

RECORD OF ORDINANCES

Ordinance No.: 2023-48

Passed: October 9, 2023

AN ORDINANCE AUTHORIZING THE MAYOR, ADMINISTRATOR, AND FISCAL OFFICER TO EXECUTE A USE AGREEMENT FOR WATERWORKS PARK WITH RIDGEWOOD RECREATION BOARD, REPEALING ORDINANCE NO. 2020-27

WHEREAS, the Village of West Lafayette and RRB have determined that the 2020 "Use Agreement" should be amended and entered into between the parties to accurately reflect the current terms of the parties' agreement concerning the Property; and

WHEREAS, RRB's use of the Property for the Events provides a benefit to the community, and therefore the Village wishes to enter into the amended Use Agreement with RRB; and

WHEREAS, the new agreement will render Ordinance No. 2020-27 obsolete and unnecessary, and therefore the Ordinance should be repealed for clarity purposes.

NOW, THEREFORE, BE IT ORDAINED as follows by the Council for the Village of West Lafayette, Ohio:

SECTION I: Council does hereby approve the Use Agreement between the Village and RRB, attached hereto, and authorizes the Mayor, Administrator, and Fiscal Officer to execute the Use Agreement Between the Village of West Lafayette and the Ridgewood Recreation Board.

SECTION II: Council hereby repeals Ordinance No. 2020-27.

PASSED IN COUNCIL THIS 9th DAY OF OCTOBER 2023.


Stephen R. Bordenkircher, Mayor

ATTEST:


Amy Bourne, Fiscal Officer

USE AGREEMENT

This Use Agreement (the "Agreement") is made and entered into this _____ day of _____, 2023 (the "Effective Date"), by and between the Village of West Lafayette, Ohio, an Ohio municipal corporation ("the Village") and Ridgewood Recreation Board, an unincorporated Public Charity ("RRB"). For simplicity, the Village and RRB are sometimes hereinafter individually referred to as a "Party" or collectively referred to as the "Parties."

BACKGROUND INFORMATION

A. The Village is the owner of that certain real property located at 546 West Water Street, West Lafayette, Ohio, Coshocton County Tax Parcel No. 0201610007300, and commonly known as "Waterworks Park," comprising of three (3) baseball fields, fixtures and buildings, and associated parking areas.

B. RRB desires to use the portion of Waterworks Park specifically depicted on Exhibit A (the "Property"), which is attached hereto and incorporated herein by reference, for the purpose of organizing and operating youth baseball/softball/tee ball games and practices (the "Events").

C. RRB's use of the Property for the Events provides a benefit to the community.

D. The Village plans to make certain improvements to the Property for the benefit of the residents of the Village, which improvements will be useful to the RRB Events.

E. The Village has agreed to allow RRB to use the Property for the Events subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants, promises, terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Use of the Property:

(a) Subject to the terms and conditions of this Agreement, the Village hereby agrees that RRB shall have the right to use, and RRB hereby agrees to use from the Village, the Property, which is more particularly depicted in Exhibit A, for the purpose of the RRB Events during the spring, summer, and fall months of the terms of this Agreement.

(b) The Property, which is outlined on Exhibit A, includes three (3) baseball fields, spectator areas, restrooms, playground, picnic pavilion, basketball court and parking areas. In addition, the Property includes a concession stand, storage building, and batting cage which were installed at the Property by RRB.

(c) RRB shall ensure that no alcoholic beverages or illegal drugs are brought on the Property during RRB's Events.

(d) RRB shall post a "Code of Conduct," such as the Code of Conduct attached hereto as Exhibit B, on the backstops of all baseball fields at the Property. RRB shall ensure that such Code of Conduct is followed and enforced.

(e) RRB shall operate its Events in compliance with all applicable state and local government laws, regulations, guidelines, requirements, codes, and orders, including but not limited to any applicable laws, regulations, guidelines, requirements, codes, and orders established by the Coshocton County Department of Health or the Ohio Department of Health. If RRB does not hold its Events in compliance with such applicable state and local government laws, regulations, guidelines, requirements, codes, and orders (as evidenced by observations by County or Village officials or investigated and confirmed complaints made by other parties), the Village may immediately terminate this Agreement by written notice of termination to RRB.

(f) RRB may keep and store the items, property, and equipment incidental to such Events at the Property in locations approved by the Village. Any items, property, or equipment kept or stored within the Property shall be at the sole risk of RRB and the owner of any items, property, or equipment stored within the Property. The Village shall not be liable or responsible for any loss, injury, or damage to RRB or any property or business of RRB, including any damage by any invitees, vendors, or members of the public entering and/or using the Property.

(g) The Property is provided to RRB "AS-IS, WHERE IS" without warranty. The Village makes no representations or promises with respect to the Property, and RRB agrees the Village shall not have any obligation to perform any work, alterations, repairs, or otherwise prepare the Property for RRB's use or the Events, other than as set forth in this Agreement.

(h) The Village shall have access to the Property, at any time for any reason, during any term of this Agreement, and shall have the right to use or allow the use of the Property for other events or purposes so long as such use does not interfere with RRB's regular schedule of Events at the Property.

2. Term:

(a) The primary term of this Agreement shall commence on _____, 2023 and end on November 9, 2029 (the "Primary Term"), unless this Agreement is sooner cancelled or terminated as permitted herein.

(b) Provided that RRB is not in default of its obligations under this Agreement, RRB shall have the option to renew this Agreement for an additional term of twenty (20) years (the "First Renewal Term"). All of the terms and conditions that apply during the Primary Term shall also apply during the First Renewal Term. The renewal option shall be exercised, if at all, by RRB giving the Village notice of renewal at least thirty (30) days prior to the expiration of the Primary Term.

(c) In addition, provided that RRB is not in default of its obligations under this Agreement, after the First Renewal Term, RRB shall have the option to renew this Agreement for an additional term of twenty (20) years (the "Second Renewal Term"). All of the terms and conditions that apply during the Primary Term and First Renewal Term shall also apply during the Second Renewal Term. The renewal option shall be exercised, if at all, by RRB giving the Village notice of renewal at least thirty (30) days prior to the expiration of the First Renewal Term.

(d) RRB may terminate this Agreement for any reason upon thirty (30) days written notice to the Village.

(e) If RRB does not fully correct any failure of RRB to observe, perform, and keep each and every of the covenants, agreements, stipulations, obligations, and other provisions of this Agreement within five (5) days after notice of such failure, the Village may terminate this Agreement by written notice of termination to RRB.

(f) The Village also may suspend or terminate this Agreement, upon providing fourteen (14) days' written notice to RRB, if the Village determines, in the Village's sole discretion, that any portion of the Property is destroyed, damaged, or otherwise unfit for the purposes contemplated by this Agreement; if part or all of the Property is needed for purposes of a public improvements project by the Village or other public or quasi-public agencies, such necessity being determined in the sole discretion of the Village (a "public improvement project" shall include, without limitation, such projects as road, street, or highway construction, building construction, or public works involving a redesigning, buffering or landscaping of the Property); at the option of the Village, sale or transfer of some or all of the Property; the determination by the Village, at its sole discretion, that the use of some or all of the Property for the purposes specified in this Agreement is no longer appropriate; appropriation or condemnation of some or all of the Property pursuant to any power of eminent domain; or any other reason as determined by the Village in its sole discretion.

(g) Upon the termination of this Agreement, RRB shall remove its property, equipment, and structures from the Property, including but not limited to the concession stand, storage facility, and batting cage installed by RRB at the Property. If RRB fails to remove any of its property within thirty (30) days of the termination or expiration of this Agreement, the remaining property will be deemed as having been abandoned, and the Village will have the right to use or dispose of the property in any manner as the Village sees fit without liability to RRB or any other party. Except as otherwise permitted or required by the terms and conditions of this Agreement, RRB cannot make any changes or alterations to any part of the Property.

3. Fees -- RRB:

During the Primary Term and any Renewal Term of this Agreement, RRB shall pay the Village the amount of one and 00/100 Dollars (\$1.00) per year. Such fee shall be paid to the Village no later than one (1) week prior to the beginning of the applicable annual year.

4. Maintenance & Repair – RRB:

(a) During the time period each year when RRB is using the Property for its Events, RRB shall maintain the Property in good and safe order throughout its use of the Property. RRB shall be responsible for general maintenance, janitorial services, and upkeep of the Property. RRB shall keep the Property clean, neat, orderly, safe and sanitary. This Section 4(a) applies only to the time period during which RRB is using the Property for its Events.

(b) RRB shall provide any necessary garbage receptacles for the Property. RRB shall dispose of all garbage in the Village dumpsters located at the Wastewater Treatment Plant located on Ripple Lane.

(c) RRB shall prepare the baseball fields for its Events. RRB shall mow and weed the grounds of the Property located inside the fence of each ball diamond. The Village shall mow and weed the remaining grounds of the Property. RRB shall maintain the fence at the Property, as well as all fixtures, baseball fields, spectator areas, concession stands and other buildings or structures at the Property used by RRB for its Events. RRB may apply herbicides at the fencing on the Property. RRB shall not otherwise use herbicides at the Property.

(d) RRB shall be responsible for all expenses associated with the rental and use of any portable restrooms required for the Events. RRB shall remove any portable restrooms from the Property within one week after the conclusion of its Events at the Property each season/year.

(e) During the time period which RRB operates its Events at the Property each year during the spring, summer, and fall months, RRB shall keep any restroom facilities at the Property clean, neat, sanitary, and supplied with sufficient toilet paper, paper towel, soap, and any other necessary products. The Village will supply RRB with toilet paper, paper towels, soap and cleaning products. RRB shall operate any restroom facilities in accordance with all applicable laws and health codes. The Village will "open" such restrooms by April 1st of each year, weather permitting, and "close" and winterize such restrooms around November 1st of each year.

(f) All maintenance of the Property to be performed by RRB pursuant to this Agreement shall be performed at RRB's own expense.

(g) RRB shall not use pesticides at the Property.

(h) The Village shall be responsible for and pay all utilities associated with the Property.

(i) At all times, RRB shall be responsible for maintaining and keeping in good repair all of its property, equipment, and structures located at the Property, including but not limited to the concession stand, storage facility, batting cage, and dugouts installed by RRB at the Property. RRB bears full responsibility for repairing any damage caused to the RRB property, equipment, and structures at the Property. Any and all repair work performed by or on behalf of RRB to repair RRB's property, equipment, and structures located at the Property shall be at RRB's sole expense. RRB shall make repairs in a reasonable time after the occurrence of such damage, so that the Property is kept in good repair, clean, neat, orderly, safe and sanitary at all times. If RRB fails to repair or restore any of its property, equipment, and structures at the Property in a reasonable time after the occurrence of damage, the Village may make such repairs and charge

the cost thereof to RRB, which shall immediately reimburse the Village for the total cost of repairs.

(j) To the extent any property, equipment, fixtures, facilities, or structures owned by the Village and located at the Property (collectively hereinafter referred to in this Section 4(j) as the "Village Facilities") (such as any permanent restroom facility) sustain damage as a result of the RRB Events (regardless of whether such damage is caused by RRB and/or any of its respective employees, agents, representatives, or invitees), RRB shall be liable for any and all damages caused to the Village Facilities including, but not limited to, the costs of repairing any such damage or restoring or replacing the damaged portion of the Village Facilities to the reasonable satisfaction of the Village; it being understood and agreed to among the Village and RRB that any necessary repair of damages to the Village Facilities arising directly or indirectly from RRB's use and occupancy of the Property shall commence and be completed promptly, with diligence, and shall be performed in a good and workmanlike manner in accordance with the plans and specifications approved by the Village and in compliance with all applicable laws, regulations, and codes. All restoration work performed by or on behalf of RRB on the Property to the Village Facilities shall be performed as approved by the Village (or at the Village's option, by the Village's employees or contractors) at RRB's sole expense. If RRB fails to repair or restore any portion of the Village Facilities in a reasonable time after the occurrence of such damage, as determined by the Village, the Village may make such repairs and charge the cost thereof to RRB, which shall immediately reimburse the Village for the total cost of repairs. RRB's obligations under this provision shall survive the expiration or termination of this Agreement. Notwithstanding the foregoing, RRB shall not be responsible for any damage to the Village Facilities caused by an act of vandalism by any party or person other than RRB.

5. Improvements- Village:

The Village reserves the right to make any alterations or improvements to the Property during any term of this Agreement, so long as such improvements do not unreasonably interfere with RRB's use of the Property.

6. Contributions Of Funds By Village:

The Village is a recipient of proceeds from the 2013 Coshocton County Parks Levy. The purpose of the Levy is for the general operation and permanent improvements of the Coshocton City and County Park District and other parks in Coshocton County which serve the recreational, historical, and cultural interest of Coshocton County residents. The Levy is a ten-year Levy, commencing in 2013. The Village desires to use its Parks Levy proceeds for the general operation and permanent improvements of all parks located within the Village, including Waterworks Park. The Village appreciates RRB providing the youth recreation program of Events at the Property. While the proceeds from the Parks Levy, including any renewal Levy, are available to the Village, RRB may request reimbursement from the Village for certain costs, at the sole discretion of the Village. Such costs may include field maintenance, mowing, and capital improvements. Any request for reimbursement of costs sustained during any year of this Agreement must be submitted by RRB to the Village Fiscal Officer by October 1st of such year. RRB must include a detailed accounting of expenses for which reimbursement is sought. If the

Village determines to make any reimbursement to RRB, the Village will make such reimbursement by December 31 of such year.

7. Insurance:

RRB shall keep in full force and effect a policy of liability insurance with limits of not less than \$1,000,000.00 per occurrence covering all of its Events and activities at the Property. The policy shall name the Village as an additional named insured under the policy. A certificate of liability insurance of such coverage shall be delivered by RRB to the Village annually prior to the start of Events each year at the Property. If RRB shall fail to provide or maintain such insurance at any time, the Village shall have the right to immediately terminate this Agreement. A copy of RRB's Certificate of Liability Insurance, for its policy effective March 17, 2023 through March 17, 2024, is attached hereto as Exhibit C.

8. Indemnification:

RRB shall indemnify and hold the Village and its members, officers, directors, managers, employees, agents, representatives, successors and assigns harmless from and against any and all liability, damages, losses, claims, actions, costs and expenses of any nature resulting from injuries or damages to persons or property on or about the Property arising out of or in any manner connected with the use of the Property by RRB and/or its members, officers, directors, managers, employees, agents, volunteers, contractors, officials, invitees, representatives, successors, or assigns during the use of the Property by RRB, or any act or omission of RRB and/or its members, officers, directors, managers, employees, agents, volunteers, contractors, officials, invitees, representatives, successors, or assigns concerning the Property. The provisions of this section will survive the expiration or termination of this Agreement.

9. Force Majeure:

It is mutually agreed to between the Parties that none of the Parties shall be deemed to be in default of any provision of this Agreement for delays or failures in performance caused by or resulting from acts or events beyond its reasonable control, including but not limited to, labor disputes, part shortages, acts of God, civil or military authority, acts of terrorism, civil disturbance, war, strikes, fires, pandemics, other catastrophes or other events beyond a Party's reasonable control.

10. Assignment:

RRB may not assign this Agreement without the prior written consent of the Village which consent may be withheld in its sole discretion.

11. No Waiver:

No waiver by the Parties to any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein.

12. Modification:

Either party may request modification of this Agreement. Any changes, modifications, revisions or amendments to this Agreement, which are mutually agreed upon by and between the Parties, shall be incorporated by written instrument and effective when executed and signed by all Parties.

13. Severability:

If any of the provisions of this Agreement, or the application thereof to any person or circumstances, shall to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. Counterparts:

This Agreement may be executed in multiple counterparts, each of which, when assembled to include an original signature for each party contemplated to sign this Agreement, will constitute a complete and fully executed original. All such fully executed counterparts will collectively constitute a single agreement.

15. Electronic Signatures:

The Village and RRB expressly agree that if the signature of either on this Agreement is not an original, but is a digital, mechanical or electronic reproduction (such as, but not limited to, a photocopy, fax, e-mail, PDF, Adobe image, JPEG, telegram, telex or telecopy), then such digital, mechanical or electronic reproduction shall be as enforceable, valid and binding as, and the legal equivalent to, an authentic and traditional ink-on-paper original wet signature penned manually by its signatory.

16. Entire Agreement and Amendments:

The parties agree that upon the Effective Date of this Agreement, the 2020 Agreement is terminated. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes and prior agreement of the Parties. This Agreement may not be modified, nor any of its provisions waived, excepted by a writing signed by all of the Parties to this Agreement.

The Parties have executed this Agreement to be effective as of the Effective Date set forth above.

The Village of West Lafayette, Ohio

Ridgewood Recreation Board

Stephen Bordenkircher
Title: Mayor
Date: _____

Name: _____
Title: _____
Date: _____

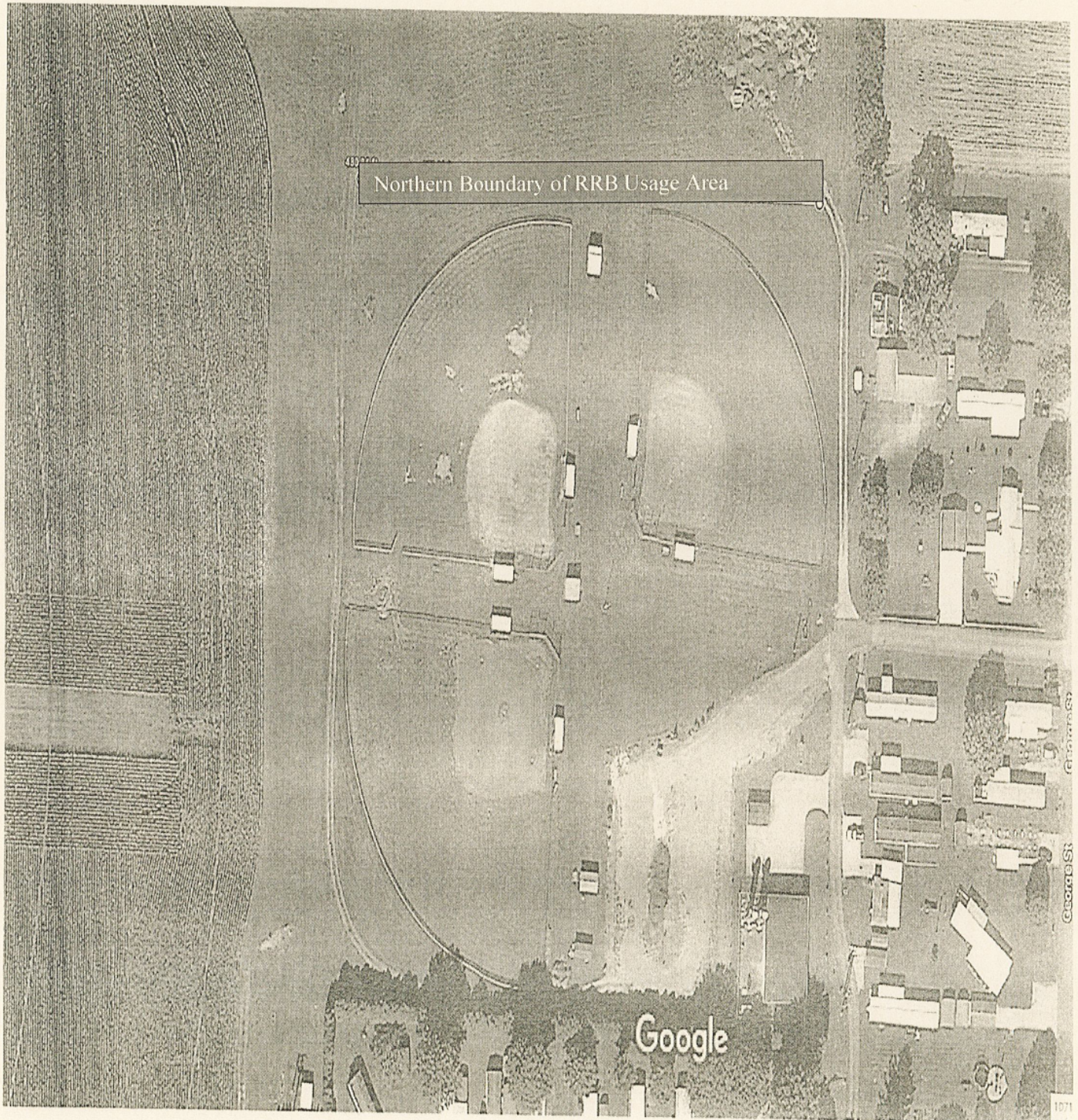
Tammy J Hicks
Title: Administrator
Date: _____

Name: _____
Title: _____
Date: _____

Amy Bourne
Title: Fiscal Officer
Date: _____

Exhibit A

Property



Imagery ©2020 Maxar Technologies, State of Ohio / OSIP, USDA Farm Service Agency, M

Measure distance

EXHIBIT B

CODE OF CONDUCT

I agree to participate in Ridgewood Recreation programs while displaying good sportsmanship. I will conduct myself in a proper manner consistent with good behavior reasonably accepted by upstanding and law-abiding citizens. This includes my actions and attitudes toward coaches, umpires, teammates, members of opposing teams, all parents and spectators attending the events, and members/directors of the Ridgewood Recreation Board. I will represent my team, my community and the Ridgewood Recreation Board in a positive manner at all times.

Failure to comply with this Code of Conduct will result in disciplinary action up to and including being prohibited from attending Ridgewood Recreation Board sponsored events and/or expulsion from the team or league. Please remember that our programming exists so that children can learn the skills associated with participating in team sports in a safe and professional manner. Proper Code of Conduct displayed by all individuals present at events will enhance this learning experience.

Printed Name of Athlete, Coach, or Umpire

Signature of Athlete, Coach, or Umpire

Signature of Parent of Athlete

Date

Your signature represents you and any other family or friend of the above athlete. You are responsible for holding all individuals attending events to the Code of Conduct above, and failing to do so can result in you being held accountable as outlined above.

The above "Code of Conduct" will be distributed to all participants associated with Ridgewood Recreation Board (RRB) programs on an annual basis. This Code of Conduct shall be signed by each player, parent of player, coach, and any other persons associated with programming of RRB. The president of the RRB shall keep the signed document until the activities for the given year have concluded. Failure to gather the signed document from each of the persons listed above could result in the termination of the Waterworks Park Use Agreement.

