

City of Auburn, Maine

"Maine's City of Opportunity"

Parks & Recreation Department



Parks & Recreation Advisory Board
Hasty Community Center
August 14, 2013
6:30 PM

- **Minutes**

Review & approve minutes

- **Lewiston-Auburn Public Health Committee – Tobacco-Free Ordinance**

1. Review proposed ordinance – Emily Dooling

- **Pulsifer Field Agreement**

1. Review

- **Tribou Field Agreement**

2. Review

- **Parks & Recreation Advisory Board – Ordinance Review**

1. Current Ordinance
2. Proposed Ordinance Amendments
3. Forward recommendations

- **Municipal Beach**

1. Review Operating Plan
2. Forward recommendations for use

- **Future Agenda Items**

1. Public Services Concept
2. Seniors Programming
3. Ingersoll Arena – Repurposing
4. Dog Park
5. Ice Arena Fees

- **Open**

- **Adjourn**

City of Auburn, Maine

"Maine's City of Opportunity"

Parks & Recreation Department



The purpose of this document is to outline the 2013 Municipal Beach operating procedures, beginning June 15th, 2013 through September 2nd 2013.

- Opening day of the beach will be Tuesday, July 2nd.
- The primary purpose for the delayed opening is wildlife services recommends keeping the outlet beach park closed to the public in 2013, until after the geese molt and are captured. This action will greatly increase the success of a goose roundup and help to ensure that money isn't wasted in mobilizing staff and resources on a day that the geese aren't present.
- The beach will close Tuesday, September 3rd.
- The beach will be closed to the public on all Mondays, except for Labor Day.
- Hours of operation will be Tuesday through Sunday, 10:00 a.m. – 6:00 p.m.
- Beach entry will be free of charge.
- There will be no lifeguard on duty; swimming is strictly at the users' own risk.
- Water testing will begin on Saturday, June 15th, in preparation for opening day. Tests performed by the Auburn Water District are at a rate of \$32 per test.
- Water testing will be done daily, and water quality reporting will be available 24 hours after the sample is taken.
- Two bacteria types will be tested for, Enterococci and E. coli. Maximum threshold limits for presence of these bacteria will be: Enterococci – 60 cfu/100ml, E. coli – 190 cfu/100ml. These standards have been adopted from the 2012 EPA Recreational Water Quality Criteria recommendations.
- Should the maximum thresholds limits be exceeded for either bacterium, the beach will have a mandatory 48 hour closure. Notification of beach closure will be made through the City website only.

- One capital project will be performed utilizing CDBG funds before opening day; installation of beach volleyball courts.
- The concession stand will be bid out through the formal RFP process.
- The Lessee of the concession stand will be responsible for the concessions area, collecting water samples, transporting water samples to the testing lab and other miscellaneous duties.

Auburn, Maine, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 2 - ADMINISTRATION >> ARTICLE V. - BOARDS, COMMISSIONS AND COMMITTEES >> DIVISION 4. - PARKS AND RECREATION ADVISORY BOARD >>

DIVISION 4. - PARKS AND RECREATION ADVISORY BOARD

Sec. 2-454. - Established; membership.

Sec. 2-455. - Term of members.

Sec. 2-456. - Officers; rules of procedure; vacancies.

Sec. 2-457. - Duties.

Secs. 2-458—2-482. - Reserved.

Sec. 2-454. - Established; membership.

- (a) There shall be a parks and recreation advisory board, which shall be composed of eight members. All except the ex officio member of the board shall be appointed by the city council.
- (b) Of the seven appointed members, there shall be no more than two members from the same ward. A member shall forfeit his membership if he becomes a resident of a ward in which two members of the board already reside.
- (c) Serving as the ex officio member shall be the director of parks and recreation, who shall also serve as secretary to the board.
- (d) Nothing in this article shall preclude the creation of standing subcommittees.

(Code 1967, § 18-3.1)

Sec. 2-455. - Term of members.

All appointed members of the parks and recreation advisory board shall serve staggered two-year terms from the date of their appointment and thereafter until their successors are appointed beginning with the effective date of this Code. Members of the board may be appointed to succeed themselves.

(Code 1967, § 18-3.3)

Sec. 2-456. - Officers; rules of procedure; vacancies.

The parks and recreation advisory board shall elect a chair, a vice-chair and such other officers as it may require. The board shall develop such rules to govern its meetings and operations as it deems advisable. Upon the death, incapacity or removal from the city of any member, or if any member shall be absent without excuse for three consecutive meetings, the secretary of the board shall advise the city council that a vacancy exists and request the appointment of a replacement.

(Code 1967, § 18-3.4)

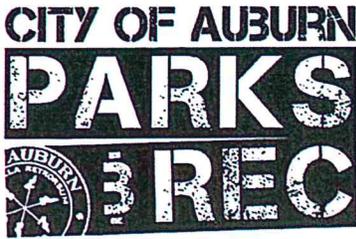
Sec. 2-457. - Duties.

The purpose of the parks and recreation advisory board shall be:

- (1) The review of existing programs of the parks and recreation department and the planning of revised, supplementary or new programs to meet the present and future needs of the city.
- (2) The coordination of existing programs and facilities of the recreation department with those of volunteer and charitable organizations and those of other governmental units.
- (3) Developing recommendations for more efficient use of present facilities and personnel.
- (4) Improving communication regarding the recreational needs of the city between the people and the recreation department, the city council, and other city departments.
- (5) The investigation of federal, state and private programs for financial assistance and the development of recommendations regarding participation in such programs by the city.

(Code 1967, § 18-3.2)

Secs. 2-458—2-482. - Reserved.



DIVISION 4. – PARKS AND RECREATION ADVISORY BOARD

Sec. 2-454. – Established; membership.

Sec. 2-455. – Term of members.

Sec. 2-456. – Officer; rules of procedure; vacancies.

Sec. 2-457. – Duties.

Secs. 2-458-2.482. – Reserved

Sec. 2-454. – Established; membership.

- (a) There shall be a parks and recreation advisory board, which shall be composed of ~~eight~~ eleven members. All except the two ex-officio members of the board shall be appointed by the city council.
- (b) Of the ~~seven-~~ nine appointed members, there shall be no more than two members from the same ward. A member shall forfeit his membership if he becomes a resident of a ward in which two members of the board already reside. The nine appointed members shall consist of five members, one representing each ward, two at-large, one school committee member and one city councilor.
- (c) Serving as ex officio members shall be the director of parks and recreation and the school department athletic director or his designee. ~~who shall also serve as secretary to the board.~~ The parks and recreation director shall also serve as secretary of the board.
- (d) Nothing in this article shall preclude the creation of standing subcommittees.

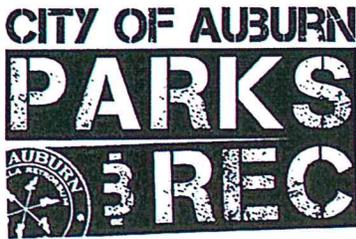
(Code 1967, §18-3.1)

Sec. 2-455. – Term of members.

All appointed members of the parks and recreation advisory board shall serve staggered two year terms from the date of their appointment and thereafter until their successors are appointed beginning with the effective date of this Code. Members of the board may be appointed to succeed themselves.

(Code 1967, §18-3.3)

Sec. 2-456. – Officers; rules of procedure; vacancies.



Parks & Recreation Advisory Board – Ordinance Amendments

The parks and recreation advisory board shall elect a chair, a vice-chair and such other officers as it may require. The board shall develop such rules to govern its meetings and operations as it deems advisable. Upon the death, incapacity or removal from the city of any members, or if any members shall be absent without excuse for three consecutive meetings, the secretary of the board shall advise the city council that a vacancy exists and request the appointment of a replacement.

(Code 1967, §18-3.4)

Sec. 2-457. – Duties.

The purpose of the parks and recreation board shall be:

- (1) The review of existing programs of the parks and recreation department and the planning of revised, supplementary or new programs to meet the present and future needs of the city with a primary responsibility to advise on the recreation master plan for development and implementation.
- ~~(2) The coordination of existing programs of the recreations department with those of volunteer and charitable organizations and those of other governmental units.~~
- ~~(3)~~(2) Review annually, a conditions and safety report of all parks and recreation facilities as prepared by staff. This report will be submitted by the parks and recreation director to the city manager by December 1st.
- (3) Improving communication regarding the recreational needs of the city between the people and the recreation department, the city council, and other city departments.
- ~~(4) Developing recommendations for more efficient use of present facilities and personnel.~~
- (4) The investigation of federal, state and private programs for financial assistance and the development of recommendations regarding participation in such programs by the city. The board shall also research and advise the parks and recreation director on other potential grant opportunities to apply for.
- ~~(5) The investigation of federal, state and private programs for financial assistance and the development of recommendations regarding participation in such programs by the city.~~

(Code 1967, §18-3.2)

Secs. 2-458-2-482. – Reserved.

LEASE AGREEMENT

BETWEEN

CITY OF AUBURN

AND

NEW AUBURN LITTLE LEAGUE ASSOCIATION

The CITY OF AUBURN, a Municipal Corporation (hereinafter referred to simply as “the City”), and NEW AUBURN LITTLE LEAGUE ASSOCIATION (hereinafter referred to as “the Association”, hereby mutually contract and agree as follows:

1. **Description of Leased Premises:** The City leases to the Association certain land and buildings situated in Auburn and more specifically described in a deed to the City of Auburn from Central Securities Corporation dated May 4, 1934 and recorded in the Androscoggin county Registry of Deeds in Book 436, Page 352. The leased premises are bordered by Broad Street, Tenth Street and Cook Street are shown on the Auburn Assessor’s maps as lot 15-1-66.
2. **Term of the Lease:** The term of the lease shall begin on the date hereof and extend for a term of twenty-five years unless either parties terminate this agreement as described herein. The City shall have the option of renewing the lease on the same terms and conditions stated herein at the conclusion of this lease. The City shall give in writing to the Association a notice of intent to renew the lease at least sixty (60) days prior to the expiration of the original term of the lease.

The City shall have the right to sell the leased premises or any portion thereof at any time during the term of the lease or any renewal thereof by giving the Association notice in writing of its intention to sell. The City shall give sufficient time for the Association to relocate.

3. **Rent:** The Association agrees to pay rent of one dollar (\$1.00) per year payable in advance for the full period of the lease.
4. **Use of Leased Premises:** The Association shall have the use of the leased premises except that the playground area shall remain open to the public. The City shall have the right to make reasonable use of the facility as a baseball field for its own recreation programs should the need arise. The City will take the same care of the field, as the Association, if it uses the facility. The Association and the Recreation Department will coordinate the use of the facility each year.
5. **Utilities:** The Association shall pay all bills for electricity, water and other utilities attributable to the use of the leased premises throughout the term of the lease. The City will reimburse the Association for use of utilities if the City uses the field for a period of thirty (30) consecutive days.

6. **Maintenance:** The Association shall maintain the leased premises including but not limited to painting, mowing, and removal of litter and shall keep the buildings thereon in good repair. The City shall be responsible for maintaining the playground equipment and playground surface in good condition. [The City shall repair any damage to the leased premises caused by it during any period the City is using the facility.] *in use of leased premises*
7. **Insurance:** The Association agrees, at its sole cost and expense, to obtain, keep and maintain in full force and effect for the mutual benefit of the City and the Association the following policies of insurance:
- (a) A commercial general liability policy including a combined single limit of not less than \$500,000 per occurrence, with respect to bodily injury, death or property damage, and an aggregate limit of not less than \$1,000,000. Provided, however, that the City shall have the right during the lease term to require the Association to obtain increased liability coverage to reflect the cost of living increases during the term of this lease, or to comport with generally accepted industry standards in the trade at such time; *new*
 - (b) The Association shall insure its personal property on the lease premises against physical loss or damage by at least the perils of fire and lightning, extended coverage, vandalism, malicious mischief and where pertinent, sprinkler leakage. [The City shall have no obligation to replace, restore or repair any fixtures of personal property installed in or improvements made on the premises by the Association.] *out*
 - (c) All insurance required under this paragraph shall be effected under valid enforceable policies issued by insurers as recognized responsible and authorized to do business in the State and otherwise reasonably acceptable to the City. All property (i.e. casualty) insurance policies shall name the City as additional insured. All liability insurance policies shall list the City as an additional insured. Upon the execution of this lease, the original policies procured by the Association pursuant to this paragraph, or conforming copies thereof, shall be delivered to the City at least thirty (30) days prior to the expiration date of any policy of insurance required to be procured by the Association under this paragraph, the original renewal policy (or conforming copies thereof) for such insurance shall be delivered by the Association to the City and any additional issued, loss payee, as the case may be, and certificate thereof shall be delivered as aforesaid, together with satisfactory evidence of payment of the premium thereon. All policies referred to in this paragraph shall, to the extent then generally obtainable, contain agreements by the insurers that (a) any loss shall be payable to the City, notwithstanding any act or negligence of the City which might otherwise result in forfeiture of said insurance, (b) such policies shall not be canceled except upon thirty (30) days prior written notice to each name insured, as the case may be, and (c) the coverage

afforded thereby shall not be affected by the performance of any work in or about the premises;

- (d) If the Association fails to procure the aforesaid insurance policies and pay the premiums for the same and deliver all such original policies or conforming copies thereof to the City within the time provided for in this lease, the City shall nevertheless have the right, without being obligated to do so, to procure such insurance and pay the premiums therefore, and all such premiums paid by the City shall be paid to the City on demand as additional rent. The Association's failure to repay the same as aforesaid shall constitute a default under this lease;
 - (e) The carrier for the Association shall add to the Certificate of Insurance the name of the City of Auburn as additional insured.
8. **Assignment of Lease:** The Association agrees not to assign this lease or sublet any portion of the premises or grant any license to use the same in any way without the prior written consent of the City.
 9. **Structural Changes:** The Association may make structural changes on the premises after first receiving the consent of the Parks and Recreation Director. The parties agree that the building on the lease premises including any structural changes thereto are and shall remain the property of the City of Auburn.
 10. **Waiver of Subrogation:** The City and the Association agree that all fire and extended coverage insurance policies and comprehensive general liability policies carried by them, respectively, covering the premises or any property located thereon, shall contain a clause permitting the insured to waive the insurance carrier's right to subrogation against any third person arising out of the occurrence of any casualty insured against. The City and the Association agree that each of them waives to the other such right of subrogation. Provided, however, this waiver of subrogation provision shall become inoperative and null and void if the insured party contracts for insurance required to be carried under the terms of this lease with an insurance company which (i) takes the position that the existence of this waiver of subrogation provision vitiates or would adversely affect any policy insuring the insured party in a substantial manner or (ii) requires the payment of a higher premium by reason of the existence of this waiver of subrogation provision, unless in the latter case, the other party within ten (10) days notice thereof from the insured party pays such increase in premium.
 11. **Taxes:** The Association will be responsible for any applicable taxes that may be due to local, state or federal agencies.

12. **Indemnification/Release:**

- (a) Except for claims arising out of the wrongful acts or negligence of the City, the Association shall protect, indemnify, save and keep harmless the City, its agents, employees, including reasonable attorneys fees, arising out of or from any accident or other occurrence in, on or at the Premises described herein, the occupancy of use of the premises, or any act or omission of the Association, its employees, agents, invitees, subtenants, licensees, assignees or contractors. The Association shall protect and save and keep the City harmless and indemnify it against and from any penalty or damage or expense, including reasonable attorneys fees, or charges imposed for any violations of any law or ordinance whether occasioned by the neglect of the Association or those holding under the Association, and also will protect, indemnify, save and keep harmless the City or the City's employees, tenants, or invitees against and from any and all claims and against and from any and all loss, cause, damage, liens or expense, including reasonable attorneys fees, arising out of any failure of the Association in any respect to comply with and perform all the requirements and provisions of this lease;
- (b) The Association shall also indemnify and hold the City harmless against all claims, demands, liabilities, lawsuits, damages, costs and expenses including legal fees, incurred by the City as a result of any mechanics liens, or security agreement filed against the leased property, or any equipment therein, or any materials used in construction, alterations or improvement of the premises;
- (c) The Association agrees to make no claim against the City and to assume responsibility of defending, at the Association's own expense, including reasonable attorney's fees, any claim which will be made against the City by any agent, employee, licensee or invitee of the Association or by others claiming the right to be on or about the premises through or under the Association for any injury, loss or damage to person property occurring upon the premises, from any clause other than the negligence of the City.

13. **Destruction or Damage by Fire or Other Casualty:** This lease is made on the condition that if the premises or any part thereof be damaged or destroyed by fire or other casualty so as to render said premises unfit for use and occupancy, a just and proportionate part of the rent, according to the nature and extent of the injury to said premises, shall be suspended or abated until said premises have been put in as good condition for the use and occupancy as at the time immediately prior to such damage or destruction, unless said destruction or damage was caused by the acts or negligence of the Association, its employees, agents or invitees. The City will proceed at its expense and as expeditiously as may be practical to repair the damage, unless the City should decide not to repair or restore the premises or the building in which said premises are located, in which event and at the City's sole option, the

City may terminate this lease forthwith, by giving the Association a written notice of its intention to terminate within thirty (30) days after the date of the casualty.

14. **Waiver of Jury Right:** The Association shall, and does hereby, waive trial- by-jury in any action, proceeding or claim brought by the City against the Association or by the Association against the City on any matters arising out of or in any way connected with this lease, the relationship of the City and the Association, the Association's use or occupancy of the premises or the Association's rights thereto.
15. **Waiver:** No waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of the covenants, conditions or agreement itself or of any subsequent breach thereof.
16. **Entire Agreement:** This lease contains the entire agreement of the parties in regard to the premises. There are no oral agreements existing between them.
17. **Governing Law:** This lease shall be construed and governed by the laws of the State of Maine.
18. **Default:** The City may cancel and terminate this agreement, upon five (5) days written notice to the Association, if the Association shall violate any terms or conditions of the lease or at anytime fails, neglects or refuses to fulfill or to perform any of the stipulations of this agreement. In such case it shall be lawful for the City, its agents or assigns, to commence forcible entry and detainer action against the Association pursuant to state law.
19. **Costs Incurred due to Default:** The Association shall pay and indemnify the City against all costs, charges and expenses, including reasonable attorneys fees, incurred by the City in connection with the enforcement of its rights under this lease, including the collection of rents or other amounts due under this lease, or in obtaining possession of the premises after the default of the Association or after the Association's default in surrendering possession upon the expiration or earlier termination of the term of this lease or extended term, or enforcing any covenants of the Association herein contained.
20. **Severability:** If any of the terms, provisions or conditions of this lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this lease and the application of such terms, provisions, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each of the other terms, provisions and conditions of this lease shall be valid and enforceable to the fullest extent permitted by law.
21. **Termination of the Agreement:** Either party has the right to terminate said lease by placing a written sixty (60) days notice of such termination in the United States Mail, postage prepaid and addressed to, in the case of the City of Auburn,

Finance Director, City of Auburn, 45 Spring Street, Auburn, ME 04210, and a copy to Parks and Recreation Director, 48 Pettengill Park, Auburn, ME 04210, and in the case of the Association, at the current Presidents home address, or by hand delivery to appropriate offices mentioned above.

Dated: _____

Dated: _____

OWNER: CITY OF AUBURN

LESSEE: NEW AUBURN LITTLE LEAGUE ASSOCIATION

By: _____
Finance Director

By: _____
League President

Witness: _____

Witness: _____

DRAFT

AGREEMENT

AGREEMENT is made this _____ day of _____, 1998, by and between the **CITY OF AUBURN, PARKS AND RECREATION DEPARTMENT** (hereinafter "the City") and **EAST AUBURN COMMUNITY UNIT** (hereinafter "East Auburn").

WHEREAS, East Auburn is the owner of a softball field known as the Tribou Field at its East Auburn community facility (hereinafter "the Field"); and

WHEREAS, the City wishes to use the Field for the purposes of adult softball; and

WHEREAS, East Auburn also uses the Field for its own softball team and other recreational activities; and

WHEREAS, the parties wish to memorialize their agreement regarding scheduling and use of the Field.

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged by both parties, they agree as follows:

1. Throughout the course of this Agreement, the City shall provide all Field maintenance, labor and equipment necessary to keep the Field in at least as good condition as it is on the date of the execution of this Agreement and shall also agree to complete any and all improvements required on the Field.
2. The City shall have full authority for scheduling activities on the Field from April 1 through September 30 of each calendar year.
3. The parties agree that during the period of April 1 through June 15, the Auburn School Department shall be entitled to the use of the Field for use by the school softball teams.

4. East Auburn shall be given reasonable scheduling preferences for the use of the Field by its members and softball teams.
5. East Auburn agrees to present its request for scheduling in writing to the City no later than April 1 of each calendar year for scheduling for that year.
6. The City shall have the right to lease or rent the Field according to the City's field fee schedule and to collect all revenues generated from said leases.
7. The City agrees to dedicate all revenues received pursuant to any leasing of the Field to field maintenance and improvements.
8. The parties hereby agree that this Agreement shall remain in full force and effect and shall be binding on the successors or assigns of East Auburn should the premises be conveyed in any manner whether by lease, sale, or other conveyance.
9. This Agreement covers only the Field and the adjoining parking lot which is described as the gravel parking area which is adjacent to the right field and center field areas of the Field.
10. The City shall make all efforts to insure that the East Auburn softball team shall be allowed to play their home games at the Field.
11. The parties hereby agree to limit the use of the Field to softball and other recreationally related activities. Both parties agree not to carry on any activities on the Field which would unduly damage the Field.
12. All determinations regarding whether or not the Field is in adequate shape for play shall be made exclusively by the City.
13. This Agreement shall be for a term of one (1) year from the date of execution.

The Agreement will be automatically renewed for a term of one (1) year unless terminated in writing by either party upon thirty (30) days written notice, served upon the non-terminating party at least thirty (30) days prior to the end of the then current term.

14. This Agreement contains the entire understanding between the parties regarding the Field and cannot be changed or terminated except by written instruments subsequently executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the date first written above.

**CITY OF AUBURN,
PARKS & RECREATION DEPT.**

By: _____
Its: _____

EAST AUBURN COMMUNITY UNIT

By: _____
Its: _____

(user\audrey\jackc\contract\auburn-rec.agr)

ORDERED, that smoking shall be prohibited in the following parks and public grounds as described in Section XX-XX of the Auburn City Code :
 Appendix A

50 Waterfront	56 Parkland	60 Parking Lots	61 City Ops	62 Education	66 Cemetery
No River Road	Great Falls Plaza 112 Main St Great Falls Plaza 85 Dennison ST 31 Chestnut St 94 Fish Hatchery Rd 114 Fish Hatchery Rd 94 Ninth St Cleveland Ave So Main St 74 Miller St 284 Main St Miller St 57 High St	15 Academy St 131 Main St 76 Court St 133 Pleasant St 51 Broad St Troy St	30 Great Falls Plaza Parks & Rec Bldgs Library 49 Spring St (elec bld) 1 Minot Ave (police Bld) 30 So Main St (Aub Water Dist) 268 Court St Aub Water office 60 Court St Auburn Hall & garage 296 Gracelwan (PW) 651 Center St (AFD) 1276 Turner (watershed treatment Plant) 740 W Auburn Rd (schoolhouse) 1208 Turner (Auburn Water Dist) 80 Airport Dr (landstrip café) Airport Hangers 110 Goldwaite Rd (MWAC) 550 Minot Ave (AFD) 180 So Main St (AFD) 106 Small Rd (Clubhouse)	277 Main St 161 Park Ave 24 Chestnut St 35 Lake Auburn Ave 15 Andrew Dr 32 Sherwood Dr 435 Minot Ave 92 Mary Carroll St 38 Falcon St 80 Lake Ave 23 High St 77 Harris St	269 Skillings Corner Rd 95 Johnson Rd 2865 Turner Rd 1095 Northriver Rd 1698 Jordan School Rd 2335 Riverside Dr 65 Old Hotel Rd Riverside Dr 155 Pownal Rd 355 Old Danville Rd 232 Fletcher Rd 653 Riverside Dr

LEASE AGREEMENT

BETWEEN

CITY OF AUBURN
AND

NEW AUBURN LITTLE LEAGUE ASSOCIATION

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- Term of the Lease:** The term of the lease shall begin on the date hereof and extend for a term of ~~ten twenty-five~~ years unless either party terminates this agreement as described herein. The City **Manager** shall have the option of renewing the lease **on two more instances under** ~~on~~ the same terms and conditions stated herein at the conclusion of this lease. The City shall give, in writing, to the Association, a notice of intent to renew the lease at least sixty (60) days prior to the expiration of the original term of the lease.

The City shall have the right to sell the leased premises or any portion thereof at any time during the term of the lease or any renewal thereof by giving the Association notice, in writing, of its intention to sell. The City shall give sufficient time for the Association to relocate. **This lease may be mutually amended at anytime.**
- Rent:** The Association agrees to pay rent of one dollar (\$1.00) per year, payable in advance for the full period of the lease.
- Use of Leased Premises:** The Association shall have the use of the leased premises except that the playground area shall remain open to the public. The City shall have the right to make reasonable use of the facility as a baseball field for its own recreation programs should the need arise. The City will take the same care of the field as the Association if it uses the facility. The Association and the recreation department will coordinate the use of the facility each year.
- Utilities:** The Association shall pay all bills for electricity, water and other utilities attributable to the use of the leased premises throughout the term of the lease. The City will reimburse the Association for use of utilities if the City uses the field for a period of thirty (30) consecutive days.

6. **Maintenance:** The Association shall maintain the leased premises including, but not limited to: painting, mowing and removal of litter, and shall keep the buildings thereon in good repair. The City shall be responsible for maintaining the playground equipment and playground surface in good condition. The City shall repair any damage to the leased premises caused by it during any period the City is using the facility.

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~~6.7.~~ **Waiver of Business Licensing Fee:** During any fiscal year (July 1 through June 30), should a request be made by the Association for a waiver of business licensing fees, the Association shall provide proof of capital improvements to the premises in the amount of ten times that of the business licensing fees which are requested to be waived. Upon validation by the City of the capital improvement expenses, the City Manager may authorize a waiver of business licensing fees. Routine maintenance as described in section 6 of this agreement shall not be considered a capital improvement.

~~7.8.~~ **Insurance:** The Association agrees, at its sole cost and expense, to obtain, keep and maintain in full force and effect for the mutual benefit of the City and the Association, the following policies of insurance:

- a. A commercial general liability policy including a combined single limit of not less than \$500,000.00 per occurrence, with respect to bodily injury, death or property damage, and an aggregate limit of not less than \$1,000,000.00. Provided, however, that the City shall have the right during the lease term to require the Association to obtain increased liability coverage to reflect the cost of living increases during the term of this lease, or to comport with generally accepted industry standards in the trade at such time;
- b. The Association shall insure its personal property on the lease premises against physical loss or damage by at least the perils of fire and lightning, extended coverage, vandalism, malicious mischief and where pertinent, sprinkler leakage. The City shall have no obligation to replace, restore or repair any fixtures of personal property installed in or improvements made on the premises by the Association.
- c. All insurance required under this paragraph shall be effected under valid enforceable policies issued by insurers as recognized responsible and authorized to do business in the State and otherwise reasonably acceptable to the City. All property (i.e. casualty) insurance policies shall name the City as additional insured. All liability insurance policies shall list the City as an additional insured. Upon the execution of this lease, the original policies procured by the Association pursuant to this paragraph, or conforming copies thereof, shall be delivered to the City at least thirty (30) days prior

to the expiration date of any policy of insurance required to be procured by the Association under this paragraph, the original renewal policy (or conforming copies thereof) for such insurance shall be delivered by the Association to the City and any additional issued, loss payee, as the case may be, and certificate thereof shall be delivered as aforesaid, together with satisfactory evidence of payment of the premium thereon. All policies referred to in this paragraph shall, to the extent then generally obtainable, contain agreements by the insurers that (a) any loss shall be payable to the City, notwithstanding any act or negligence of the City which might otherwise result in forfeiture of said insurance, (b) such policies shall not be canceled except upon thirty (30) days prior written notice to each name insured, as the case may be, and (c) the coverage afforded thereby shall not be affected by the performance of any work in or about the premises;

- d. If the Association fails to procure the aforesaid insurance policies and pay the premiums for the same and deliver all such original policies or conforming copies thereof to the City within the time provided for in this lease, the City shall nevertheless have the right, without being obligated to do so, to procure such insurance and pay the premiums therefore, and all such premiums paid by the City shall be paid to the City on demand as additional rent. The Association's failure to repay the same as aforesaid shall constitute a default under this lease;
- e. The carrier for the Association shall add to the Certificate of Insurance the name of the City of Auburn as additional insured.

8.9. Assignment of Lease: the Association agrees not to assign this lease or sublet any portion of the premises or grant any license to use the same in any way without the prior written consent of the City.

9.10. Structural Changes: The Association may make structural changes on the premises after first receiving the consent of the Parks and Recreation Director. The parties agree that the building on the lease premises including any structural changes thereto are and shall remain the property of the City of Auburn.

10.11. Waiver of Subrogation: The City and the Association agree that all fire and extended coverage insurance policies and comprehensive general liability policies carried by them, respectively, covering the premises or any property located thereon, shall contain a clause permitting the insured to waive the insurance carrier's right to subrogation against any third person arising out of the occurrence of any casualty insured against. The City and the Association agree that each of them waives to the other such right of subrogation. Provided, however, this waiver of subrogation provision shall become inoperative and null and void if the insured party contracts for insurance required to be carried under the terms of this lease with an insurance company which (i) takes the position that the existence of this waiver of subrogation provision vitiates or would adversely affect any policy insuring the insured party in a substantial manner or (ii)

requires the payment of a higher premium by reason of the existence of this waiver of subrogation provision, unless in the latter case, the other party within ten (10) days notice thereof from the insured party pays such increase in premium.

~~11.~~ **12. Taxes:** The Association will be responsible for any applicable taxes that may be due to local, state or federal agencies.

~~12.~~ **13. Indemnification/Release:**

- a. Except for claims arising out of the wrongful acts or negligence of the City, the Association shall protect, indemnify, save and keep harmless the City, its agents, employees, including reasonable attorneys fees, arising out of or from any accident or other occurrence in, on or at the Premises described herein, the occupancy of use of the premises, or any act or omission of the Association, its employees, agents, invitees, subtenants, licensees, assignees or contractors. The Association shall protect and save and keep the City harmless and indemnify it against and from any penalty or damage or expense, including reasonable attorneys fees, or charges imposed for any violations of any law or ordinance whether occasioned by the neglect of the Association or those holding under the Association, and also will protect, indemnify, save and keep harmless the City or the City's employees, tenants or invitees against and from any and all claims and against and from any and all loss, cause, damage, liens or expense, including reasonable attorneys fees, arising out of any failure of the Association in any respect to comply with and perform all the requirements and provisions of this lease;
- b. The Association shall also indemnify and hold the City harmless against all claims, demands, liabilities, lawsuits, damages, costs and expenses, including legal fees incurred by the City as a result of any mechanics liens, or security agreement filed against the leased property, or any equipment therein, or any materials used in construction, alterations or improvement of the premises;
- c. The Association agrees to make no claim against the City and to assume responsibility of defending, at the Association's own expense, including reasonable attorney's fees, any claim which will be made against the City by any agent, employee, licensee or invitee of the Association or by others claiming the right to be on or about the premises through or under the Association for any injury, loss or damage to personal property occurring upon the premises, from any clause other than the negligence of the City.

~~13.~~ **14. Destruction or Damage by Fire or Other Casualty:** This lease is made on the condition that if the premises or any part thereof be damaged or destroyed by fire or other casualty so as to render said premises unfit for use and occupancy, a just and proportionate part of the rent, according to the nature and extent of the injury to said premises, shall be suspended or abated until said premises have been put in as good

condition for the use and occupancy as at the time immediately prior to such damage or destruction, unless said destruction or damage was caused by the acts or negligence of the Association, its employees, agents or invitees. The City will proceed at its expense and as expeditiously as may be practical to repair the damage unless the City should decide not to repair or restore the premises or the building in which said premises are located, in which event and at the City's sole option, the City may terminate this lease forthwith, by giving the Association a written notice of its intention to terminate within thirty (30) days after the date of the casualty.

- ~~14.~~**15. Waiver of Jury Right:** The Association shall and does hereby, waive trial-by-jury in any action, proceeding or claim brought by the City against the Association or by the Association against the City on any matters arising out of or in any way connected with this lease, the relationship of the City and the Association, the Association's use or occupancy of the premises or the Association's rights thereto.
- ~~15.~~**16. Waiver:** No waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of the covenants, conditions or agreement itself or of any subsequent breach thereof.
- ~~16.~~**17. Entire Agreement:** This lease contains the entire agreement of the parties in regard to the premises. There are no oral agreements existing between them.
- ~~17.~~**18. Governing Law:** this lease shall be construed and governed by the laws of the State of Maine.
- ~~18.~~**19. Default:** The City may cancel and terminate this agreement, upon five (5) days written notice to the Association, if the Association shall violate any terms or conditions of the lease or at any time fails, neglects or refuses to fulfill or to perform any of the stipulations of this agreement. In such case, it shall be lawful for the City, its agents or assigns, to commence forcible entry and detainer action against the Association pursuant to state law.
- ~~19.~~**20. Costs Incurred due to Default:** the Association shall pay and indemnify the City against all costs, charges and expenses, including reasonable attorneys fees, incurred by the City in connection with the enforcement of its rights under this lease, or in obtaining possession of the premises after the default of the Association or after the Association's default in surrendering possession upon the expiration or earlier termination of the term of this lease or extended term, or enforcing any covenants of the Association herein contained.
- ~~20.~~**21. Severability:** If any of the terms, provisions or conditions of this lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this lease and the application of such terms, provisions, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each of the other terms, provisions and conditions of this lease shall be valid and enforceable to the fullest extent permitted by law.

21.22. Termination of the Agreement: Either party has the right to terminate said lease by placing a written **one hundred eighty**~~sixty~~ (180~~60~~) days notice of such termination in the United States Mail, postage prepaid and addressed to, in the case of the City of Auburn, City Manager, City of Auburn, 60 Court Street, Auburn, Maine 04210 and a copy to Parks and Recreation Director, 48 Pettengill Park Road, Auburn, Maine 04210, and in the case of the Association, at the current president's home address, or by hand delivery to appropriate offices mentioned above.

Dated: _____

Dated: _____

OWNER: CITY OF AUBURN

LESSEE: NEW AUBURN LITTLE
LEAGUE ASSOCIATION

By: _____
City Manager

By: _____
League President

Witness: _____

Witness: _____