improvements specifically to the ball field and its surrounds on a portion of the park, Parcel I.D. 132934, 0830-14-24-3928. The improvements to be made to the ball field and surrounds constitute the “Project.” The City has determined that the area designated on Attachment A as the “Premises” can be shared for joint recreation purposes during the term of this Agreement, and use of these Premises by NCCU will serve important public purposes. By this Agreement, the parties will define the ways they will share responsibility, authority and accountability for the field improvements at Campus Hills. In consideration of the investment by NCCU under the terms of this Agreement, the City agrees that NCCU shall have times of exclusive use of the Premises, as specified in this Agreement.

THEREFORE, in consideration of the above-stated public purposes and such other mutual promises and covenants as are hereinafter set forth, the City and NCCU agree as follows:

I. Property

Property. The property previously defined as “the Premises” is owned by the City, and provided for joint use of the parties under the terms and conditions specified in this interlocal agreement.

II. Renovation and Construction Terms

1. The Project.

In its current condition, the Premises are not suitable for competition or sports league play. Through the financial contributions of NCCU to this Agreement and the contribution of use of the property by the City, the Premises will be renovated for use as both a Division I playing field for NCCU softball and a community recreation playing field for the City.

NCCU will appropriately renovate and provide new amenities for the Premises, and in return will enjoy periods of exclusive use of the Premises for its softball use, and will also be allowed to rent the Premises to the City for the City’s use as a community recreation field during those periods of exclusive use. NCCU’s periods of exclusive use shall be mutually

determined by the parties.

Upon completion of the Project, meaning upon completion of the construction and renovation phase by NCCU, NCCU will have the use and control of the Premises as specified in this Agreement, with the accompanying maintenance and management responsibilities as specified in this Agreement.

The City and NCCU will share use of the “Common Areas,” of Campus Hills Park and the I. R. Holmes Recreation Center, which shall be defined to include parking lots and utility features of the building, such as restrooms, elevators, stairs, and the lobby. The City hereby grants to NCCU a non-exclusive license for use of the Common Areas of the Property.

2. Renovation Budget.

- A. The total cost of the Project, including contractor’s and designer’s fees, site improvements, site amenities, and contingency, shall be paid by NCCU.
- B. The Parties agree that plans and designs for the project must be approved in writing by the Director of the City’s Parks and Recreation Department (“Director”) before any work is commenced on the site. Any value engineering recommendations or other changes which modify the scope, plans or design of the Project will be provided in advance of any implementation for the City’s review and approval, which shall be provided in writing. Such approval shall not be unreasonably withheld and shall be provided in a timely manner.
- C. In the event that the Project’s contingency fund is exhausted prior to the completion of the Project, NCCU will go back to its funding authority and there will be a presumption that funds will be appropriated to complete the Project to remedy any health, safety, or code compliance concerns.

3. Selection of Vendors.

- A. Design professionals and all contractors shall enter into contracts with NCCU, and NCCU’s process for selecting these vendors shall conform to all state requirements for such selection and contracting. NCCU will obtain all necessary and prudent warranties and protections for the design and construction process.
- B. NCCU shall select the Project Contractor(s), pursuant to North Carolina’s public construction procurement statutes, and the process used shall be the usual NCCU construction process. The Contractor(s) for the Project shall enter into a contract with NCCU, which will use its standard Construction Contract.

4. Division of Responsibilities during Renovation.

- A. NCCU will designate an owner’s representative from its staff, who will oversee the Project and/or construction management firm, and provide appropriate written updates regarding the Project to the City. In addition, the City’s representative will be invited to participate in meetings with Project consultants and contractors during the design and construction phase.
- B. NCCU will notify the City of changes to the Project, and the Director shall have the authority to approve or disapprove said changes. Such approval shall be in writing, shall

not be unreasonably withheld, and shall be provided in a timely manner.

- C. NCCU will make a good faith effort to provide notice to the City within 10 business days of receiving written notice of any claims or disputes associated with the Project.
- D. NCCU's contract with the Construction Contractor shall require the Contractor to restore the areas surrounding the Premises to the condition they were in prior to the beginning of construction.
- E. In the event of significant changes or disruption during the Project, the Parties will work together in a timely manner to come to mutual agreement. The City and NCCU agree to schedule in a timely manner any special meetings that may be required to respond to any significant change or disruption during the Project.
- F. NCCU will work directly with the Contractor to finalize the closeout and secure use of the Premises pursuant to the Project schedule, and will work closely with the City to satisfy punch list items and other warranty work.
- G. NCCU will oversee the maintenance of the Premises during the term of the Project. The Director will assign a representative from the City's Parks and Recreation Department to serve as advisory liaisons between the NCCU and the City for maintenance concerns. The City, its agents or employees may enter upon the Premises to inspect the site and to determine the progress of the work at any time without giving advance notice to NCCU.
- H. NCCU shall not allow any Environmental Contamination to be brought onto the Premises by itself or its agents, contractors, invitees, or licensees, and NCCU shall be responsible for immediately removing or remediating said contamination if it occurs.
- I. If either party receives any notice or document (i) which alleges any violation of the Americans with Disabilities Act ("ADA") relating to the Premises, or (ii) which pertains to any claim made or threatened relating to the Premises regarding alleged noncompliance with the ADA, or (iii) which pertains to any governmental or regulatory action or investigation instituted or threatened relating to the Premises regarding alleged noncompliance with the ADA, it shall, within ten (10) days after receipt of such notice or document, provide the other party with a copy.

5. Scope of Renovation Work on the Premises

- A. The Project will occur in three phases: Phase 1 will run from December 1, 2012 through March 1, 2013; Phase 2 will run from August 1 through October 15, 2013; Phase 3 will run from August 1 through October 31, 2014.
- B. Phase 1 includes the following work: removal of existing infield and addition of field conditioning material; grading and removal of top six inches of existing infield; installation and fine grading of subsurface and playing surface of approved material; replacement of existing chain link backstop with three foot wall and four inch mesh net; replacement of existing outfield with fescue turf blend; installation of breakaway fence in outfield.
- C. Phase 2 includes the following work: replacement of existing chain link boundary fence with CMU wall with brick façade, on both home and visitor sides; expansion of existing dugouts by fifty square feet each; installation on new concrete floors in dugouts; installation of benches and gates in dugouts; construction of home and visitor side bullpens; construction of batting cages.
- D. Phase 3 includes the following work as funding allows: construction of press box and

sound system, grandstands, score board, team locker rooms, storage facility, and security gates.

- E. NCCU or its Contractor will take reasonable precautions to minimize the impact of the work on the surrounding park area and to protect members of the public using other parts of the Property (Campus Hills Park and I. R. Holmes Center). NCCU agrees to comply with all local, state and federal laws, rules and ordinances applicable to the work, and further agrees to exercise due care in performing all work on the Project.
- F. NCCU or its contractor will be responsible for determining the location of all underground utilities prior to the commencement of any work.
- G. NCCU will notify the City when each phase of the renovation portion of this Agreement is complete. At the end of each specific phase of the work, with the exception of construction warranty activities, the Operational Guidelines of Section III of this Agreement will be instituted.

III. Use, Occupancy, and Operational Guidelines.

1. Occupancy of Space

- A. In consideration for its significant investment in the Project, NCCU shall have exclusive possession and use of the Premises between September 1 and May 31 each year for fifteen (15) years from the completion of Phase 1 of the Project, which term may be extended as provided in Section 2, "Term," below. NCCU's rental fees for use of the Premises shall be as described in Section 2.B. below.
- B. NCCU agrees that the City will have use and control of the Premises between June 1 and August 31 each year.
- C. NCCU may rent the field to the City for softball use at any time during the September 1 through May 31 time period; the fee for that rental will not be paid in funds to NCCU by the City but shall be credited to NCCU's fee for use of the Premises as described in Section 2.b. below.

2. Term and Termination.

A. Term.

The Use, Occupancy, and Operational Guidelines section of this Agreement, consisting of this Section III, shall have a term of fifteen(15) years from the date of substantial completion of Phase 1 of the Project.

B. Management and Use Fees

The City shall credit NCCU toward use of the Premises an amount equal to the amount of funding that NCCU has invested into renovations of the Premises. These credits shall be applied toward payment for use, based on the standard rental rate of the Premises. Until NCCU has used up that credit, it shall not pay the City any rent or deposit for the use of the Premises. The City shall not pay any management fee to NCCU. NCCU agrees that the City may rent the Premises for its softball use during those times when NCCU is not using it for its university softball team, at NCCU's discretion, and that the City's rental fee will be credited towards NCCU's fee for use of the Premises. Any credits held by NCCU shall extinguish when this Agreement expires or is terminated.

C. Termination.

1. Either party may terminate this Agreement during the fifteen-year term by giving the other party at least 120 days' notice of termination, to be effective no sooner than the first July 1 following such notice period.
2. The City reserves the right to terminate this Agreement should it determine that the property is necessary for public recreational use. In that case, the City shall give NCCU at least 120 days' notice of its determination and the termination of this Agreement, to be effective no sooner than the first July 1 following such notice period. If the City terminates the Agreement prior to the Term as described in Section 2.A. above, then the City shall reimburse NCCU for its expenditures on the Premises to the extent not covered by NCCU's use of the Premises and pro-rated based on the time period the improvements have been in place. The value of that reimbursement shall be determined by subtracting the value of the exclusive use times already enjoyed by NCCU from the expenditures NCCU reasonably spent on the Project.
3. If NCCU should exercise its right of termination during the term of this Agreement, then all improvements on the Premises, except the scoreboard, immediately become the property of the City upon giving the notice of termination, and NCCU shall not remove any fixed items from the Premises except the scoreboard and shall receive no reimbursement for their expenditures on the Project, except the value of such use of the Premises as enjoyed by NCCU prior to giving the notice of termination.

3. Enhancements or New Construction on Project property by the City or NCCU

The City and NCCU shall consult, plan, coordinate and receive written approval from the City Manager prior to making improvements to the Premises other than those included in this Agreement. The City may make such enhancements, modifications, renovations, or new construction on its Property other than the Premises in its sole discretion and without approval from NCCU. The City shall notify NCCU that it is making such improvements not later than 10 days before beginning cosmetic improvements such as painting or 90 days before beginning non-cosmetic improvements. However, changes to the Property which affect the efficiency and operation of systems which serve the Premises as a whole, such as utilities or parking, shall not proceed without prior written notice to NCCU, and the City shall plan and coordinate such improvements with NCCU to ensure that such improvements are completed with minimal impact on the operations of NCCU. Whether NCCU or the City, the party making such enhancements or improvements will be responsible for and shall repair at its sole expense any damage to drive accesses, parking areas or other Common Areas of the Project incurred due to their use or construction.

4. Ownership.

All improvements made to or upon the Premises, with the exception of the scoreboard, shall be the property of the City. It is acknowledged, however, that the significant contributions of NCCU to the renovation of the Premises are the consideration for the rights to exclusive use that are accorded by this Agreement.

5. Appropriate Use.

No use of the Premises shall be inconsistent with the proper care and preservation of public property.

6. Management of the Premises

- A. NCCU shall be responsible for all maintenance and security needs during the period of its exclusive use, that is, September 1 through May 31 each year. NCCU agrees that it will not lease, rent, or sublet the Premises to any party other than the City during the times of its exclusive use.
- B. The Parties shall each confine their activities to their assigned Areas and Common Areas, during the times of NCCU's exclusive use, except that the City may use the Premises during any specific period of time when NCCU has rented it to the City.
- C. Should a party make approved use of another party's assigned space, the party sponsoring the activity shall retain supervision and control of that activity for legal purposes. For example, if an athletic team makes use of the Common Areas, supervision and control of the activity remains with NCCU, even if employees or agents of the City assist in use of the City's facility or equipment.
- D. The permitted uses of the space in the Premises are as provided in this Agreement. Changes to these permitted uses must be approved by the Athletic Director and the City Manager.
- E. Representatives of the City and NCCU agree to meet a minimum of three times per year to coordinate use and establish maintenance schedules for the Premises. The City and NCCU designees shall maintain on-going, open, reciprocal communication between one another while acting in good faith to build a positive reciprocal relationship.

7. Supervision and Security of the Premises and Common Areas

- A. The City shall be responsible for security for the Common Areas in the Property. Each party shall be responsible for security in the Premises during the periods of its use and control.
- B. Each Party assumes full responsibility for any and all damage, injury, or breakage to the Premises as a result of its program being operated on the Premises. In the event of damage attributed to use or maintenance by a particular party, the responsible party shall restore the Premises.
- C. If a party is holding an event for which additional security in addition to that routinely provided by the City is deemed appropriate, that party shall bear the costs of providing such additional security.
- D. During recreation center operational hours, all NCCU maintenance personnel shall make their presence known on site by signing in at the center's office upon arrival.
- E. The Parties agree to provide appropriate signage in the Premises so that users and the general public will have the necessary information to contact the appropriate party with questions about the Premises during those periods of the City's or NCCU's exclusive use.
- F. NCCU shall have the right to install a lock on the building used for storage of its equipment and materials and shall give the City a copy of the key to the lock. NCCU shall inform the City within two business days of any occurrence which causes any lock(s) on the Premises to be changed and shall furnish the City with a copy of any new key(s). At the end of the term, NCCU shall give to the City all keys that NCCU has for the Premises.

8. Fees/Charges for Use of the Premises and Common Areas

A. The City and NCCU agree that, except as expressly stated in this Agreement, there shall be no additional fees and/or charges associated with either party's use of the Premises unless mutually agreed upon.

B. Income from Programs.

The City and NCCU agree that the income from programs and events operated on the Premises that are subject to this Agreement shall go to the agency which is the operator of the program or event.

C. Concession Operations.

Each party, or its operating agent, has the right to operate concessions in its own assigned areas, and the proceeds shall go to the party operating the concessions. Each party is responsible for ensuring that appropriate health and safety regulations are observed.

9. Routine Maintenance and Management Responsibilities for the Premises

A. NCCU's responsibilities include the following:

1. To use the property for no other purpose than activities such that the City itself would be legally authorized to conduct on the Premises and such activities that would be appropriate for an outdoor public facility;
2. To make the Premises available for use by the City in accordance with the requirements of this Agreement;
3. To establish a process for recording, responding to, and resolving any complaints received from users about the Premises, and make information received through that process available to the City upon request;
4. To require any team(s) using the field to ensure that restrooms are available if an event either lasts more than ninety (90) minutes or involves more than 150 persons. This requirement can be satisfied with either use of the restrooms in the adjacent center during its operating hours or by rented portable toilets installed at a pre-approved location;
5. To provide trash containers and make arrangements for trash removal from the Premises during the period each year from September 1 through May 31;
6. To ensure that any use of the Premises does not interfere with the City's regularly scheduled mowing service in the Property outside the Premises;
7. To agree not to allow any use of alcohol on the Premises;
8. To do any seeding of the Field in the Premises performed during the playing season; to do all mowing of the Field between September 1 and May 31; to do any maintenance of the infield during the playing season including dragging and lining of the field before games and between games of double headers; installation and maintenance of the pitching rubber and base anchors; to do any work on the field necessitated by a rain event prior to a game or practice; and to perform all trash collection within the Premises during the period of its exclusive use.
9. To maintain the Field turf on a mutually agreed upon schedule;
10. To have access to the light panel and authority to turn field lights on and off as needed. The schedule of light usage will be recorded and given to the City. NCCU agrees that no lights be used on the field after 10:00 PM at night;
11. To manage the watering of the Field if irrigation is installed in any form to serve the Field.

B. The City's responsibilities include the following:

1. To collect trash from containers in the park outside the Premises on a regular schedule consistent with that provided to other City parks, which at the time of execution of this Agreement is collection no more than three times per week;
2. Through its Urban Forestry Division, to maintain the existing trees on the Premises;
3. Through the Police Department, provide security to the Premises as is customary for other Durham City parks;
4. To mow the area in the park outside the Premises on a regular schedule consistent with mowing at other Durham City parks, which at the time of execution of this Agreement is once every ten (10) days and to mow the area within the Premises as well between June 1 and August 31;
5. To respond as possible to a request for a specific date for mowing when that date is provided to DPR no less than fourteen (14) days in advance.

10. Additional Responsibilities

- A. During the term of this Agreement, the City and NCCU shall have regular communication between their designated liaisons on events scheduled in the Premises by either party, and shall also communicate on events in surrounding areas likely to have an impact on the Premises. Cancellations of events shall also be communicated. The on-site Manager for NCCU's uses shall communicate with the on-site Manager of the I. R. Holmes Center at Campus Hills to agree on mutually acceptable behaviors and uses by participants and spectators for both agencies. Disagreements between those parties will be referred to the Director of Parks and Recreation and the Athletics Director of NCCU to resolve.
- B. Each Party bears the responsibility to inspect and know the condition of the Premises at the end of its period of exclusive use. At the end of each of those periods the City representative responsible for field maintenance and the NCCU athletics facility services director and/or head softball coach will inspect the Premises and make a mutual decision about any necessary repairs and the responsibility for cost of the repairs.
- C. Damages resulting from vandalism during the period of either Party's exclusive use shall be the responsibility of that Party to remedy. The City may, but is not required to, contribute funding to repairs of vandalism occurring during NCCU's exclusive use in an amount consistent with what it would typically spend on such repairs on a field in any of its other park sites.
- D. Nothing in this Agreement is intended to or shall be considered to create a joint venture or partnership between the City and NCCU, or to constitute either the agent of the other or to make the City in any way responsible for the duties, responsibilities, obligations, liabilities, debts, or losses of NCCU.
- E. The City agrees to be responsible for utility costs arising from NCCU's renovations to and use of the Field.

11. Insurance.

- A. The City and NCCU agree to each cover its own risks for liability through either obtaining insurance or by self-insuring these risks. Each shall furnish the other occupants with evidence of such insurance and of its renewal as the premiums become due. Each shall

provide the other party with thirty days' prior written notice of any reduction in coverage or cancellation of such insurance.

- B. NCCU and the City are each responsible for insuring replacement value of their respective personal property.

IV. General Terms

1. Use of Care.

Each party acknowledges that construction, maintenance, and use pursuant to this Agreement will take place on a site at which children, City employees, and members of the public are present. NCCU shall take reasonable care under the circumstances to protect and secure the construction and maintenance areas to minimize the possibility of injury to staff and the public. NCCU endeavors to keep the Premises in a clean and safe condition at all times, and to ensure that any equipment, materials, or supplies brought onto the premises are properly and safely stored when not in use.

2. Nondiscrimination.

The Parties shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, sexual orientation, age, religion, or national origin. Neither the City, nor NCCU, nor their employees shall discriminate against any person or organization on the basis of race, color, creed, sex, sexual orientation, age, religion, or national origin by refusing to furnish such person or organization services for privileges offered to or enjoyed by residents of Durham, nor shall the City, NCCU or their employees publicize the facilities provided hereunder in any manner that would directly or inferentially reflect negatively on any person because of race, color, creed, sex, sexual orientation, religion, or national origin.

3. Nonperformance.

In the event any party should fail to keep, perform or abide by any term, condition or covenant of this Agreement for a period of thirty days after written notice of such failure by the non-breaching party, the non-breaching party shall have the right to pursue all remedies available at law or equity.

4. Notices.

All notices, requests, approvals, or consents required to be given hereunder shall be in writing and hand delivered or sent by certified mail, return receipt requested, postage prepaid, and addressed as follows:

City: Director, Parks and Recreation
City of Durham
101 City Hall Plaza
Durham, NC 27701

NCCU: Director of Athletics
1801 Fayetteville Street

Durham, NC 27707

Or to such other address as either party may specify in the manner hereinabove prescribed.

5. Severability.

In the event any term or provision of this Agreement shall be adjudged to be partially or completely invalid or unenforceable, then such term or provision shall be severed from this Agreement, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6. Future Costs.

No costs additional to those set forth in this Agreement shall be incurred. Should future costs arise that are not set forth in this Agreement, the Parties must agree in writing before any legal obligation is incurred.

7. Indemnification.

To the maximum extent allowed by law, the Contractor shall defend, indemnify and save harmless Indemnities from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of the errors, omissions or negligent acts of the Contractor or Subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "IV.7", Contractor shall at its sole expense defend Indemnities with legal counsel reasonably acceptable to City.

8. Entire Agreement.

The City and NCCU agree that this document and its Attachment listed below constitute the entire agreement between the Parties and may only be modified by a written mutual agreement signed by the Parties. To the extent that there is any conflict between the terms of this Agreement and any prior understanding or agreement between the Parties, the terms of this Agreement shall control.

Attachment A : The Premises within Campus Hills Park

9. Agreement in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

10. Miscellaneous.

(a) Choice of Law and Forum; Service of Process. This agreement shall be deemed made in Durham County, North Carolina, and shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection.

(b) Waiver. No action or failure to act by the parties shall constitute a waiver of any of their rights or remedies that arise out of this agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(j) No Third Party Rights Created. This agreement is intended for the benefit of the City and NCCU and not any other person.

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IN WITNESS WHEREOF, North Carolina Central University has caused this Agreement to be signed by its Chancellor and the City of Durham has caused this Agreement to be signed by its City Manager, attested to by the City Clerk, and sealed with its seal, by order of the respective governing boards duly given the day and year first written above.

NORTH CAROLINA CENTRAL UNIVERSITY

ATTEST

By: _____
Chancellor

By: _____

CITY OF DURHAM

ATTEST

By: _____
City Manager

By: _____
City Clerk

(Affix City Seal)

NORTH CAROLINA
DURHAM COUNTY

The undersigned, a Notary Public of the County and State aforesaid, hereby certified that _____ personally appeared before me this day, and being duly sworn by me, acknowledged that he/she is Chancellor of North Carolina Central, and that by authority duly given and as the act of NCCU the forgoing instrument was signed by its Chancellor.

Witness my hand and notary seal this ____ day of _____ 2012

My Commission expires:

Notary Public

The undersigned, a Notary Public of the County and State aforesaid hereby certified that _____ personally appeared before me this day, and being duly sworn by me acknowledged that he/she is City Clerk of the City of Durham, and that by authority duly given and as the act of the City, the forgoing instrument was signed by its City Manager, sealed with its corporate seal and attested to as its City Clerk.

Witness my hand and notary seal this ____ day of _____, 2012

My Commission expires:

Notary Public

Attachment A: The Premises within Campus Hills Park

