

## Charles C. Marcus Field Facility Use Agreement

This Charles C. Marcus Field Facility Use Agreement (hereinafter the "Agreement") is entered by and between the City of Ranson, 312 S. Mildred Street, Ranson, West Virginia 25438, (hereinafter "the City"), Ranson Building Commission (hereinafter "RBC"), 312 S. Mildred Street, Ranson, West Virginia 25438, the Ranson Parks and Recreation Commission, (hereinafter "RPRC"), 312 S. Mildred Street, Ranson, West Virginia 25438, and Jefferson County Youth Football, Inc. (hereinafter "JCYFL"), a West Virginia not-for-profit corporation whose principal place of business is \_\_\_\_\_.

WHEREAS, the Ranson Building Commission is the record owner of a 3.7512 acre tract of land and more specifically described in the Jefferson County land books as deed Book 1052, page 527, for the purpose of a civic stadium and other related purposes (hereinafter "Facility"); and,

WHEREAS, the Ranson Parks and Recreation Commission has been managing and maintaining the Facility for approximately two (2) years with the assistance of JCYFL; and

WHEREAS, the City JCYFL, RBC, and RPRC entered into a Memorandum of Understanding prior to the construction of the Facility on December 7, 2006, that established a relationship between the parties, granted JCYFL the right to use the Facility, and detailed the rights and responsibilities between the City, JCYFL, RBC, and RPRC; and

WHEREAS, the City, JCYFL, RBC, and RPRC wish to clarify the obligations and rights contained in the executed Memorandum of Understanding after two (2) years of actual operations;

WHEREAS, JCYFL has agreed to manage and maintain the Facility, on behalf of the community; and,

WHEREAS, the City, JCYFL, RBC, and RPRC wish to enter into this agreement for the operation, management and maintenance of the Facility.

NOW THEREFORE, the parties hereby enter into this Agreement which shall be regarded as the principal agreement governing the relationship between the City, JCYFL, RBC, and RPRC as it pertains to the use and operation of the Facility.

1. **Location.** The Facility is located at 132 Athletic Way, Ranson, West Virginia 25438. The specific site is legally described in the Office of the Jefferson County Clerk at Deed Book 1052, page 527.
2. **Ownership of Facility.** RBC is the record owner of the Facility. Concurrent with the execution of this Agreement, RBC agrees to grant the right to use, operate, develop

policies and procedures and enter into agreements regarding the use and operation of the Facility.

Nothing in this Agreement shall be construed to transfer the ownership of the Facility to the RPRC or to JCYFL; affect the City's obligations under its leases with the RBC; or affect any obligations under the Bond Purchase Agreement, dated May 27, 2008 by and between RBC, the City and J.P. Morgan Chase, and other affiliated agreements.

3. **Lease of Facility.** Consistent with the powers granted in paragraph 2, the RPRC and JCYFL agree to enter into this Agreement for an initial term of one (1) year (hereinafter the "Term"), which can be renewed in successive one (1) year increments by the parties in writing (hereinafter the additional terms referred to as an "Additional Term" or individually as an "Additional Term"). The option to renew may not be abridged so long as JCYFL is complying with the terms and conditions of its lease. The period for the Term and any Additional Term shall run from July 1 until June 30 each year.

4. **Operation of Facility.** JCYFL shall have control over the management and operation of the Facility as provided by this Agreement, including the use of the Facility for Jefferson County Youth Football games. When the Facility is in use, JCYFL must have an attendant on site to handle any problems or issues that the user may have. Any such attendant must be easily identifiable and properly trained as necessary and in accordance with accepted training methods employed for the service provided by the attendant.

JCYFL shall abide and follow the terms and conditions of the policies of the Ranson Parks and Recreation Commission in the utilization and renting of the Facility.

5. **Maintenance.** JCYFL shall be responsible for all maintenance of the Facility. JCYFL shall apply for all necessary building permits, and the City shall be responsible for ensuring all building permits are processed for construction and maintenance projects. All improvements to the Facility must be approved by the RPRC and the RBC. All maintenance and construction projects at the Facility shall be subject to final inspection by the City. JCYFL shall not be responsible for paying any permit fees for any construction at the Facility.

6. **Application of Laws.** JCYFL shall comply with all applicable laws, rules, regulations and ordinances of every governmental body or agency whose authority extends to the property or to any business conducted upon the property, including, but not limited to, rules, regulations and policies relating to the use of the Facility by the JCYFL.

7. **Auxiliary Use of the Facility.** The parties acknowledges that JCYFL has placed a significant monetary investment in the Facility, and JCYFL intends to pay for operating costs and maintenance from revenue derived from subletting the Facility for purpose other than youth football. It is understood and agreed that the Facility shall be used and occupied by JCYFL and persons and entities who rent the Facility from JCYFL for cultural, social, athletic and political events consistent with the use of a City park. JCYFL shall establish an open scheduling system that shall be viewable on-line and contain an override function through which the City may override a scheduled event to schedule a City-sponsored event and/or City emergency; provided, however, that if said override function shall be used, the City shall provide, in writing, the intent to invoke said override power to JCYFL no less than thirty (30) days in advance of the City-sponsored event and/or City emergency; further provided, however, that if an emergency dictates that thirty (30) notice cannot be provided, the City shall provide as much written notice as it can to JCYFL.

JCYFL shall not unreasonably deny access to persons and/or entities wishing to rent the Facility. The fee schedule adopted by JCYFL shall be reasonable. Any person or entity denied access to the Facility by JCYFL shall have a right of appeal to the RPRC. If the RPRC overrules any JCYFL decision denying access to the Facility, RPRC shall assume the risk and liability for any and all damage resulting from utilization of the Facility.

No liens may be filed against publically owned City property. JCYFL covenants that no liens will attach to the Facility as a result of JCYFL's operation of the Facility, and JCYFL will hold harmless, defend and indemnify the City, the RBC, and the RPRC against any asserted claims or liens.

The parties hereto recognize that permitted and prohibited use of the Facility will be determined over time, based on experience. Any use that is prohibited or restricted either by its nature, potential damage to the Facility or undue disruption to the neighborhood, shall be listed in the Ranson Parks and Recreation Commission policies provided for above.

8. **Management Fee.** Neither the RBC nor the RPRC shall be required to pay JCYFL any fee for management of the Facility. Consideration to JCYFL will be the ability to utilize the Facility, manage events in the Facility, and collect rental income on the Facility as provided in this Agreement.

9. **Facility Rental.** JCYFL shall be entitled to rent the Facility or portions thereof to persons and entities for cultural, social, athletic, or political events consistent with the use of a City park. JCYFL shall be responsible for all costs and expenses associated with such rentals. JCYFL shall be entitled to set reasonable rental rates for use of the Facility or specific portions of the Facility and retain all rents paid for such use for operation, management and maintenance of the Facility. A schedule of rental rates shall be established and published by the JCYFL and subject to review by the RPRC. -?
10. **Nondiscrimination.** JCYFL recognizes that it is unlawful to discriminate in violation of State or Federal laws and JCYFL agrees that JCYFL shall not discriminate in either employment matters or in the provision of any public services or public accommodations because of, or on the basis of race, creed, religion, color, national origin, sex, marital status, physical or mental disability, political ideas, unless with respect to employment positions the genuine reasonable demands of the employment position require a bona fide occupational qualification pertaining to an age, physical or mental disability, marital status or sex distinction.
11. **Facility Operation, Maintenance and Repair.** JCYFL agrees to maintain the Facility in good, clean and safe condition at its sole expense, including payment of all personnel salaries and benefits of those employed by JCYFL for maintenance purposes, utilities (including gas, water, electricity, telephone and sewer), maintenance, insurance, professional fees and costs, advertising, all normal and necessary costs of operation, snow and ice removal (as needed to accommodate any event), and any applicable taxes or assessments. Maintenance shall include repairs to the roof, structure and building systems of the Facility as well as the field, field house, concession stands, restrooms, offices, lights, public address system, fences, screens, irrigation systems, bleachers, box seats, Facility parking areas and common areas. Nothing in this provision shall require or preclude JCYFL from contracting with the City or its departments for maintenance services at the Facility. Volunteer work is permitted at the Facility provided that a contract is signed and the volunteer is properly licensed and insured.
12. **Events.** The parties hereto acknowledge that the Facility is a community Facility and will be used by the community for a variety of purposes in addition to the intended use of youth football. Further, the parties agree that the Facility will be suitable for some events and not others. Unsuitable events are those which endanger the public, exceed the Facility's ability to support public use during the event or unduly jeopardize the Facility, or cause undue hardship on the surrounding neighborhood. Unsuitable events will not be permitted in the Facility. JCYFL agrees that every contract it enters into with

third parties for events shall include a provision allowing free admittance to any City employee, provided said City employee possessed valid identification identifying said person as an employee of the City at the time of the event in question.

*Extraordinary Events* are events which, by their nature, require observance of specific provisions to protect the interest of the community as well as those of the affected neighborhood. The parties acknowledge that it is impossible to catalog each and every potential Extraordinary Event and therefore the parties agree that events with the following characteristics, alone or combined in any fashion, will be Extraordinary Events:

- a. Events with potential expected or planned attendance at any one time of more than 1,000 persons;
- b. Events which run for more than eight (8) consecutive hours, or the same event occurs for more than two (2) consecutive days;
- c. Events that require sound amplification in addition to the sound system incorporated into the Facility;
- d. Events that require the City Council to grant a specific variance from the City of Ranson Codified Ordinances in order to legally occur; and/or
- e. Events such as rodeos, circuses, livestock shows, auctions, and motor sports events.

Each extraordinary event shall be reviewed by an Extraordinary Events Committee (hereinafter the "Committee") comprised of the following members:

- a. One representative of JCYFL;
- b. The Mayor, or his or her designee; and
- c. The President of the Parks and Recreation Commission, or his or her designee;

This Committee will determine the measures necessary to mitigate the impacts of Extraordinary Events which may include the posting of a bond, or to determine whether such event should occur at all. Before an Extraordinary Event will be permitted at the Facility, the Committee must approve said event by a majority vote.

**13. Signs/Advertising.** The parties acknowledge that advertising signs are a part of the anticipated revenue of JCYFL. Nothing in this Agreement shall preclude placement of advertising within the confines of the Facility.

**14. Facility Name.** JCYFL agrees that that it cannot change the name of the Facility.

15. **City Use of the Facility.** The City and JCYFL agree that the Facility shall be available at no charge for City-sponsored events during the course of the calendar year, but that such use shall not interfere with previously scheduled youth football activities, with the exception of a City-wide emergency in which the Facility may have to be utilized. If any occasion constitutes an Extraordinary Event, the City may contribute to the costs associated with the Extraordinary Event such as parking and traffic control. The City shall not be exempt from any provisions governing other Extraordinary Events. It is expressly understood, however, that if the City used the Facility for a City-sponsored event, JCYFL shall not be responsible for any costs of said event. Furthermore, the City shall be responsible for any damage to the Facility caused during a City-sponsored event.
16. **Security.** The parties acknowledge that some events by their nature may require extra security. JCYFL shall consult with the Ranson Police Chief to determine if security is necessary. If security is deemed necessary by the Ranson Chief of Police, JCYFL shall require the lessee of the Facility to obtain private security obtained by the Ranson Chief of Police or retain Ranson police officers.
17. **Right of Enter and Inspections.** City officials may enter the Facility at any reasonable time to conduct inspections on the condition of the Facility and to ascertain that cleaning and maintenance are being performed in a satisfactory manner. The City shall conduct a quarterly inspection of the Facility and an inspection checklist shall be developed and incorporated in the **Manual of Policies** to establish clear standards for the condition of the Facility.
18. **Personal Property and Liability Risk.** The City shall not be liable to JCYFL or those claiming through or under JCYFL, for injury, death or property damage occurring in, on or about the Facility, and JCYFL shall indemnify the City, hold it harmless and defend the City from any claim or damage arising from any injury, death, property damage or administrative, operational or management claim occurring in, on or about the Facility to any person or entity. Without limiting JCYFL's liability hereunder, JCYFL agrees, at its own cost and expense, to have in continuous effect public liability insurance protecting the City and JCYFL in the amount One-Million Dollars (\$1,000,000) in the aggregate for personal injuries sustained by any one or more persons. All policies of insurance shall name both the City and JCYFL as insured thereunder, and shall protect the interests of the City. A copy of the insurance policy shall be provided to the City Attorney.

Additionally, during any event that is either City-sponsored or a City emergency wherein the City has invoked its override power as defined in Section 7 above, JCYFL shall not be liable to the City or those claiming through or under the City, for injury, death or property damage occurring in, on or about the Facility during said event, and the City shall indemnify JCYFL, hold it harmless and defend JCYFL from any claim or damage arising from any injury, death, property damage or administrative, operational or management claim occurring in, on or about the Facility to any person or entity.

The City shall not be liable for the personal property owned by JCYFL contained in the Facility, except as otherwise provided herein. JCYFL shall be responsible for securing and maintaining insurance to protect its property and equipment in case of loss.

19. **Business Records.** JCYFL agrees that it shall keep and provide to the City a full and complete accounting of all income and expenses of the operation of the Facility and that its accounting records shall be open to the City upon request. Additionally, JCYFL agrees to provide to the City a monthly balance sheet of its operations without request. JCYFL shall provide the RPRC with a copy of an annual audit of JCYFL's financial accounts conducted by an independent licensed accountant no later than September 30 of each year.

20. **Notice.** Notice to the City shall be sent to:

City of Ranson  
312 S. Mildred Street  
Ranson, West Virginia 25438

Notice to JCYFL shall be sent to:

Jefferson County Youth Football  
Post Office Box 906  
Kearneysville, West Virginia 25430

If there is a change in address, the party changing its address shall timely notify the other party of any address change.

21. **Default.** If JCYFL violates or fails to abide by the provisions of this Agreement; and fails to take immediate corrective action within thirty (30) days written notice from the City of a violation or default; JCYFL will be deemed to have forfeited its privileges and

management rights with respect to the operation of the Facility. If the RPRC and JCYFL ultimately disagree over the interpretation of this Agreement, the parties agree to submit to dispute to the Ranson City Council for resolution. In the event this Agreement is terminated due to a default and JCYFL is removed as manager of the Facility, the RPRC becomes the Facility manager and assumes responsibilities and liability pursuant thereto.

22. **Remedies.** Upon default the RPRC may take possession of the Facility. If any default occurs, JCYFL shall be responsible for any and all bills, expenses and costs incurred with respect to the construction, establishment and operation of the Facility up to the date of the City's taking possession.

23. **Surrender of Premises.** At the conclusion of the Term of any Additional Term for which there is no Additional Term that follows, JCYFL agrees to leave the premises of the Facility in as good or better condition, and will surrender all keys, maintenance manuals, as-built drawings whether modified or not, to the City. Further, JCYFL will remove all items of personal property whether owned by JCYFL, its tenants or leases unless specifically authorized by the RPRC in writing to do otherwise. All fixtures shall remain in place on the premises.

If the City does not renew the lease, the City shall be responsible for paying JCYFL for the value of the fixtures JCYFL has been responsible for obtaining according to the attached amortization schedule.

24. **Quiet Possession.** JCYFL shall be entitled to the quiet possession and use of the Facility as herein described so long as the terms of this Agreement and any other agreements between the parties are complied with.

25. **Termination and Modification by Mutual Consent.** The parties may consider mutual termination and any mutually-agreed upon modification of, or amendments to, this Agreement at any time, but any such termination, modification or amendment may only be in writing signed by the parties and approved by each respective body prior to said termination and/or modification.

26. **Complete Agreement.** This Agreement, including any exhibits and attachments hereto, embodies the entire Agreement and understanding of the parties with respect to its subject matter. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in this

Agreement. Both parties shall be prohibited from offering into evidence in any arbitration or civil action any terms, conditions, understandings, warranties, statements or representations, whether oral or written, that are not contained in this Agreement. No party will be bound by any terms, conditions, understandings, warranties statements or representations, whether oral or written, that are not contained in this Agreement

27. **Severability.** If any provision of this Agreement is declared void or held invalid, such provision will be deemed severed from this Agreement and, the remaining provisions of this Agreement will otherwise remain in full force and effect.

28. **Relationship of Parties.** The parties hereto are not and shall not be regarded as partners or joint venturers, and neither party shall, as a result of this Agreement, be held to answer for any loss, charge or expense in connection with or arising from operation of the Facility except as otherwise provided in this Agreement or any other agreement entered into by the parties hereto.

29. **Governing Law.** All provisions of this Agreement shall be construed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 15<sup>th</sup> day of September, 2009

**City of Ranson**

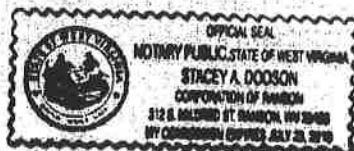
A. David Hamill  
A. David Hamill, Mayor

State of West Virginia:  
County of Jefferson:

On this 15<sup>th</sup> day of September, 2009, personally appeared before me, A. David Hamill, of the City of Ranson known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Notarial Seal, the day and year first above written.

[Affix Seal]



Stacey A. Dodson  
Notary

My commission expires July 23, 2018

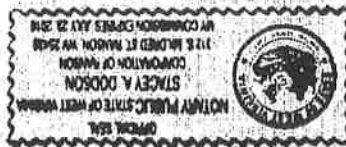
**Ranson Building Commission**

Shannon Reed, President  
State of West Virginia:  
County of Jefferson:

On this 15<sup>th</sup> day of September, 2009, personally appeared before me, Shannon Reed, of the Ranson Building Commission known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Notarial Seal, the day and year first above written.

[Affix Seal]



Stacey A. Dodson  
Notary

My commission expires July 23, 2018

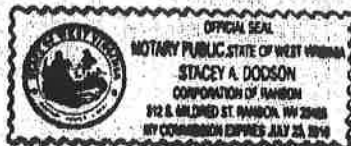
**Ranson Parks and Recreation Commission**

Duke Pierson  
Duke Pierson, President  
State of West Virginia:  
County of Jefferson:

On this 15<sup>th</sup> day of September, 2009, personally appeared before me, Duke Pierson, of the Ranson Parks and Recreation Commission known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Notarial Seal, the day and year first above written.

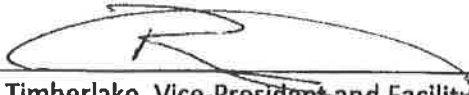
[Affix Seal]



Stacey A. Dodson  
Notary

My commission expires July 23, 2018

**Jefferson County Youth Football, Inc.**

  
Brice Timberlake, Vice-President and Facility Manager

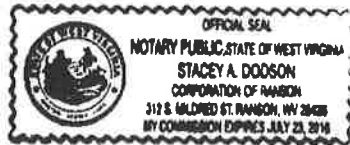
State of West Virginia:

County of Jefferson:

On this 15<sup>th</sup> day of September, 2009, personally appeared before me, Brice Timberlake, Vice-President of the Jefferson County Youth Football, Inc. known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Notarial Seal, the day and year first above written.

[Affix Seal]



  
Notary

My commission expires July 23, 2018