



AGENDA STAFF MEMO

TO: Honorable Mayor and City Council Members
FROM: Tom McKlveen, Parks & Recreation Director
DATE: Submitted February 12, 2025, for the March 3, 2025, Regular City Council Meeting

Signed by:
Tom McKlveen
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AGENDA ITEM: Approval of an Intergovernmental Agreement between the Fulton County Board of Education and the City of Milton for a Five-Year Agreement to Use Hopewell Middle School for Recreational Purposes

SUMMARY:

The City has maintained a longstanding partnership with the Fulton County Board of Education through a long-term agreement that allows for City-use of outdoor recreational space at Hopewell Middle School.

Under a newly established five-year agreement, the City has secured first-priority access to the school's indoor facilities, enabling expanded programming for basketball and other indoor recreational activities. This enhanced access ensures that the City can continue offering high-quality recreational opportunities to residents, particularly during peak seasons when gym space is in high demand.

As part of the agreement, the City has committed to maintaining the outdoor recreational facilities for the duration of the five-year term, ensuring they remain safe, functional, and well-kept for community use. Additionally, the City has pledged to complete one light screening and polyurethane application for the gymnasium floor each winter. This investment will provide recreation participants with an attractive, high-quality playing surface.

The total annual cost to maintain the IGA is accounted for in the FY2025 budget.

ALTERNATIVES:

If this agreement is not approved, staff will continue to research and secure another facility for recreational use, based on community needs.

FINANCIAL SUMMARY (if applicable)

Purchasing method used:	Other (See Comment Above)
Account Number:	Multiple accounts within P&R General Fund budget
Estimated Total:	\$14,500.00

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REVIEW & APPROVALS:

Financial Review: Karen Ellis, Finance Director – February 6, 2025

Legal Review: Joshua Jones, Jarrard & Davis, LLP – January 7, 2025

Concurrent Review: Steven Krokoff, City Manager –

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ATTACHMENT(S):

Intergovernmental Agreement Between the City of Milton and Fulton County Board of Education.

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HOPEWELL MIDDLE SCHOOL

INTERGOVERNMENTAL AGREEMENT FOR THE USE OF FACILITIES

THIS INTERGOVERNMENTAL AGREEMENT FOR THE USE OF FACILITIES (this “**Agreement**”) is made and effective this _____ day of _____, 202__ (the “**Effective Date**”), by and between the **FULTON COUNTY BOARD OF EDUCATION**, a political subdivision of the State of Georgia (hereinafter referred to as “**FCS**”) and the **CITY OF MILTON**, a municipal corporation of the State of Georgia, acting by and through its governing authority, the Mayor and City Council (hereinafter referred to as the “**City**”).

WITNESSETH:

WHEREAS, FCS operates a school commonly known as Hopewell Middle School (the “**School**”) located at 13060 Cogburn Road, Milton, Fulton County, Georgia 30004 (the “**School Property**”); and

WHEREAS, the City desires to use certain portions of the School Property for public recreational purposes when not in use by FCS; and

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

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

1. Agreement for Use.

- a. Permitted Use; AS-IS. Throughout the Term of this Agreement, FCS does hereby grant to the City, the right to enter upon and use certain portions of the School Property listed and depicted on **Exhibit “A”** attached hereto and incorporated herein by reference, along with the non-exclusive right to use the common areas necessary for or associated with such use (e.g., parking lot, sidewalks, stairways) (collectively the “**Premises**”), during the Restricted Hours defined in **Exhibit “B”** attached hereto and incorporated herein by reference, for community recreational uses under the purview of the City’s Parks and Recreation Department (the “**Permitted Use**”) on and subject to the terms and conditions contained herein. FCS shall at all times have the exclusive use of the remainder of the School Property. The City accepts the use of the Premises in their “AS-IS,” “WHERE-IS” condition, without representation or warranty as to their condition, status of title, safety, compliance with laws including the Americans with Disabilities Act of 1990 and the regulations promulgated thereunder (“**ADA**”), or fitness for a particular purpose.
- b. Priority of Educational Use. Notwithstanding any other provision of this Agreement, if FCS and/or the School, as determined by the principal of the School (the “**Principal**”) desire to use the Premises or any part thereof during any of the Restricted Hours in connection with the conduct of any curricular or extracurricular activities of the School or of any FCS

school, then upon not less than fourteen (14) days' written notice to the City, the City's rights of use shall be suspended during the period or periods specified in such notice to the City. Additionally, the City acknowledges and agrees that FCS shall have first priority for the use of the Premises superseding any scheduled or non-scheduled activity or event of the City during the Restricted Hours if and as needed as a result of or due to any emergency, public health crisis, natural disaster, evacuation and/or any other unexpected event or occurrence (any one or more of the foregoing, an "**Emergency**"). The City shall have the responsibility of reviewing public communications issued by FCS, specifically including FCS's website, to determine whether the School Property is open for use; and FCS shall not be in default of this Agreement for failure to communicate closure information directly to the City in the event of an Emergency.

- c. SchoolDude. FCS uses an online system called SchoolDude that allows organizations to search for a facility, check the facility's availability, and start the facility reservation process. City shall request and reserve usage of the Premises through SchoolDude for City use during the Restricted Hours for organized events. The Parties agree that use of SchoolDude does not apply to general public use of the Athletic Fields as park space. In no event shall there be any dedication, express or implied, of the Athletic Fields for public park or recreational use.

2. **Term; Hours of Use.** The term of this Agreement (the "**Term**") shall be for a period of five (5) years, beginning on the Effective Date and ending at 11:59 p.m. on the date that is five (5) years thereafter, unless sooner terminated under the terms of this Agreement. During the Term of this Agreement, the City shall have the right to use the Premises for the Permitted Use, during the Restricted Hours set out on **Exhibit "B"** and confirmed by FCS through the SchoolDude process.
3. **Consideration.** City shall, at City's sole expense (a) perform the maintenance, repair and provide the capital improvements set forth in **Exhibit "C"** attached hereto and incorporated herein by reference; and (b) pay FCS the reimbursable costs set out in Section 4 hereof. The City provided improvements, maintenance, repair and reimbursable cost payments serve as the consideration for the City's use of the Premises. No additional monetary rent shall be payable by City for the use of the Premises. City covenants and agrees that it will provide the services and make the improvements and repairs as described in this Agreement within the timeframes set forth herein.
4. **Reimbursable Costs.** FCS shall provide standard utilities, restroom supplies, custodial services and FCS personnel (as per FCS's KG Operating Guideline) for City at each Permitted Use of the Premises by City. City shall reimburse FCS the costs incurred by FCS from the Permitted Use by City. City shall reimburse FCS for these costs within thirty (30) days from the date of FCS' written invoice(s) to the City. With respect to utilities, thermostats and HVAC settings will be controlled by FCS based on information provided by City in the SchoolDude process.
5. **Capital Improvements.** The City may not alter the Premises, nor install, demolish or remove any improvements or components of the Premises without the prior written consent of FCS, in FCS's sole discretion. Detailed plans and specifications for any proposed alterations or improvements, including without limitation any alterations set out on **Exhibit "C"**, must be submitted to and approved, in advance, in writing by FCS' Facility Alterations Department and giving FCS at least thirty (30) days for review and consent. Following submission of the request, City shall provide all

additional information requested by FCS within thirty (30) days following the request. The timing and performance of the capital improvements shall be coordinated with the FCS Facility Alterations Department within thirty (30) days after all FCS required and requested information is received by the FCS Facility Alterations Department.

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

- a. Records of the FCS authorized capital improvements performed by City on the Premises.
- b. Current Certificate(s) of Insurance evidencing compliance with the insurance requirements of this Agreement.

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

- a. Use. The City shall use the Premises only for the Permitted Use during the Restricted Hours. Organized events at the Premises must be confirmed by FCS through the SchoolDude process as set forth herein. City and its invitees shall vacate the Premises within thirty (30) minutes at the end of each Permitted Use.
- b. Securing the Premises. FCS personnel shall open the doors of the Premises prior to each City Permitted Use, and lock the doors at the end of each City Permitted Use. City shall provide responsible adult supervision at all times during use of the Premises by City.
- c. Security and Police. The City's policing jurisdiction shall apply during the City's Restricted Hours. The City police shall be the first responders for any and all incidents and calls pertaining to the Premises during the City's Restricted Hours. The City shall provide security and responsible adult supervision during use of the Premises by the City and its invitees commensurate with the security the City provides to other recreational facilities under the purview of the City's Parks and Recreation Department.
- d. Parking. The City shall keep all motorized vehicles off all grassed areas in the vicinity of the Premises and may park only in areas designated by the Principal. It is understood and agreed that FCS does not assume any responsibility or liability for any damage, theft or loss to any automobiles parked in the parking areas or to any personal property located therein, or for any injury sustained by any person in or about the parking areas. In no event shall the City license, sublease or otherwise allow the use of the parking areas on the Premises by any third party other than the City's employees, contractors and event participants, and then only during the Permitted Use hours.
- e. Unauthorized Items. The City shall not permit the consumption of any alcoholic beverages or use of tobacco products or weapons by its employees (other than police officers carrying weapons for performance of their public duties), participants, volunteers or invitees on or about the Premises, in accordance with applicable State law regulating School Safety Zones (including but not limited to O.C.G.A. § 16-11-127.1), as the

Premises is deemed and agreed to remain and be school property, regardless of any other description or label.

- f. Compliance with Laws. The City shall comply with all applicable laws, ordinances, rules and regulations related to the City's use of the Premises, including without limitation O.C.G.A. § 13-10-91, *et seq.* (E-Verify). The City shall at all times during the Term comply with District Policy KG and Operating Guideline KG (Use of School Facilities), as amended from time to time, the current versions of which may be found at <https://go.boarddocs.com/ga/fcss/Board.nsf/Public> (under *Policies: District Policy* and *Policies: Operating Guidelines*), and which are fully incorporated herein. In the event of any conflict between the terms of this Agreement and the Policy or Operating Guideline, the Policy and Operating Guideline shall control.
 - g. Manner of Work. The City and its designees shall perform all construction, maintenance and repair activities expeditiously and in a good, safe and workmanlike manner and in strict accordance with all applicable permitting requirements, laws, ordinances, rules and regulations, as well as any procedures reasonably provided by FCS to City, such as hours of work. Such work shall be carried out in such a manner so as to, to the extent reasonably practicable, avoid any disruption to the operations of FCS.
 - h. Hazardous Materials. City shall not bring or store or allow to be brought or stored on the School Property, any Hazardous Materials (as defined below). To the extent allowed by applicable law, the City shall be solely responsible for any and all claims, costs, losses, expenses, demands, actions, causes of action, and liabilities, including attorney's fees and costs, arising out of or in connection with the use, handling, storage, release or discharge of Hazardous Materials (as defined below) by the City or its employees, agents, contractors, licensees or invitees on the School Property. As used herein, "**Hazardous Materials**" means any toxic or hazardous substance, material or waste, which is regulated or becomes regulated by any federal, state, or local governmental authority. The term "Hazardous Material" includes, without limitation, any substance or material (i) containing petroleum, crude oil or any fraction thereof; (ii) containing polychlorinated biphenyls (PCBs); (iii) containing asbestos; (iv) which is radioactive; (v) which is infectious; (vi) defined as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317); (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 47 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601); or (ix) defined as a "hazardous substance," "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" or similar term under any other environmental, health or safety law, rule, regulation or policy. The obligations of this Section 7(h) shall survive the expiration or earlier termination of this Agreement.
8. **Default; Termination.** FCS shall have the right to terminate this Agreement by written notice upon default by the City, and may demand immediate possession of the Premises, seek damages or equitable relief, or pursue any cause of action available at law or in equity to enforce its rights hereunder, or any combination of the foregoing. The City shall be in default for failing to cure,

after thirty (30) days' written notice from FCS, the non-performance or breach of any provision of this Agreement, including but not limited to a failure to timely make the required contributions and maintenance as set forth herein, provided that if such default is not reasonably susceptible of being cured within thirty (30) days, the City shall have a period of up to sixty (60) days to diligently commence and pursue such cure to completion. Notwithstanding the foregoing, FCS may terminate this Agreement immediately upon written notice to the City in the event of a breach by the City constituting an imminent threat of harm to life, safety or property, or an unreasonable interference with the operation of the School on the School Property. The City shall have the right to terminate this Agreement by written notice upon default by FCS. FCS shall be in default for failing to cure, after thirty (30) days' written notice from the City, the non-performance or breach of any provision of this Agreement, provided that if such default is not reasonably susceptible of being cured within thirty days, FCS shall have a period of up to sixty (60) days to diligently commence and pursue such cure to completion. In addition, either party shall have the right to terminate this Agreement without cause upon ninety (90) days' prior written notice to the other party. Further, this Agreement shall terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of City. Upon expiration of the Term, or in the event of termination, FCS shall have no obligation to compensate the City for any improvements made to the Premises by the City, including as to any unamortized value of any improvements or replacements made to the Premises.

9. **Liability.** City shall be responsible for the acts and omissions of City, its agents, contractors and employees, and City shall be responsible for any liability, claims and damages arising out of the same. FCS shall be responsible for the acts and omissions of FCS, its agents, contractors and employees, and FCS shall be responsible for any liability, claims and damages arising out of the same. This Section 9 expressly survives the expiration or earlier termination of this Agreement. This provision shall not be deemed to create rights in any third party or constitute a waiver of either party's sovereign immunity, which FCS and City each expressly reserve.
10. **Insurance.** Set forth on **Exhibit "D"** attached hereto and incorporated herein are the minimum insurance and limits that the City or any third party using or performing work on the Premises or any portion of the School Property on behalf of the City, including any contractor or subcontractor (each a "**Third Party**") must maintain throughout the Term, which requirements may be amended from time to time by FCS. In the event of any conflict between the terms of this Agreement and any FCS amended insurance requirements, the amended FCS insurance requirements shall control. If the City or Third Party maintains higher limits than the minimums stated herein, FCS requires and shall be entitled to the coverage and for the higher limits maintained by the City or Third Party. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be made available to FCS. The obligations of the City and any Third Party to procure and maintain insurance shall not be construed to waive or restrict other obligations and it is understood that insurance in no way limits any liability or indemnification obligations of the City or Third Party, whether or not the same is covered by insurance. FCS reserves the right to reasonably modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances, by providing the City with notice of the same. Notwithstanding the forgoing, the Georgia Municipal Association shall be deemed an acceptable insurer for the City. Additionally, the City may provide coverage through self-insurance by providing proof of such self-insurance.
11. **Intergovernmental Agreement; Assignment; Subletting.** This Agreement shall be construed

as an intergovernmental contract and no estate shall pass out of the Board or FCS. City may not assign its rights and obligations hereunder or sublease the Premises to any third party without the prior written consent of FCS, in FCS's sole discretion.

12. **Liens.** No encumbrances, charges or liens against the School Property shall exist because of any action or inaction by City. City shall at City's sole cost and expense discharge by bond or otherwise within ten (10) days of written notice by FCS of any lien, encumbrance or other charge. City shall be responsible for all attorney's fees and court costs incurred by FCS as a result of any such lien or encumbrance.
13. **Notices.** Any and all notices permitted or required to be given under this Agreement shall be in writing, and except as otherwise provided herein, shall be delivered personally, by commercial overnight courier, or by email, to the other party at the address set forth below or at such other address as may be supplied by notice thereof given pursuant to this provision. Notices may be given by or to the attorneys for either party as may be listed herein. The date of personal delivery or email transmission, or the next business day following the date of deposit with a commercial courier, shall be the date such notice shall be deemed to have been given, whether or not actually received, if properly addressed. Either party may change its address or contact person(s) for notices by providing the other party with notice of such change in accordance with this Section 13.

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

Fulton County Schools
6201 Powers Ferry Road NW
Atlanta, Georgia 30339
Attn: Executive Director Capital Programs
William C. Boyajan
boyajanwc@fultonschools.org

and

Fulton County Schools
6201 Powers Ferry Road NW
Atlanta, Georgia 30339
Attn: Director of Land Management
Velda Simpson
simpsonv1@fultonschools.org

With a copy to:

Parker Poe Adams & Bernstein LLP
1075 Peachtree St. NE, Suite 1500
Atlanta, GA 30309
Attn: Board Attorneys for Fulton County Schools
E-mail: suzannwilcox@parkerpoe.com

And the address of City is:

City of Milton
Attn: Tom McKlveen, Director
Parks & Recreation
2006 Heritage Walk
Milton, GA 30004
E-mail: tom.mcklveen@miltonga.gov

and

City of Milton
Attn: Steven Krokoff, City Manager
2006 Heritage Walk
Milton, GA 30004
E-mail: Steven.krokoff@miltonga.gov

With a copy to:

Jarrard & Davis, LLP
222 Webb Street
Cumming, GA 30040
Attn: Ken Jarrard
E-mail: kjarrard@jarrard-davis.com

Notices or notifications to the principal of the School that are required or permitted under this Agreement shall be sent via email to: Michael LeMoyné, Principal, at LeMoynéM@fultonschools.org (or the then-current principal of the School at the time the notice is sent) with a copy to FCS at the address above.

14. Miscellaneous.

- a. If either party is delayed, hindered or prevented from performing any act or thing required hereunder by reason of strikes, lock-outs, labor troubles, casualties, inability to procure labor or materials, failure or lack of utilities, governmental laws, orders and regulations, riots, insurrection, war, acts of God, pandemics, epidemics, shelter-in-place orders, fire, flood, hurricane, or other causes beyond the reasonable control of either party ("**Force Majeure**"), the delayed party shall not be liable, and the period of performance of any such act shall be extended for a period equivalent to the period of such delay, provided such party provides written notice of such occurrence to the other party within ten (10) days of such occurrence. The foregoing is inapplicable to the payment of money unless such delay is due to an act arising after a party's mailing which affects the physical delivery of the payment.
- b. This Agreement constitutes the sole and entire agreement between the parties hereto as to the subject matter hereof, and no modification of this Agreement shall be binding unless made in writing and signed by FCS and the City. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto.

Notwithstanding the foregoing, any agreement entered into for the use of any room or facility other than the Premises through FCS' "SchoolDude" system (or other similar facility rental system maintained by FCS) shall be fully binding on the parties. Any breach or default of such agreement shall constitute a breach of this Agreement.

- c. Time is of the essence for each and every provision and obligation of this Agreement.
- d. City shall provide to FCS within sixty (60) days of execution of this Agreement a "Safety Plan" describing City's proposed means and methods of crowd control for at the Premises.
- e. City acknowledges that pursuant to State law, as well as FCS' policies, any person listed on the Georgia Violent Sex Offender Registry maintained by the Georgia Bureau of Investigation is prohibited from being within 1,000 feet of the Premises. City shall comply with all relevant laws, rules regulations, including without limitation, the aforementioned State law, in the performance of City's activities on the Premises.
- f. The section headings in this Agreement are inserted only as a matter of convenience and are not to be given any effect whatsoever in construing this Agreement. Nothing contained in this Agreement shall constitute or be deemed or construed to create a partnership or joint venture, or any agency relationship, between FCS and the City. Neither this Agreement nor any memorandum or short form thereof shall be recorded in the public real estate records.
- g. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, and specifically including O.C.G.A. § 51-1-53. The parties agree to submit to the jurisdiction of, and that venue is proper in, the state or federal courts in Atlanta or Fulton County, Georgia, in any dispute arising out of this Agreement.
- h. If any clause or provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, then such terms shall be stricken from the Agreement and the unaffected terms and provisions shall remain in full force and effect. Each covenant, agreement, obligation, or other provision of this Agreement on City's part to be performed shall be deemed and construed as independent covenants of City, not dependent on any other provisions of this Agreement.
- i. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party drafting or causing the Agreement to be drafted. City has carefully read this Agreement and understands it. City executes this Agreement as a voluntary act after having consulted with counsel of its choosing concerning the same or having voluntarily chosen not to consult with counsel concerning the same.
- j. Each individual executing this Agreement on behalf of City represents and warrants that he or she is duly authorized to execute this Agreement on behalf of City and to legally bind the City hereto, and that City has the full right and authority to execute and perform this Agreement.
- k. This Agreement may be executed in two or more counterparts, each of which shall be

deemed an original, but which together shall constitute one and the same instrument. The execution of this Agreement may be made and/or confirmed by electronic means which shall have the same force and effect as an original.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

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

FCS:
FULTON COUNTY SCHOOL DISTRICT

By: _____
Name: Dr. Mike Looney
Title: Superintendent

_____ Date

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

CITY:
THE CITY OF MILTON

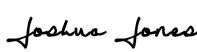
By: _____
Name: Peyton Jamison
Title: Mayor

Date

ATTEST:

By: _____
Name: Tammy Lowit
Title: City Clerk

Approved as to form:
Jarrard & Davis, LLP

Signed by:
 2/12/2025

City Attorney

EXHIBIT A
PREMISES AND DEPICTION OF PREMISES

The gymnasium on the interior of Hopewell Middle School, together with the Athletic Fields located on the campus of Hopewell Middle School as depicted below:



EXHIBIT B
HOURS OF USE / RESTRICTED HOURS

City's use hours shall be the hours set out below on the days when the Premises are not being used for curricular, extracurricular or special events:

Gymnasium: Year-Round

Weekdays: 5:00pm until 9:30pm

Weekends:

- (a) Saturday: 8:00 a.m. until 9:00 p.m.
- (b) Sunday: 12:00 p.m. until 9:00 p.m.

Athletic Fields: Year-Round

Weekdays: 6:00 p.m. until dusk on School Days

Weekends:

- (a) Saturday: 8:00 a.m. until dusk
- (b) Sunday: 8:00 a.m. until dusk

Notwithstanding the foregoing, City will not be entitled to use the Premises when the School is closed for holiday breaks including but not limited to Martin Luther King Jr. holiday, Presidents Day holiday, Labor Day holiday, Thanksgiving holiday, Fall Break, Winter Break, Spring Break, etc.

** The Hours of Use for the Gymnasium and the Athletic Fields are proposed above but are not final until approved by FCS. City must submit all requests for use of the Gymnasium and the Athletic Fields through SchoolDude as set forth in Section 1 of the Agreement.

EXHIBIT C
CITY CAPITAL CONTRIBUTIONS AND ONGOING MAINTENANCE REQUIREMENTS

At the City's sole cost and expense, the City will:

1. Perform maintenance and improvements to the Athletic Fields at the City's sole cost and expense, up to a value of \$90,000 annually during the Term. Examples include, without limitation:
 - a. Mowing of grass fields
 - b. Weed control and fertilization
 - c. Fungus control; and
 - d. Irrigation maintenance
2. Perform any unforeseen repairs to the Premises and pay for water usage at the Athletic Fields, up to a total of \$15,000 annually during the Term.
3. Refinish the gymnasium floor every winter break during the Term of the IGA, which includes a sanding and re-application of polyurethane.

EXHIBIT “D” INSURANCE REQUIREMENTS

Insurance Requirements for Facility Use Agreement(s) used by Outside Organizations

[The City is referred to herein as the “Lessee” or an “Organization”]

Lessee is solely responsible for complying with the most recent version of these requirements, which may be obtained by contacting FCS Risk Management or by visiting <https://www.fultonschools.org/Page/24029>

All outside organizations seeking to rent Fulton County School Facilities are required to provide Insurance coverage. Organizations shall maintain, at its sole cost and expense, such insurance as will protect it and FCS and FCS’ Board, officials, directors, officers, employees, agents and volunteers from all incidents, accidents and claims for any injury, property damage or liability which may arise from the use of FCS Facilities under this Agreement. A Certificate of Insurance is required to be submitted with the request to rent the facility and insurance coverages must be in effect at this time. The Certificate of Insurance should be issued on an ACCORD Form 25 or comparable form.

The following is the minimum insurance and limits that the Organization must maintain. If the Organization maintains higher limits or broader coverage than the minimums shown below, FCS requires and shall be entitled to the broader coverage and higher limits maintained by the Organization. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to FCS.

Commercial General Liability Insurance

Organization shall procure and maintain Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, including contractual liability insurance, product and completed operations, personal injury, bodily injury (including death), abuse and molestation, property damage to rented premises, advertising injury, and any other type of liability for which this Agreement applies. Policy shall be written on an “occurrence” form. For more information, review [Board Policy EG: Risk Management & Insurance](#).

Automobile Liability Insurance

Organization shall procure and maintain Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per accident, for bodily injury and property damage, if vehicles are to be used in the delivery of or in the completion of services and work. Insurance shall include all owned, non-owned and hired vehicle liability.

Umbrella Liability Insurance

Organization shall procure and maintain Umbrella Insurance with limits of liability excess of Employer's Liability Insurance, Commercial General Liability Insurance and Automobile Liability Insurance with limits not less than \$2,000,000.

Workers' Compensation and Employer's Liability *(Required if organization, entity, or company employs workers)*

Workers' Compensation and Employers Liability coverage must be provided in compliance with the applicable Workers' Compensation Act(s) of the state(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statutes. Employer's Liability Insurance, with limits of liability of not less than \$1,000,000 per accident for bodily injury or disease. The policy shall provide a waiver of subrogation in favor of FCS. Revised 5.10.201

Other Insurance Provisions

The aforementioned insurance policies shall contain or be endorsed to contain, the following provisions:

- A provision that coverage afforded under such policies shall not expire, be canceled or altered without at least thirty (45) days prior written notice to FCS.
- Workers' Compensation and Employer's Liability insurance policies shall contain a waiver of subrogation in favor of FCS.
- Commercial General Liability, Automobile Liability, and Umbrella Liability shall include an endorsement making FCS an Additional Insured under such policies

Certificates of Insurance (COI)

- Certificate of Insurance must indicate all required coverages, endorsements and waivers that are in force and filed under this Agreement. Certificate should be forwarded to: FCS, Attn: Director of Land Management, 6201 Powers Ferry Road, Atlanta, GA 30339.
- Required coverages not provided requires a written explanation and must accompany COI. Failure to provide could result in delay of approval.

Property Insurance

Organization assumes sole responsibility for loss or damage to its property and hereby releases FCS and FCS's boards, officials, directors, officers, employees, agents, and volunteers from loss or damage to Organization, its agent, representatives, employees, or by any subcontractor for property including tools, equipment, goods, machinery, materials and supplies.

Non-Limitation on the Organization's Liability

The obligations for the Organization to procure and maintain insurance shall not be construed to waive or restrict other obligations and it is understood that insurance in no way limits liability of the Organization

whether or not same is covered by insurance.

Special Risks or Circumstances

FCS reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

In-General:

- Non-profit Organizations, Clubs, PTA, Groups, etc. usually do not have employees, but volunteers. Workers' Compensation is not required if all volunteer staff; otherwise, Organization must comply with Georgia law. FCS does not provide Workers' Compensation nor is it legally liable for an Organization's workers' injuries, including death.
- Non-profit Organizations, Clubs, PTA, Groups, etc. may own, lease or hire vehicles – Auto Liability required.
- All non-profit Organizations, Clubs, PTA, Groups, etc. must have Commercial General Liability.
- FCS must be listed as Additional insured on all General Liability, Automobile Liability and Umbrella policies.
- All businesses (partnerships, corporations, LLC, etc.) must comply with all insurance requirements (CGL, AL, Umbrella and WC).
- Insurance coverage listed on Certificate of Insurance (COI) must be in effect upon submission of request.
- Additional coverages may be required if deemed appropriate by the FCS Risk Management Department.
- The organization or business name must coincide with information on the Certificate of Insurance.
- The business must be listed with the Georgia Secretary of State.
- Feeder teams should register in the name that is on the Certificate of Insurance.