



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of September 17, 2011**

DATE: September 15, 2011

SUBJECT: Barcroft Park Baseball Field #6 Public Facilities Construction, Permissive Use and Maintenance Agreement

C. M. RECOMMENDATION:

Approve the Public Facilities Construction, Permissive Use and Maintenance Agreement (the "Agreement") (**Attachment I**) between the County Board and The George Washington University for the substantial improvement of, ongoing maintenance and repair to, and long-term use of Baseball Field #6 at Barcroft Park; and

Authorize the County Manager to sign the Agreement on behalf of the County Board, after approval of the Agreement, as to its form, by the County Attorney.

ISSUES: This Agreement will formalize a collaboration between Arlington County (the "County") and The George Washington University ("GW") regarding the improvement of, maintenance and repair to, and long-term shared use by GW of baseball field #6 ("the Field") at Barcroft Park in Arlington. The proposed improvements to the Field are consistent with the Barcroft Park Master Plan approved by the County Board in December 1999.

SUMMARY: The Agreement sets forth the terms under which GW will substantially improve the Field and adjacent facilities, contribute ongoing operational funds for maintenance and repairs, and replace, as necessary, certain improvements to the Field and facilities, in return for use of the Field and facilities at Barcroft Park for a period of up to 20 years. GW's use of the Field and facilities will be for practice and competition by its men's baseball team. GW will make financial contributions for the ongoing maintenance and operations of the Field and its supporting infrastructure based on GW's share of the use of the Field. GW also will pay the costs of life cycle replacement of the synthetic turf and underlying drainage system of the Field, based on GW's share of the use of the Field. GW's annual use of the Field is expected to be approximately 600 hours, which represents less than 25% of the amount of the projected annual use of the Field. Construction for this project is expected to begin in October 2011. The project's estimated completion month is March 2012.

County Manager:

BMD/mjs

County Attorney:

BRC

[Signature]

49.

Staff: John Blevins, Department of Parks, Recreation and Cultural Resources

The Agreement will enable the County to complete the last phase of the County Board-approved Master Plan for Barcroft Park at no capital cost to the County. Upon completion of the proposed improvements to the Field and facilities, the community will have access to a quality sports facility – a regulation sized 90-foot synthetic baseball diamond, outfield, and substantially improved support amenities. Also, community use of the Field may increase because there are expected to be fewer weather- and maintenance-related cancellations at synthetic turf fields. The Agreement also entitles GW to conduct up to four one-week summer sports camps and two (2) clinics at the Field. These new camp programs will supplement the Arlington community's choice of summer programs.

County staff conducted two public meetings to share the details of the proposed collaboration between the County and GW for the improvement and use of the Field and to seek community input. Staff also met with the Sports Commission and sports user groups and posted information about the proposed collaboration on the County's web site to seek additional feedback. An email expressing support from the Sports Commission and Senior Babe Ruth League is attached to this Report (**Attachment II**).

BACKGROUND: GW's baseball team has been using the Field as its home field since 1992 for games and practices. In return for the use of this County field, GW has been responsible for the routine maintenance and upkeep of the Field, including improvements to the Field. A combination of formal and informal agreements has guided this arrangement during the past 19 years.

GW recently created a new Board of Trustees Athletics Committee to conduct a comprehensive review of GW athletics. That committee hopes to raise GW's athletic performance profile nationally. GW's outreach to the County for improving the Field and related facilities is part of this larger effort.

The Field is one of three County-owned 90-foot baseball fields. The Field currently is used for youth baseball and for baseball games and practices by GW. The Field has a grass outfield and fairly new athletic lights, which lights will not be altered by the proposed improvements. GW's proposal is not expected to change the level of the existing use of the Field in any significant manner – the Field is already used until 11:00 p.m., as needed.

The County's Sports Commission has been interested in securing GW's financial support for the renovation and upgrade of the Field for many years.

DISCUSSION: Per the Agreement, GW, at its sole cost and expense, will spend a minimum of \$3 million to design, construct and install improvements to the Field. The improvements will include, but are not limited to, a synthetic turf field, dugouts, a press box/concession area, locker facility, stadium seating, and bullpen, reconfigured parking lot adjacent to the Field, and a new entry plaza from the adjacent parking lot. The County will review and approve the design and construction documents for the improvements to the Field prior to construction by GW, and County staff will conduct on-site monitoring and coordination of the improvements with GW during the construction phase. GW will be responsible to secure all necessary approvals, permits and insurances, as well as to comply with all applicable rules and regulations for constructing the improvements to the Field and adjoining facilities.

GW will be responsible for maintaining, repairing or replacing any facility, equipment, furniture or fixtures that are used exclusively by GW. GW will also be responsible for the year-round routine maintenance of the synthetic turf play area, including the bullpens, per County standards. The County will be responsible for the overall routine maintenance of the Field and non-exclusive amenities, except for the maintenance of the synthetic turf play area and the bullpens.

GW and the County will share the total annual costs of routine maintenance and operation of the Field and associated amenities, including utility costs, based on their pro-rated annual hourly use of the Field. GW will be solely responsible for the operations, maintenance, and utility costs of their exclusive use amenities including the new scoreboard, dressing / locker rooms, and a designated GW storage area.

GW also will pay the cost of replacing or repairing the synthetic turf field and the drainage system based on GW's share of the use of the Field, at the time the County deems replacement to be necessary, which is expected to occur at least once during GW's usage term of up to 20 years. This obligation of GW will exist for the first 16 years of the Agreement's term because the turf is expected to need replacement twice - in years 8 and 16. The synthetic turf's replacement is expected to generally coincide with the eight-year warranty typically offered by the manufacturer.

In return for GW's improvements and financial contributions, the County will grant use of the Field to GW for conducting games and practices for its intercollegiate baseball team for a period of 20 years. The Agreement entitles GW to play all of its preseason, regular season and post season home baseball games at the Field. Most of this use will be on weekday mornings or afternoons before most community recreational players would require use of the Field. The Agreement limits how much game and practice time can overlap with preferred peak times for community recreational sports. In total, GW's annual use of the Field will be approximately 600 hours, which represents less than 25% of the projected total use of the Field each year. The Agreement also entitles GW to conduct up to four one-week summer sports camps and two clinics at the Field, so long as they comply with the County's then-current policies, procedures and fees in place for such camps or clinics.

The Agreement allows only non-exclusive use of the Field by GW. The County has and will retain complete ownership of the Field and related facilities.

The on-going use of the Field by the community and GW will not change as a result of this Agreement. GW will continue to use the Field for games and practices as it has since the early 1990s, and the community may use it at all other times. All use will continue to be coordinated by PRCR's Facilities Scheduling Office. GW uses the Field between September and November for practices and between February and May for practices and regular-season home games. GW's utilization of the facility is often during non-peak hours and months. Arlington County user groups (including the Babe Ruth and Little Leagues) use the Field throughout the year but primarily during the late spring and summer months. The level of use by GW and the Arlington sports community is anticipated to remain essentially the same. If anything, the community may get more use out of the Field as synthetic turf fields have less down time for maintenance and weather issues.

Since the level of use for the Field will not change markedly, staff does not anticipate traffic or parking issues. It is anticipated that there will be approximately 100 spaces included in the surface parking lot adjacent to the Field (there are currently approximately 85 spaces). In addition, there are 91 spaces in the main Barcroft Park lot and 192 spaces in the Barcroft Park parking garage, plus on-street parking in the vicinity. Historically, the current parking supply has been more than adequate to satisfy demand, with the exception of certain days when multiple events are scheduled, at which times PRCR makes necessary accommodations (e.g., providing shuttle vans) to address the increased demand. GW currently uses shuttle buses for players. Through the Agreement, the County and GW agree to work cooperatively to develop a parking plan for any event attracting more than 100 vehicles to the Field. The County has reserved the right to collect and retain parking fees consistent with County policy.

The existing sports lights will remain in use subject to the current facility schedule and "lights off" curfew of 11:00 p.m.

GW has proposed an Identity, Advertising, and Donor Acknowledgement Plan (the "Identity Plan") for the County Manager's consideration (see Exhibit B of the attached Agreement). The proposed Identity Plan is intended by GW to allow it to include GW identity elements, as well as the potential for advertising and donor recognition to generate revenue to support GW's initial contribution (minimum of \$3 million) and the ongoing maintenance and replacement costs for the Field. The proposed Identity Plan does not include renaming of Barcroft Park. The Agreement obligates GW to submit a final Identity Plan to the County Manager for her review and approval at a later date. Any future request from GW for the naming of the playing field will be processed by the County as per then-current naming policy of the County.

The proposed collaboration for the improvements of the Field has been shared with the Sports Commission and the youth baseball organizations. Construction of the proposed improvements to the Field is planned to begin in October 2011 so that GW can begin the use of the renovated Field in spring 2012.

FISCAL IMPACT: GW will be responsible for all costs associated with the proposed improvements to the Field. In addition, GW will share a portion of the total annual routine maintenance and operation costs of the Field and supporting amenities, based on GW's pro-rated share of the total hourly use of the Field each year. GW also will share the cost of replacing or repairing the synthetic turf field and the drainage system based on GW's share of the use of the Field, at the time the County deems replacement to be necessary. The County's share of this cost will be addressed through a future Capital Improvement Program budget.

The County will continue to maintain and operate the Field in FY 2012 using already-appropriated funds in the operating budget of PRCR. The proposed improvements to the Field and adjacent facilities will increase the County's annual cost of maintenance in FY 2013 by approximately \$25,000 to \$40,000. A range is given because exact plans are not yet drawn. The projected increase in the operating cost is primarily associated with the County's share of maintaining the new amenities, including press-box, concessions, stadium seating and dugouts. County staff will examine all factors that could offset these additional costs, including reductions in field maintenance costs and increases in revenue, before developing FY 2013 budget

recommendations. The need for these additional operating funds will be addressed through the FY 2013 budget process.

Attachment II

From: WGMurray99@aol.com [mailto:WGMurray99@aol.com]
Sent: Thursday, September 08, 2011 10:55 AM
To: Christopher Zimmerman; Mary Hynes; Barbara Favola; Jay Fisette; Walter Tejada
Cc: Walter Tejada; John Blevins
Subject: GWU Baseball Proposal

Dear Chairman Zimmerman and Board Members,

I'm writing in support of the GWU proposal to renovate the Barcroft #6 baseball field. I'm sorry for the informality of an email, but I realize time is of the essence.

On August 31 I attended a special presentation made by GWU and PRCR staff exclusively to members of the Sports Commission (of which I chair) and the Arlington Senior Babe Ruth Baseball Board of Directors (of which I am a longtime member). I can report to you that all of the attendees were extremely impressed with the proposal and enthusiastically support it.

For the last ten years or so (GW has been playing at Barcroft for about 20 years), I have been encouraging GW to renovate the field and encouraging PRCR to charge a higher rental fee if they didn't. Finally, it is happening!

This field renovation is a win-win situation. This will be great for youth baseball players in Arlington and great for members of our community who enjoy watching Division I college baseball in a pleasant environment.

My only concern is that the MOU restrict GW's use of the field to generally the same number of hours that they traditionally have used. I believe that will be the case, but I have not seen the final MOU. In the past, GW and youth baseball have shared the field with really no issues whatsoever. The MOU should guarantee that this positive sharing arrangement continues.

Thank you for your consideration of this proposal.

Bill Murray

**BARCROFT PARK FIELD #6 PUBLIC FACILITIES
CONSTRUCTION, PERMISSIVE USE AND MAINTENANCE AGREEMENT**

This BARCROFT PARK FIELD #6 PUBLIC FACILITIES CONSTRUCTION, PERMISSIVE USE AND MAINTENANCE AGREEMENT (“Agreement”) is dated this _____ day of September 2011, by and between the County Board of Arlington County, Virginia, a body corporate and politic (“County”), and The George Washington University, a private university located in Washington, D.C. (“GW”) (individually “Party” or collectively “Parties”).

WHEREAS, the Parties executed a Letter of Intent dated July 18, 2011 (“LOI”), to confirm their intent to collaborate regarding certain proposed construction, permissive use by GW, and maintenance of public improvements (“Park Project” or “Improvements”) to the baseball field and supporting amenities and facilities at Barcroft Park in Arlington, Virginia, commonly known as “Barcroft Park Field #6”, and shown on the map attached hereto as **Exhibit C** (“Field”); and

WHEREAS, by the LOI, the Parties declared their intent to work together to develop an agreement that sets forth the terms and conditions of the proposed collaboration, with the goal of having an agreement finalized and signed by the Parties by the end of September 2011; and

WHEREAS, by letter dated June 24, 2011, the County Manager granted permission to GW, and its contractors, to enter portions of the County’s Barcroft Park property for the purposes of making and performing civil engineering surveys, borings, soundings, environmental tests and studies, soils studies, drainage evaluations and archaeological investigations to determine the feasibility of the proposed Park Project; and

WHEREAS, GW and its contractors have completed, to their satisfaction, all of the studies and testing that GW sought to perform or have performed pursuant to the June 24, 2011, letter; and

WHEREAS, this Agreement sets forth the terms and conditions upon which the Parties have mutually agreed for the construction, permissive use and maintenance of Park Project public facilities to be constructed on the Field,

W I T N E S S E T H:

NOW, THEREFORE, in consideration of the construction by GW of the Park Project, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. Term. The term (“Term”) of this Agreement shall be for a period of twenty (20) years from the Effective Date, as that term is defined below, unless terminated earlier in accordance with the provisions of this Agreement.

I. DESIGN, CONSTRUCTION, AND INSTALLATION OF THE PARK PROJECT

2. Funding. GW, at its sole cost and expense, shall pay for the design, construction and installation of the Park Project improvements required to accomplish the scope of improvements to the Field that are set forth in the attached **Exhibit A**, and create outstanding, significantly enhanced baseball facilities on the Field. GW shall spend a minimum of Three Million Dollars (\$3,000,000) to design, construct and install the Park Project improvements. GW shall provide the Chief of the Parks Development Division of the Arlington County Department of Parks, Recreation and Cultural Resources (“PRCR”) with a schedule of values which sets forth all costs associated with the Park Project, and include copies of GW's construction contract with its general contractor and contracts with other contractors and consultants to establish the amounts spent by GW for the Park Project improvements. The Park Project improvements shall include a synthetic turf field, dugouts, bullpens, fencing and batter’s eye, lighted batting cage, press box, concession area, spectator stadium seating, an entry plaza, general site lighting, and lighted parking. The existing field lights will remain unchanged in their present locations, and the existing scoreboard will either remain and be relocated or be replaced with a new scoreboard. The Park Project improvements may include a deck area and appropriately-sized public restrooms, as noted in **Exhibit A**. The \$3-million requirement and the required improvements enumerated in this paragraph do not include additional improvements that GW may make, as described in part in **Exhibit A**, with the County’s written permission, throughout the remainder of the Term. In due recognition of GW’s financial commitments set forth in this Agreement, the County agrees to work with GW during the Term of this Agreement to explore opportunities for GW to use PRCR facilities other than Barcroft #6, within then-current PRCR facilities usage policies.
3. Scope of Work; Plans. Not later than September 29, 2011, GW shall submit a scope of work, design and construction plans and specifications, and a construction schedule (the “Construction Plans”) to the Chief of the Parks Development Division of PRCR for review and comment. The Construction Plans shall include written cost estimates, prepared by a licensed architect, civil engineer or construction management firm, for construction of the Park Project.
4. Response to the County’s Revisions and Comments. GW shall promptly respond to the County’s comments and will work with the County to address and incorporate the County’s written revisions and comments into the Construction Plans consistent with the scope and terms hereunder, and GW shall submit the revised Construction Plans to the Division Chief of the Park Development Division of PRCR for review and approval. Approval of the Construction Plans by the Division Chief shall not relieve GW and its general contractor and subcontractors of their obligations to obtain all other required governmental approvals from the appropriate authorities.
5. Bid Documents. GW has prepared construction management bid documents and submitted them to the County. The bid documents consist of instructions to bidders, bid specifications, and a bidders list (collectively, the “Bid Documents”).
6. Bidding Process. As of the effective date of this Agreement, GW has undertaken a competitive bidding process for construction of the Park Project by a general contractor. The

County, through PRCR, participated in the process through which GW selected the general contractor for the Park Project.

7. Contract Approval. If, as of the effective date of this Agreement, the Division Chief of the Parks Development Division of PRCR has given approval to GW to award a contract to the selected general contractor to construct the Park Project, then GW shall enter into a construction contract with the selected general contractor. The construction contract is subject to the prior written approval of the Division Chief of the Parks Development Division of PRCR before execution of the contract by GW and the selected general contractor, which approval shall not be unreasonably withheld or delayed. The County shall not be a party to any contract with a general contractor or subcontractor for construction management or related construction services. The County has provided to GW certain contract terms that the County suggested that GW include in its general contract, and GW agrees to incorporate such contract terms as appropriate and consistent with the terms of this Agreement in its general contract.
8. Commencement of Work. Within three (3) business days after the County Board approves this Agreement, if GW has made the submittals to the County that are required herein, the Division Chief of the Park Development Division of PRCR shall give GW written notice to commence work or cause the work to commence. GW shall commence work or cause the selected general contractor to commence work on the Park Project not later than three (3) business days after the date of the Division Chief's written notice to GW to commence work, pending receipt of all necessary permit approvals.
9. Project Officer. A County Project Officer (hereinafter "Project Officer"), who shall be appointed, in writing, by the Director of PRCR, shall have the authority to inspect and reasonably reject GW's or the approved general contractor's performance, work and materials provided. The Project Officer's right of reasonable rejection shall be in addition to GW's right to reasonably reject the selected general contractor's work and materials.
10. Schedule of Values; Order of Work. Within three (3) business days after the date of issuance of the Division Chief's notice to commence work, GW shall deliver to the Project Officer the final Schedule of Values for construction of the Park Project and work schedules. The Schedule of Values and work schedules shall show the order in which the work will be performed, with start and completion dates for each task. The Schedule of Values and work schedule shall be subject to the Project Officer's review and approval to confirm that the scope and value of the work is consistent with the terms of this Agreement, which reasonable approval or disapproval shall be provided by the Project Officer to GW not later than three (3) business days after the date of receipt of the Schedule of Values and work schedules by the Project Officer. GW shall require the general contractor to submit to GW and the Project Officer an updated work progress schedule monthly.
11. Submittals. GW shall provide the Project Officer with a copy of each submittal required by the construction drawings and specifications, or as requested by the Project Officer or his or her designee. A copy of each submittal shall be provided by GW to the Project Officer within a reasonable time after GW receives each submittal from the general contractor. If the

general contractor desires to change or substitute any material or product that is specified in the Construction Plans which would adversely impact the quality or performance of the Park Project, then GW shall submit a written request to the Project Officer for approval of the proposed change or substitution which approval shall not be unreasonably withheld. The Project Officer will have three (3) business days after receipt of the written request to approve or reject the request. GW shall utilize Bowie Gridley Architects, Stranix Associates, or an architect, professional engineer or construction manager acceptable to the County to review and approve or reject all submittals to ensure that they meet the specifications of materials and products specified in the final Construction Documents. The term "submittal", as used in this section, shall include fabrications, erection and setting drawings, manufacturers' standard drawings, schedules, descriptive literature, catalogs, brochures, performance and test data, wiring and control diagrams, and other descriptive data pertaining to the materials and equipment.

12. GW's Project Manager. GW's designated project manager ("Project Manager") shall be frequently present at the Park Project site to represent GW, and be available to meet with the Project Officer or other County representatives upon request. GW may change designation of its Project Manager by written notice to the Division Chief of the Park Development Division of PRCR and the Project Officer at least two (2) days prior to the effective date of such change.
13. Change Orders; Changes to Bid Documents. All change orders to the general construction contract or changes or substitutions to the Bid Documents which would adversely impact the quality or performance of the Park Project are subject to approval by the Project Officer within three (3) business days of receipt. GW agrees that it may not approve or reject any claims by the approved bidder for an extension in contract time that would result in an extension of the February 29, 2012, completion date set forth in section 15 without the prior written approval of the Project Officer. The Project Officer shall approve or reject any change orders or claims within three (3) business days of receipt by the County of the change order or claim with complete supporting documentation from GW. In the event that the Project Officer rejects any submitted change order or claim, including a change order or claim that pertains to timeframes, GW shall either (1) deny the change order or claim, or (2) negotiate modification of the change order or claim to the reasonable satisfaction of the Project Officer and then have the change order or claim resubmitted to the Project Officer within three (3) business days of the date of rejection.
14. Status Meeting. A monthly status meeting will be held to review and inspect the work to date. The GW Project Manager and the County Project Officer or his or her designee will attend each monthly meeting and will either approve or disapprove of the work and materials performed, provided or installed to date. GW shall provide to the Project Officer written meeting minutes not later than three (3) business days from the conclusion of each monthly meeting.
15. Completion of Park Project. GW's contract with the general contractor shall require that the general contractor completes construction of the Park Project by February 29, 2012. Final Acceptance of the Park Project must be jointly approved in writing by the County Manager

or her designee (as set forth more fully in section 24 herein) and GW, and must be consistent with the approved Construction Plans, and all applicable laws and ordinances, and all adopted Arlington County standards. The Parties recognize that achieving the completion date set forth herein is of great importance to both GW and the County, and to that end and notwithstanding any of the review opportunities and periods therefor set forth herein, both GW and the County agree to act in good faith and in a reasonable and diligent manner with each other and with GW's contractors to accomplish the completion date set forth herein. Failure of the general contractor to complete the Park Project by February 29, 2012, or such later date as the Parties may agree in writing pursuant to the approval provisions herein, will not be considered a breach of this Agreement by GW; however, in the event that GW's general contractor has not completed the Park Project by February 29, 2012, or such later date as the Parties may agree in writing pursuant to the approval provisions hereunder, GW shall provide the County with weekly updates regarding the status of completion, the remaining steps necessary for completion, and the general contractor's estimated completion date. In no event shall the Park Project be completed by GW and its general contractor after March 31, 2012.

16. Warranties and Guarantees. GW shall include in its construction contract with the general contractor and in all other contracts (e.g., for materials and improvements) that all warranties and guarantees provided by any material supplier and/or the general contractor and any of their subcontractors, including warranties on purchased equipment, shall inure to the benefit of both GW and the County. GW shall either deliver to the Project Officer or require that its general contractor delivers to the Project Officer, prior to the County Manager's or her designee's Final Acceptance of the Park Project and its equipment and improvements, all documentation reflecting warranties, guarantees, or other covenants or obligations regarding the condition, usability or longevity of any equipment or improvements associated with the Park Project.
17. Insurance During Design and Construction Periods. GW shall provide to the Project Officer, no later than the date on which GW submits schedules of values to the County for review, Certificate(s) of Insurance indicating that GW or the general contractor has in force the types and amounts of insurance coverage described below. GW agrees that it or its general contractor shall maintain such insurance types and coverage until the Final Acceptance of the Park Project by the County Manager or her designee. All required insurance coverage shall be acquired from insurers authorized to do business in the Commonwealth of Virginia and acceptable to the County. The minimum insurance coverages shall be:
 - (a) Workers' Compensation: Virginia Statutory Workers Compensation (W/C) coverage, including Virginia benefits and employer's liability with a limit of \$1,000,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
 - (b) Commercial General Liability: \$2,000,000 per occurrence with \$5,000,000 general aggregate covering all premises and operations of GW or the contractor, and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Agreement.

Evidence of Contractual Liability coverage shall be typed on the Certificate of Insurance. Such coverage may be comprised of primary coverage alone or a combination of primary and excess coverage.

- (c) Builders' Risk: \$4,000,000 combined single-limit coverage.
- (d) Business Automobile Liability: \$1,000,000 Combined Single Limit per occurrence (Owned, non-owned and hired).
- (e) Additional Insureds: "The County Board of Arlington County, Virginia, its officers, elected and appointed officials, employees, agents and contractors, and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly of hereafter constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the County Board or one in which controlling interest is vested in Arlington County or Arlington County Constitutional Officers" shall be named as additional insureds in GW's or the general contractor's Commercial General Liability policy. Evidence of the Additional Insureds endorsement shall be typed on the certificate of insurance, and any such certificate shall reference this Agreement.

All insurance types and coverage required by this section also shall be required of the general contractor selected by GW as a result of the bid process. The general contract that GW submits to the County for pre-approval shall contain the same insurance requirements as this section.

If such endorsement is reasonably available, all insurance policies required herein shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until thirty (30) days prior written notice has been given to the County Manager of Arlington County, Virginia."

GW and its general contractor assume all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with GW's obligations set forth herein, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation pursuant to this Agreement, or in connection in any way whatsoever with their obligations, except insofar as such damage or injury is the result of negligence of the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing GW or its general contractor from any liability or obligation imposed upon GW or its general contractor by this Agreement.

Notwithstanding any of the above, GW or the general contractor may satisfy their obligations under this section by means of self insurance for all or any part of the insurance required, provided that evidence of the alternative coverage is submitted to and acceptable to the County's Risk Manager.

18. Payment of Others by GW. GW agrees to promptly pay, and require its authorized employees, contractors, subcontractors, and agents to pay, all persons supplying labor, services and materials in the performance of the Park Project and any and all future work performed by or on behalf of GW within or upon the Field. If any lien, encumbrance or charge is asserted, filed, or recorded, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued, or any claim related to the work to be performed by GW, its authorized employees, contractors, subcontractors, and agents, whether or not valid, is made against the County Board or the Field or any part thereof, any other real estate owned by the County, or the interest therein, or against any payment or other amounts payable under this Agreement, then GW, upon receipt of notice of the filing, assertion, entry or issuance of such lien (regardless of the source of such notice) shall give written notice thereof to the County. GW, at its sole cost and expense, promptly shall take all actions (including the payment of money, the securing of a bond, and court actions or suits) as may be necessary to obtain the discharge in full of the lien and to remove or nullify the basis therefor.
19. Performance Bond. GW shall provide, or require its general contractor to provide, to the County, by September 29, 2011, a complete and properly executed performance bond in the amount of Three Million Dollars (\$3,000,000) that ensures satisfactory completion of the Park Project. The performance bond shall be a corporate surety bond issued by a surety company authorized to do business in the Commonwealth of Virginia and acceptable to the County. The performance bond shall be renewed annually by GW or its general contractor in the amount set forth herein until the County Manager or her designee makes final acceptance of the Park Project and improvements. The Division Chief of the Park Development Division of PRCR shall have no obligation to issue the notice to begin work that is referenced hereinabove until the requisite performance bond is delivered to the County.
20. Payment Bond. GW shall provide, or require its general contractor to provide, to the County, by September 29, 2011, a complete and properly executed original payment bond in the amount of GW's general contract that ensures the payment of all persons and entities that have and fulfill contracts with GW arising out of the Park Project. The payment bond shall be a corporate surety bond issued by a surety company authorized to do business in the Commonwealth of Virginia and acceptable to the County. The payment bond shall be renewed annually by GW or its general contractor in the amount set forth herein until the County Manager or her designee makes final acceptance of the Park Project and improvements. The Division Chief of the Park Development Division of PRCR shall have no obligation to issue the notice to proceed that is referenced hereinabove until the requisite performance bond is provided to the County.
21. Due Diligence by GW. GW acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work required for the Park Project, and that it has investigated and satisfied itself as to the general and local conditions and factors which can affect the Park Project or its cost, including, but not limited to:
- (a) Conditions bearing upon transportation, disposal, handling, and storage of materials;
 - (b) The availability of labor, water, electric power, and roads;
 - (c) Uncertainties of weather, river stages, tides, or similar physical conditions at the site; and

(d) The character of equipment and facilities needed before and during work performance.

GW also acknowledges that it has taken steps reasonably necessary to ascertain the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this site is concerned. The County assumes no responsibility or liability for any conclusions or interpretations made by GW based on the information or documents provided by, or made available by the County to GW or its contractors.

When construction crosses highways, railroads, streets, or utilities under the jurisdiction of the Commonwealth, the County, or any other public agency, any public utility, or private entity, GW shall secure written permission where required from the proper authority before executing such construction. A copy of such written permission must be filed with the Project Officer before any work is started.

Any damage to other public facilities at Barcroft Park resulting from work performed pursuant to this Agreement shall be restored, to the County's reasonable satisfaction, by GW, at its sole cost and expense.

22. Differing Site Conditions. GW shall, within seventy-two (72) hours after becoming aware of differing site conditions, and before the conditions are disturbed, give a written notice to the Project Officer of the conditions at the site which differ materially from those found during GW's site testing and studies completed prior to the Effective Date. The Project Officer shall investigate the site conditions within seventy-two (72) hours after receiving the written notice.
23. Discipline Among and Proficiency of Workers. GW shall require that the general contractor at all times enforce strict discipline and good order among the workers performing pursuant to this Agreement, and shall not employ on the work any person not reasonably proficient in the work assigned or to be assigned.
24. Acceptance of the Park Project; Title to Improvements. GW covenants and agrees that there shall be no use by GW of the Park Project until the Park Project is accepted by the County Manager or her designee, which acceptance shall be made in two (2) phases and shall not unreasonably be withheld. The initial acceptance ("Phase I Acceptance") shall include acceptance of the synthetic turf playing field including the bullpen areas and fence around the field and associated drainage improvements which work is anticipated to be completed and ready for acceptance by or before January 31, 2012. The second and final acceptance ("Phase II Acceptance" or "Final Acceptance") shall include all other improvements constituting the Park Project which work is scheduled to be completed and ready for acceptance by or before February 29, 2012. Prior to commencing work on the Park Project, GW shall require that the general contractor install security fencing or an equivalent barrier surrounding the Park Project property to prevent entry to the property by unauthorized persons until Phase I Acceptance of the Park Project has been issued by the County Manager or her designee. Appropriate security fencing or an equivalent barrier will be maintained by GW or its general contractor following the Phase I Acceptance and during the completion of the remainder of the improvements. The County Manager or her designee may allow access

to authorized users after Phase I Acceptance (which authorized users shall specifically include those granted permissive use of the Field pursuant to section 29). GW understands and agrees that it has no right or authority to permit other persons or entities onto the area of the Park Project, except for construction or construction staging purposes. GW further covenants and agrees that unencumbered title to the equipment and other improvements, as described in **Exhibit A**, shall vest in the name of the County upon Final Acceptance of the Park Project by the County Manager or her designee. Such title shall be free of liens, encumbrances, financing statements, security interests, or any other limitation upon the improvements' ownership or use.

GW agrees to provide to the County, before the County Manager's or her designee's Final Acceptance of the equipment and improvements, a list of all such equipment and improvements, which list shall contain the following information and documents:

- (a) A description of each piece of equipment or improvement;
- (b) Each piece of equipment's or each improvement's model number or other identifier;
- (c) The manufacturer's and supplier's names and addresses for each piece of equipment and improvement;
- (d) The date of the purchase of each piece of equipment or improvement by GW or the general contractor or any of their subcontractors;
- (e) For each piece of equipment and improvement, copies of all warranty or guarantee documents; and
- (f) Other documents and information as may be requested by the Project Officer or the County Manager or her designee.

This list shall be signed by GW and its general contractor and shall constitute a bill of sale from GW and its general contractor to the County Board of Arlington County, Virginia.

25. Indemnification. GW covenants, for itself, its employees, contractors, and subcontractors, to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, contractors, agents, departments, agencies, boards, and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including reasonable court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with, GW's acts or omissions, including the acts or omissions of their employees, general contractor, and subcontractor(s), in performance or nonperformance of the Park Project work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Agreement. If, after notice by the County, GW fails or refuses to fulfill its obligations contained in this section, GW shall be liable for and shall reimburse the County for any and all expenses, including, but not limited to, reasonable attorneys' fees incurred and any settlements or payments made. GW shall pay such expenses upon demand by the County.

26. Acts of God and Other Causes. GW shall not be held responsible for failure to perform the duties and responsibilities imposed by this Agreement if such failure is due to fires, acts of

terrorism, riots, rebellions, natural disasters, wars, or an act of God or other occurrences reasonably beyond the control of GW, that make performance impossible or illegal, unless otherwise specified in this Agreement. The County shall not be held responsible for failure to perform its duties and responsibilities imposed by this Agreement if such failure is due to fires, acts of terrorism, riots, rebellions, natural disasters, wars, or an act of God or other occurrences reasonably beyond control of the County that make performance impossible or illegal, unless otherwise specified in this Agreement.

27. GW as Independent Contractor. GW is an independent contractor, and neither GW nor its employees, trustees or contractors shall, under any circumstances, be considered, or hold themselves out as, employees, servants or agents of the County. The County shall not be liable for any negligence or other wrongdoing by GW its employees, contractors, servants or agents. The Parties agree that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or any other legal relationship between the County and GW. The County will not withhold payments to GW for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to GW. The County shall not provide to GW any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.
28. Incorporation of Provisions. GW shall incorporate into each construction contract related to the Park Project the substantive provisions of sections 2, 7-11, 13, 15-17, 19, 20, and 23-25 of this Agreement

II. PERMISSIVE USE OF PUBLIC IMPROVEMENTS BY GW

29. GW Use of Field and Improvements. In exchange for GW's design, construction and installation of the Park Project, which shall be at GW's sole cost and expense, the County agrees, during the Term, to permit the non-exclusive use by GW of the Field and Improvements, for intercollegiate baseball games and practices for GW's men's baseball program, consistent with the terms and conditions of this Agreement. GW's permissive use of the Field and Improvements shall include the following:
 - (a) Games. GW shall be entitled to schedule and play all fall season, pre-season, regular season, and post-season home games for GW's men's baseball team on the Field, consistent with the scheduling practices in subparagraph 30(a) of this Agreement;
 - (b) Practice and Game Hours. GW shall be entitled to schedule up to six hundred (600) hours of baseball practice and game time per calendar year on the Field, consistent with the scheduling practices in subparagraphs 30(a) and 30(b) of this Agreement;
 - (c) Camps and Clinics. GW shall have a right of first refusal for dates to schedule and conduct up to four (4) one-week summer youth baseball camps and a minimum of two (2) fall weekend baseball clinics on the Field or at another PRCR facility in the event the Field is not available. GW shall comply with all existing County policies, requirements, and procedures in place for other sports-camp providers, and will pay

to the County the then-current County fees, if any, for such baseball camps or clinics.

GW will also work with PRCR staff to provide GW coaching staff and player resources as available to various Arlington County youth baseball programs and clinics throughout the year.

- (d) Facilities. GW's use of the Field for games and practice shall include the right to:
- (i) use of and access to, on a non-exclusive basis, the synthetic turf field, dugouts, bullpens, batting cage, spectator bleachers/seating areas, press box, concessions area, public address system, existing scoreboard, electrical outlets and water faucets serving the Field (if written permission for concessions by GW is obtained from the County); and
 - (ii) exclusive use of and access to any designated GW storage area and any other additional improvements that GW may make for its exclusive use, with the County's prior written permission, throughout the remainder of the Term (e.g. team locker rooms, etc.) ("Exclusive Use Improvements").

In the event GW shall in the future schedule night games and/or practices, GW shall also have the non-exclusive right and access to the existing Field lights.

- (e) No Assignment of Permissive Use. GW shall have no right to assign or transfer all or any portion of its rights to permissively use the Field and Improvements to other entities or individuals.
- (f) No Liability for Facilities' Failure or Inoperability. The County shall not be liable to GW or to any third party for the facilities' failure or inoperability at any time.

30. GW Field-Use Scheduling.

- (a) Home Game Dates: GW shall provide the dates and times for all scheduled home games to the County's Facility Scheduling Unit no less than sixty (60) days prior to the start of each season, in order to ensure the availability of and reserve the Field for those dates. The Parties will work together to accommodate unforeseen schedule changes due to inclement weather or other conditions beyond the Parties' control.
- (b) Practice Hours: GW shall schedule available baseball practice dates and times with the County's Facility Scheduling Unit a minimum of fourteen (14) days in advance for off-peak usage practice times ("off-peak" meaning between 7:00 a.m. and 4:00 p.m. Eastern Time on Mondays through Fridays), and a minimum of sixty (60) days in advance for peak usage practice times ("peak usage" meaning after 4:00 p.m. Eastern Time on Mondays through Fridays and at all times on weekends).
- (c) Tournaments. Prior to scheduling any in-season or post-season baseball tournament, GW shall obtain prior written approval from the PRCR Facility Coordinator in order for GW

to use the Field for the proposed in-season or post-season baseball tournament, so that such events can be appropriately scheduled and coordinated with other park activities.

(d) No Liability for Facilities' Unavailability. The County shall not be liable to GW or to any third party for the facilities' unavailability at any time, however, the Parties shall work cooperatively to attempt to find alternative space at another PRCR facility in the event the Field is not available for such use.

31. GW Identity, Advertising and Donor Recognition. The proposed Park Project will provide an opportunity for the inclusion of GW identity, advertising, and donor acknowledgement elements that are intended to help establish a true "ballpark" experience for players and spectators alike as well as to enable GW to generate revenue that will be necessary to support GW's contribution to the Park Project. In furtherance of those objectives, GW has developed a proposed Identity, Advertising, and Donor Acknowledgement Plan (the "Identity Plan"), attached hereto as **Exhibit B**. A final Identity Plan containing specific identity, advertising, and donor-recognition elements (including, but not limited to, the type (permanent or temporary), design, size, locations, numbers, and duration of displays) which are generally consistent with the concepts included in the proposed Identity Plan attached hereto shall be developed by GW. The final Identity Plan shall be subject to the review and approval of the County Manager.
32. Concessions. GW shall have the right to conduct on-site sales of food and/or merchandise during GW's permissive use of the Field, subject to the receipt of annual prior written approval of such sales from the Director of PRCR or his designee, and any required permits and licenses from the appropriate governmental authorities. The County retains the right to manage any concessions at Barcroft Park at all times, and at the Field at all times when GW is not using the Field.
33. Parking. GW shall use vans and/or shuttle buses to transport players and students to and from the GW campus and the Field to minimize the need for on-site parking at Barcroft Park. The County shall provide an on-site parking area for one charter bus for the visiting collegiate baseball team, and for van(s) for GW transport of players and students to and from the GW campus. The availability of on-site general parking shall be on a first-come, non-exclusive basis, and may, in the future, be subject to the payment of a parking fee by the users of the parking spaces, but in no event shall a parking fee be charged to GW for one (1) charter bus for the visiting collegiate baseball team, three (3) vans and/or shuttle buses to transport GW players and students to and from the GW campus, and up to five (5) individual parking spaces for the GW staff associated with GW's permissive use under this Agreement (including games and practices, camps and clinics, and field maintenance activities). If GW expects any event to result in more than one hundred (100) vehicles being parked in the parking lot adjacent to the Field, then GW shall inform the County of that expectation in advance, and GW shall work with the County to accommodate that level of vehicular traffic. The County shall have no liability to GW or any other person or entity if the County is unable to provide parking, whether free or paid, near the Field for all who seek parking.
34. Non-Exclusive Use. Both Parties understand and agree that the Field will be available for community use, in accordance with County policies, during times when the Field has not

been scheduled for use by GW. Any revenue from rental, lease, or licensure of the Field and Improvements by the County to a person or entity other than GW shall be the property of the County.

35. Compliance with Laws. GW's use of the Field shall comply with all applicable state and federal laws, rules and regulations, and all County ordinances, codes, rules, regulations, and policies, and, PRCR and Barcroft Park-specific rules and regulations, including, without limitation, the County's noise ordinance.

III. FIELD MAINTENANCE AND OPERATIONS RESPONSIBILITIES AND COSTS

36. Routine Field Repair and Maintenance Responsibilities.

- (a) After Final Acceptance of the Park Project by the County, GW shall perform all routine maintenance associated with the synthetic turf field (including bullpens) throughout the Term of this Agreement, consistent with County maintenance guidance and standards, and any manufacturer's warranty requirements, specifications and recommendations. The County shall perform all routine maintenance on, and be responsible for the operation of, all other Improvements, including the dugouts, fencing, batting cage, spectator seating areas, press box, concessions area, the scoreboard existing on the date of this Agreement, and the public address system, lighting, and the electrical outlets and water faucets serving the Field, consistent with County maintenance standards, and any manufacturer's warranty requirements, specifications and recommendations. The Parties shall make good-faith efforts to incorporate each other's suggestions and requests into the maintenance and operation of the Field throughout the year, to arrive at an appropriate level of repair and maintenance of the Field.
- (b) GW shall be responsible for the costs of repairing any damage, to the Field or to the supporting park infrastructure, which results from use of the Field by GW, its players, its staff, agents, and employees, and other collegiate baseball teams, beyond what is reasonably considered normal "wear and tear".
- (c) The County shall be responsible for the costs of repairing any damage to the Field not resulting from GW's use of the Field as described in section 36(b) and not including damage that is considered to be normal "wear and tear". The County shall be responsible for completing repairs to address damage to the supporting park infrastructure which results from use of that infrastructure by the general public or the County through its agents or employees, beyond what is reasonably considered normal "wear and tear".

37. Warranty Repairs/Replacements. GW shall direct, manage, and pay for all repairs or replacements of the synthetic turf field (including bullpens) during the turf's applicable warranty period with the exception of those repairs described in section 36(c) above.

38. Maintenance and Operation of Exclusive Use Improvements. The Exclusive Use Improvements shall be locked and secured by GW when they are not in use by GW. The operation and maintenance (including all associated costs) of the Exclusive Use Improvements shall be the sole responsibility of GW during the Term. GW shall also be

solely responsible for the maintenance, repair or replacement of any equipment or furniture that are exclusively used by GW. GW shall be responsible for all connection, disconnection, repair, and service costs for utilities related to the Exclusive Use Improvements, and such improvements shall be separately metered. GW shall take reasonable measures to provide that the Field, including the spectator seating areas, parking lot, press box, and concession area, is free of litter at the end of each instance of GW's exclusive use of the Field.

39. Annual Maintenance and Operation Payments. The costs of routine (including normal wear and tear) maintenance and operations of the Field, with the exception of the Exclusive Use Improvements (as described in section 38 above), shall be shared by both Parties, based on their prorated annual hourly use of the Field as calculated by the County in its sole discretion.

(a) Within ninety (90) days from the date of the execution of this Agreement, the Parties shall develop a mutually acceptable facility maintenance plan and budget which addresses their respective routine maintenance and operations responsibilities as described in portions of section 36 above for the time period between the date of the Park Project's completion and June 30, 2012. Notwithstanding any provision of this section 39 to the contrary, the terms of section 36 shall control. In the event that the Parties are unable to mutually agree to a facility maintenance plan and budget within ninety (90) days of the date of this Agreement, then the County in its sole discretion shall develop a reasonable final facility maintenance plan and budget for such time period, within then-current County maintenance standards. GW shall provide to the County, by August 1, 2012, a detailed itemization of GW's expenditures on its routine maintenance and operations of the Field for the time period between the date of the Park Project's completion and June 30, 2012. The County shall provide to GW, by August 1, 2012 (1) a detailed itemization of the County's expenditures on its routine maintenance and operations costs for the Field for the time period between the date of the Park Project's completion and June 30, 2012 and (2) GW's percentage use of the Field based on GW's total hourly use during that time period. The Parties will review the total actual routine maintenance and operations expenditures to confirm that they are reasonably within the estimated costs in the facilities maintenance plan and budget, and to determine the total actual routine maintenance and operations costs for the Field for the time period between the date of the Park Project's completion and June 30, 2012. In the event that, based on the Parties' routine maintenance and operations expenditures and their respective percentage use of the Field, either Party owes the other for its prorated share of the total routine maintenance and operations costs during that period, then such Party shall remit payment to the other for that amount by October 31, 2012.

(b) By April 30, 2012, and by April 30 of 2013 and subsequent calendar years, the Parties shall develop a mutually acceptable facility maintenance plan and budget which addresses each of their respective routine maintenance and operations responsibilities as described in portions of section 36 above for the coming fiscal year (July 1 to June 30). Notwithstanding any provision of this section 39 to the contrary, the terms of section 36 shall control. In the event that the Parties are unable to mutually agree to a facility maintenance plan and budget by April 30 of a given calendar year, then the County in its sole discretion shall develop a reasonable final facility maintenance plan and budget for the upcoming fiscal year, within then-current County maintenance standards. GW shall

provide to the County, by August 1 (beginning in 2013), a detailed itemization of GW's expenditures on its routine maintenance and operations of the Field for the just-ended fiscal year. The County shall provide to GW, by August 1 of such year, (1) a detailed itemization of the County's expenditures on its routine maintenance and operations costs for the Field for the just-ended fiscal year and (2) GW's percentage use of the Field based on GW's total hourly use during the just-ended fiscal year. The Parties will review the actual total routine maintenance and operations expenditures to confirm that they are reasonably within the estimated costs projected prior to the beginning of the fiscal year and to determine the total routine maintenance and operations costs for the Field for the just-ended fiscal year. In the event that, based on the Parties' routine maintenance and operations expenditures and their respective percentage use of the Field, either Party owes the other for its prorated share of the total routine maintenance and operations costs during that fiscal year, then such Party shall remit payment to the other for that amount by October 31 of the then-current calendar year.

(c) The County's calculations, as described in this section, shall include all utilities costs for the routine operation and maintenance of the Field. GW shall be responsible for all connection, disconnection, repair, and service costs for utilities related to the Exclusive Use Improvements.

(d) If at any time during the Term of this Agreement either Party's actual maintenance and operations expenditures substantially deviate from the maintenance plan and budget established prior to the then-current fiscal year, such Party shall inform the other Party of such deviation, and the Parties shall work in good faith to develop a mutually acceptable revised facility maintenance plan and budget for that fiscal year.

40. Payments by GW of Additional Costs for Tournaments. If, during the Term of this Agreement, GW schedules, with the County's prior knowledge and approval, an in-season or post-season tournament at the Field, and the requirements for such event necessitate additional use and operational support from the County, in excess of the support normally provided for a regular season game, as determined by the County, then GW shall reimburse the County for all actual and reasonable additional expenses associated with such use. GW shall reimburse the County for such additional expenses within thirty (30) days after receipt of an invoice from the County. GW shall be solely responsible for arranging for, and paying all the costs associated with, third-party vendor security, traffic management, overflow parking, and other costs associated with such tournament. For playoffs and tournaments, the Parties will work together in good faith to expand the spectator seating to accommodate a larger crowd, if needed.

41. Partial Payments by GW for Synthetic Turf and Drainage System Repair and Replacement. The Parties shall, on an at least annual basis, conduct a joint review of the condition of the synthetic turf to evaluate its condition and wear. If at any point during the first sixteen (16) years of the Term the County determines that repair to or replacement of the synthetic turf or drainage system improvement is necessary, then GW shall pay to the County a portion, consistent with GW's percentage use of Field, of the County's incurred cost for any such repair or replacement. The County shall calculate GW's percentage use of the Field based on the County's records for all scheduled uses of the Field for the previous eight (8) years. This

obligation of GW to contribute to the cost of repair and replacement the turf and drainage system shall extend beyond the end of the useful life (“Useful Life”) of such improvements, if, and when, the County reasonably deems such repair or replacement to be required. The Useful Life of the synthetic turf and drainage system improvements is expected, at a minimum, to be equal to or longer than warranty typically offered by the manufacturer. A determination that the synthetic turf field or the drainage system requires repair or replacement shall be made by the County, in its sole discretion, in accordance with the standards and schedule used by the County for replacing or repairing the other synthetic turf field improvements at Barcroft Park. The County shall provide GW thirty (30) days prior written notice of the County’s determination and intent to proceed with repairs or replacement, along with an estimate of the cost for the work. GW shall make payment to the County of its share of such repair or replacement costs within thirty (30) days after receipt of an invoice from the County. If GW does not make timely payment of the invoiced costs, the County shall after giving GW not less than thirty (30) days prior written notice of GW's failure to make timely payment, have the right to immediately terminate this Agreement, without any further liability or obligation of the County to GW. The County further may enforce this section and recover, as permitted by this Agreement and law, GW’s share of the cost of such repairs or improvements.

IV. GENERAL PROVISIONS

42. No Liability; Indemnification.

(a) The existence and use of all personal property of GW, its authorized employees, contractors, subcontractors, students, and agents, in and/or on the Field, shall be and remain, under any and all circumstances, at the sole risk and responsibility of GW. The County shall not be liable to any person or entity for any damage to, or loss of, such property, or for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the entry upon or the use of the Field, except to the extent solely caused by the gross negligence or willful misconduct of the County, its elected and appointed officials, officers, employees, contractors and agents. GW hereby covenants to defend, indemnify and hold harmless the County, and its elected and appointed officials, officers, employees, contractors, agents and successors and assigns from all liability, costs and expenses for lost, stolen, damaged or destroyed personal property arising out of the entry upon, or use of, the Field pursuant to the terms of this Agreement by GW, its authorized employees, contractors, subcontractors, and agents, except to the extent solely caused by the gross negligence or willful misconduct of the County, its elected and appointed officials, officers, employees, contractors and agents.

(b) GW acknowledges and agrees that the County, its elected and appointed officials, officers, employees, contractors, agents and successors and assigns shall neither be liable for, nor responsible for, any damages, special, consequential, punitive or otherwise, as a result of any claim relating to this Agreement or the use of, or entry upon, the Field by GW, its authorized employees, contractors, subcontractors, agents, and invitees, pursuant to the terms of this Agreement.

(c) GW hereby covenants to save, defend, indemnify and hold harmless the County, and

its elected and appointed officials, officers, employees, contractors, agents, successors and assigns, from and against all claims, losses, damages, injuries, fines, penalties, causes of action, liabilities, costs and expenses (including court costs and attorney's fees) arising from, or in any way connected to the Park Project, or GW's acts or omissions in performance or non-performance of its obligations under this Agreement, including, but not limited to, any injury or other damage to any person or property resulting from GW's acts or omissions in performance or non-performance of its obligations under this Agreement, which occurs within or upon the Field, or which is caused by the negligence or willful misconduct of GW, its authorized employees, contractors, subcontractors, and agents.

(d) All of GW's obligations and liabilities set forth in this section 42 shall survive the expiration or termination of this Agreement.

43. Insurance.

(a) GW, at its sole cost and expense, shall obtain and maintain a policy of commercial general liability insurance from an insurance carrier satisfactory to the County, providing coverage for claims arising from, or in connection with, the exercise of the use and permissions granted hereunder to GW, for personal injury, death, property damage or loss suffered by any person or entity, with a minimum coverage of not less than Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) annual aggregate. Such insurance coverage shall protect the persons and entities indemnified under section 43 of this Agreement from liability. GW shall maintain such insurance coverage in full force and effect continuously at all times throughout the Term and for one (1) year thereafter. The insurance policy and policy limits shall neither operate as a limit of GW's liability to the County under this Agreement, nor as a limit of GW's duty of indemnification hereunder.

(b) Prior to the Effective Date of this Agreement, and at the beginning of each year thereafter throughout the Term and for one (1) year thereafter, GW shall furnish the County with certificates of insurance indicating that the insurance is prepaid for a one year policy period, that it insures all activities contemplated under this Agreement, and that it contains a thirty (30) day notice provision prior to termination, cancellation, non-renewal, material change, or reduction of coverage except in the event of nonpayment of premium in which case such notice provision shall be three (3) business days. The policy shall provide, among other things, that the actions or omissions of any insured Party shall not invalidate the policy as against any other insured Party or otherwise adversely affect the rights of any insured Party under the policy. No provision contained in this Agreement shall act as a waiver of any rights of subrogation of the insurance company which is the primary insurer for the County.

(c) The insurance hereby required to be carried by GW shall be with an insurance company licensed to do business in the Commonwealth of Virginia and rated not lower than A-VII in the A.M. Best Rating Guide. Such insurance shall:

(i) contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured has released its right of action against any Party

before the occurrence of a loss;

(ii) name the County and others listed herein as additional insureds and loss payees; and

(iii) provide that the policy shall not be canceled, failed to be renewed or materially amended without at least thirty (30) days' prior written notice to the County except in the event of nonpayment of a premium, in which case such notice provision shall be three (3) business days. On or before the Effective Date and, thereafter, not less than thirty (30) days before the expiration date of the insurance policy, a certificate of insurance, together with evidence satisfactory to the County of the payment of all premiums for such policy, shall be delivered to the County. The County, its elected and appointed officials, officers, employees, contractors and agents shall be named as additional insureds under all coverage maintained by GW hereunder and the certificate of insurance must so state. Coverage afforded under this section shall be primary as respects the County, its elected and appointed officials, officers, employees, contractors and agents.

(d) The following definition of the term "County" applies to all insurance policies issued in fulfillment of GW's obligations contained in this Agreement:

"The County Board of Arlington County, Virginia, its officers, elected and appointed officials, employees, agents and contractors, and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly or hereinafter constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the County Board of Arlington County, Virginia, or one in which controlling interest is vested in Arlington County or Arlington County Constitutional Officers."

(e) All insurance policies and certificates of insurance hereby required of GW shall be endorsed to include the following provision:

"It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until thirty (30) days prior written notice has been given to Arlington County, Virginia."

44. Notices. No notice, request, approval, consent, waiver, demand or other communication which may be or is required or permitted to be given under this Agreement shall be effective unless the same is in writing and hand-delivered, sent by registered or certified mail, return receipt requested, first-class postage prepaid, or sent with charges prepaid by a nationally-recognized air courier service, addressed to the County or GW at their respective addresses set forth below, or at any other address of which any Party shall notify the other Party. Notice by e-mail is acceptable for meeting notices and meeting rescheduling. All other communications, if delivered by hand, shall be deemed to have been given when delivered, or if sent by registered or certified mail, shall be deemed to have been given two (2) days after the date of mailing, or if sent by a nationally-recognized air courier service,

shall be deemed to have been given one (1) business day after the date of deposit of the notice with such service. Any notice required by this Agreement shall be addressed as follows:

If to the County:

Chief, Park Development Division
Department of Parks, Recreation and Cultural Resources
Arlington County, Virginia
2100 Clarendon Blvd., Ste. 414
Arlington, VA 22201

With a copy to:

County Manager
Office of the County Manager
Arlington County, Virginia
2100 Clarendon Blvd., Ste. 300
Arlington, VA 22201

If to GW:

Louis H. Katz
Executive Vice President and Treasurer
The George Washington University
Suite 701
2121 Eye Street, NW
Washington, DC 20052

With a copy to:

Office of the Senior Vice President and General Counsel
The George Washington University
2100 Pennsylvania Avenue, NW Suite 250
Washington, DC 20052

Any Party may, by notice given at least five (5) days before such change becomes effective, designate a new address to which such notices shall be sent.

45. No Permanent Rights. The County and GW acknowledge that by this Agreement the County grants GW conditional use of the Field, as mere permission, for GW's sole use and benefit. The Parties agree that there is no intention whatsoever to grant to GW, its successors in title or interest, or to any other person or entity, any permanent rights or legal interests, of any kind, in the Field or in County personal property. This Agreement shall not create a benefit for any person or entity other than the Parties hereto.

46. Termination; Closure of Field by County.

- (a) Except as otherwise specifically provided in this Agreement, and notwithstanding any other provisions of this Agreement to the contrary, if GW violates or fails to meet any requirement of this Agreement, or of any County permit or ordinance, then the County may provide GW with written notice of such violations or failures. If GW's violation or failure continues for thirty (30) days from the date the County sends the written notice of violation or failure to GW, then the County shall have the right to terminate this Agreement immediately or at any time thereafter, without penalty, without payment or reimbursement of monies, and without any liability whatsoever to the County. Provided, however, if GW's violation or failure is not reasonably susceptible of cure within thirty (30) days, then the time to cure shall be extended for a reasonable period of time provided GW demonstrates to the County's satisfaction that it is making a good faith diligent effort to cure the violation or failure. If this Agreement is terminated by the County pursuant to this subparagraph, then the County shall have the right to prevent GW's entry to or access upon the Field and to immediately remove, at the County's sole option, and at GW's sole cost, risk, and expense, any or all of the property of GW located upon the Field. If GW fails to terminate its use of the Field upon the expiration or earlier termination of this Agreement, then GW shall be deemed a trespasser. In the event of this Agreement is terminated by the County pursuant to this subparagraph, GW shall be and remain liable to the County for all monetary and other damages, liabilities, costs, and expenses arising its violation or failure described in the County notice, and the County shall have no further obligations to GW.
- (b) Notwithstanding any provision of this Agreement to the contrary, the County Manager shall have the right and authority to temporarily or permanently close the Field, in the interest of public health, safety, welfare, or emergency, without any liability of the County whatsoever to GW or others.
- (c) After Final Acceptance by the County Manager or her designee of the work performed for the Park Project, GW may terminate this Agreement at any time.

47. Inspection. The County, its employees, contractors, subcontractors, and authorized agents, shall have the right, at all reasonable times and without prior notice to GW, to enter upon the Field site to conduct all required, necessary, or other inspections deemed prudent in the County's sole discretion. Any such examination or inspection shall not be express or implied acceptance or approval by the County of any use of the Field, or any work being performed thereon.

48. No Partnership, Joint Venture, Lease, or Easement; Use by County. The Parties hereby agree that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or a relationship of landlord and tenant between the County and GW. This Agreement does not grant, convey or provide to GW, or to others, an ownership, leasehold interest, easement, or other property right in any portion of the Field. Rather, this Agreement provides to GW mere permission to use the Field, consistent with this Agreement. The County, its employees, authorized contractors, and subcontractors shall have the right, at all times, to enter upon and use the Field in any manner not inconsistent

with the use rights granted GW by the Agreement. The County shall retain and have full ownership of the Field and the Improvements.

49. Role of the County/County Decisions; No Waiver. The execution of this Agreement on behalf of the County shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, or for any other governmental approval or consent required to be obtained by GW from the County or other governmental authorities. Nothing in this Agreement shall be construed to waive any of the County's powers, rights or obligations as a governing authority or local governing body, whether or not affecting the Field, including, but not limited to, its police power, right to grant or deny permits, right to collect taxes or fees, or any other power, right or obligation whatsoever.
50. No Waiver of Sovereign Immunity by County. Nothing in this Agreement, nor any action taken by the County pursuant to this Agreement, nor any document which arises out of this Agreement, shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the County, or of its elected and appointed officials, officers and employees.
51. No Rights in Third Parties. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a Party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise.
52. No Assignment or Transfer. GW shall not assign, transfer, convey, or otherwise dispose of any or all of its rights, obligations, permissions, or interests under this Agreement. All of GW's obligations and liabilities set forth in this Agreement shall survive the expiration or termination of this Agreement.
53. No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this Agreement to the contrary, the County shall have no obligation to explicitly or implicitly indemnify or hold harmless GW or any third party or parties from any liability whatsoever, except insofar as such liability is the result of negligence of the County.
54. Appropriation of Funds. All of the County's obligations under this Agreement shall be fully subject to, and contingent upon, the appropriation of funds by the County Board of Arlington County, Virginia, for the specific purpose of satisfying the obligations of the County pursuant to this Agreement.
55. Severability. If any term or provision of this Agreement shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement, other than those terms or provisions which are held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
56. Survival. Expiration or termination of this Agreement for any cause shall not release either Party from any liability that, at the time of termination, has already accrued to it or that may thereafter accrue with respect to acts or omission made prior to such termination, and shall

not affect in any way the survival of any right or obligation of either Party which is expressly or implicitly stated in this Agreement to survive termination hereof.

57. Compliance with Laws. In performing its obligations under this Agreement, GW shall comply with applicable federal, state, and local laws, ordinances, regulations, policies and procedures.
58. Entire Agreement; Applicable Law. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof. The Parties expressly acknowledge and represent that they have not relied on any oral or written representations, warranties, promises, statements, covenants or agreements, express or implied, direct or indirect, given or made by or on behalf of the other, except those representations, if any, that are expressly stated herein. This Agreement shall not be modified, changed or terminated, in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the County and GW. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. All legal actions instituted by the County or GW concerning this Agreement shall be filed in the Arlington County General District Court or Circuit Court, and in no other court whatsoever.
59. Incorporation of Recitals. The foregoing recitals are fully incorporated into this Agreement by this reference.
60. Approval of Agreement by the County; Effective Date. The term "days", when used in this Agreement, unless otherwise specifically noted, means calendar days. This Agreement shall not become effective unless and until the County Board approves this Agreement and it is signed on behalf of the County. If this Agreement is not approved by the County Board and executed by an authorized person, then no liability whatsoever shall accrue to the County or GW, and the County and GW shall have no obligations whatsoever to each other. This Agreement shall be effective on the date when it is last signed by all of the Parties ("the Effective Date").

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, the County and GW have caused this Agreement to be executed and delivered as their respective acts, intending to be legally bound by its terms.

THE GEORGE WASHINGTON UNIVERSITY

By: _____
Printed Name: _____
Title: _____
Date: _____

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

By: _____
Printed Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

County Attorney

EXHIBIT A - SCOPE OF IMPROVEMENTS

1. Parking: Reconfigure, pave and stripe parking lot to accommodate 100 cars and 2 buses.
2. Entry Plaza: New Entry Plaza from parking lot to field area.
3. Locker rooms: The design should allow for the addition of team locker rooms and a club house in the future.
4. Press Box and Concessions: Proposed two-story facility to accommodate press box area and concessions sales.
5. Restrooms: The design shall include appropriate-sized public restrooms for future expansion and, in the interim, a location and detailed plans for temporary restroom facilities.
6. Seating: New seating for 300 - 500 spectators (existing seating is approximately 400), proposed in a U or boomerang shaped bowl between 1st and 3rd base with controlled access preferred for potential ticket sales.
7. Dugouts: Dugouts to accommodate forty (40) players/coaches/trainers with bench seating and storage.
8. Deck Area: GW, at its option, may provide an area for hosting events or social outings, or alternatively, space identified for location in the future. Any such deck area shall be subject to non-exclusive use by GW and the County.
9. Playing Field: Synthetic turf field (including base paths and home plate area) with clay pitcher's mound.
10. Bullpens: New bullpen areas along left and right field lines.
11. Scoreboard: GW, at its option, may replace the existing scoreboard with a new scoreboard with sound and video display.
12. Fencing: Replace existing fencing and incorporate a "batter's eye".
13. Lighting: Existing field lighting to remain; additional site lighting to be included.
14. Batting Cage: Replace existing batting cage and add appropriate lighting for that area.

EXHIBIT B

THE GEORGE WASHINGTON UNIVERSITY & ARLINGTON COUNTY PRCR
BARCROFT PARK BASEBALL FACILITY:
IDENTITY, ADVERTISING & DONOR ACKNOWLEDGMENT PLAN
As Proposed by GW to Arlington County on September 13, 2011

Introduction

The George Washington University (GW) and Arlington County Parks and Recreation and Cultural Resources (PRCR) (the “Parties”) are preparing to enter into a public-private partnership to significantly improve the existing PRCR baseball diamond facility at Barcroft Park (“Barcroft #6”). The proposed improvements to Barcroft #6, described more fully in the Memorandum of Understanding (MOU) between the Parties, will provide enhanced opportunities to incorporate various GW identity, advertising and donor acknowledgment elements throughout the facility. GW is interested in appropriately pursuing these opportunities to help establish a true “ballpark” experience for players and spectators alike as well as to generate revenue that will be necessary to support GW’s investment in the initial improvements (estimated at \$3 - \$4 million) and ongoing maintenance costs for the facility.

As referenced in the MOU, this Identity, Advertising & Donor Acknowledgment Plan (the “Plan”) establishes guidelines regarding the types of identity, advertising and donor acknowledgement opportunities that may be incorporated in the enhanced Barcroft #6 facility.

Overview of Identity, Advertising, and Donor Acknowledgment Opportunities

A. Identity Elements

As has been discussed between the Parties, GW does not seek to rename the PRCR Barcroft Park facility and it is envisioned and anticipated by both Parties that the diamond facility will continue to be known widely as Barcroft Park. GW is, however, interested in incorporating various identifying elements within the proposed improvements that would help create an environment that will identify the facility as the “*Home of the Colonials*”.

Priority locations for these elements include:

- Scoreboard
- Dugouts
- Turf insignias in outfield and behind home plate
- On deck batter and batting practice pads (temporary/removable)
- Outfield and other walls surrounding the playing field (e.g., on safety padding)
- Banners/pennants on foul poles and/or light poles
- Entry signs along South Four Mile Run and at entry plaza area within facility
- Concession area
- Press Box

Additional locations where identity elements may be incorporated include:

- Fencing/screening apparatus
- Seating areas
- Batting shell
- Temporary kiosks (suitable for special announcements or events)

Illustrative representations of these types of identifying elements to be incorporated in the proposed enhancements to Barcroft #6 are included in the exhibits attached hereto.

In addition, incorporating a “buff and blue” color scheme for various park elements (e.g., wayfinding and room signage, etc.) in a design consistent with the existing Barcroft Park venue will help create a cohesive appearance for Barcroft #6 while still maintaining continuity with the rest of the Park.

B. Advertising

The enhanced Barcroft #6 facilities will provide several new opportunities to include appropriate advertising for mutually agreeable sponsors that will not only generate necessary revenue but will also enhance the player and spectator “ballpark” experience at Barcroft #6. Certain forms of advertising will be permanent (e.g., a major scoreboard sponsor), while other advertising will be temporary/seasonal in nature.

Locations suitable for advertising include:

- Scoreboard
- Permanent (e.g., major sponsor identified on scoreboard)
- Temporary (e.g., digital displays during games for corporate promotions and special events)
- Press Box
- Seating area
- Concession area
- Dugouts
- Outfield fence
- Foulpoles and lightpoles
- Tarps and tarp covers
- Trash cans
- Banners and kiosks for special events and promotions (temporary)
- Batting practice pads (temporary)

Illustrative representations of these types of advertising opportunities to be incorporated in the proposed enhancements to Barcroft #6 are included in the exhibits attached hereto.

C. Donor Acknowledgment Opportunities

GW is actively pursuing targeted fundraising and development activities among interested donors in order to help support the university's initial and on-going financial investment in the Barcroft #6 facility. A key component in the success of this effort will be the opportunity to acknowledge significant benefactors and donors and their commitment to this project at appropriate locations throughout the improved facility.

The design team of Bowie Gridley/DLR has identified several suitable locations for donor acknowledgment elements specific to the design of the enhanced Barcroft #6 facility. These donor acknowledgment concepts include:

1. Donor Wall

A "Donor Wall" recognizing key benefactors has been incorporated into the design of the entry plaza of the playing field. In addition to acknowledging key donors, the donor wall area may also identify outstanding athletes who played at Barcroft.

2. Donor Acknowledgment Plaques and Recognition

In addition to the Donor Wall concept, there are numerous locations, facility components, rooms, etc. included in the scope of improvements to Barcroft #6 that provide excellent opportunities for individual donor acknowledgement in the form of an appropriately sized and designed plaque or other suitable recognition.

These locations include:

- Press Box
- Concession area
- Ticket area
- Dugouts
- Bullpens
- Entry Plaza, concourse and seating entrances
- Stadium seating sections
- Storage rooms
- Batting cage
- Restrooms
- Locker room/clubhouse

Proposed design concepts for the donor wall and acknowledgment plaques are included in the exhibits attached hereto.

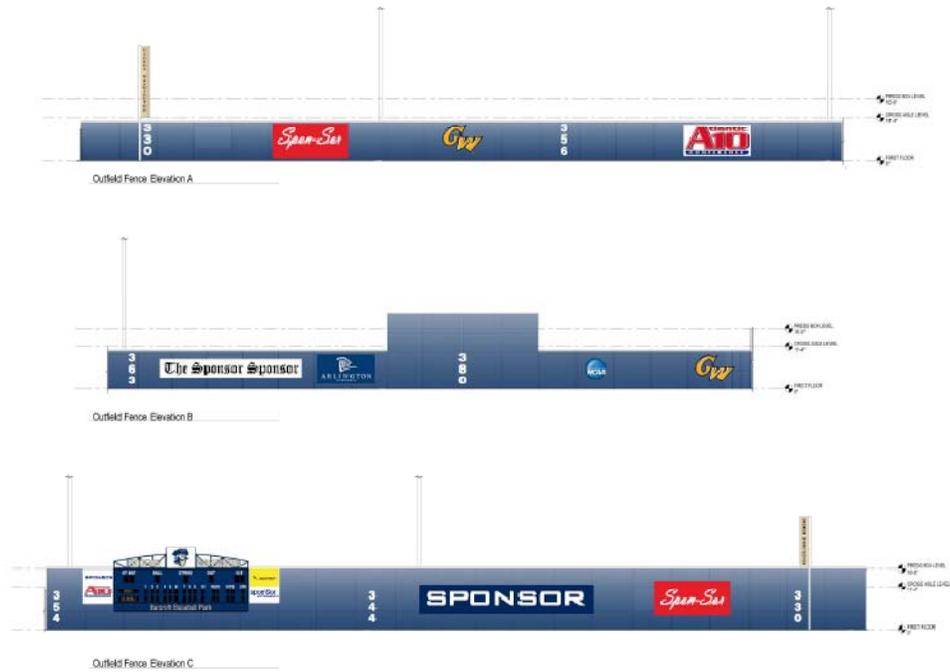
In the event a major donor is identified with a specific interest in pursuing the naming of the playing field, such naming opportunity would require review and approval pursuant to PRCR's current naming policy. In such an event, it is envisioned that the field name would be incorporated at appropriate locations within the Barcroft Park facility, including on the field-facing façade of the press box and the proposed entry gate. These concepts are as illustrated in the supplemental exhibits attached hereto.

Administration of the Plan

Representatives from GW and the County Manager or her designee shall meet regularly throughout the design and construction process to ensure that the guidelines and standards set forth in this Plan are properly incorporated into the Barcroft #6 improvements provided for under the MOU. In addition, GW and the County Manger or her designee shall meet annually or as otherwise required to:

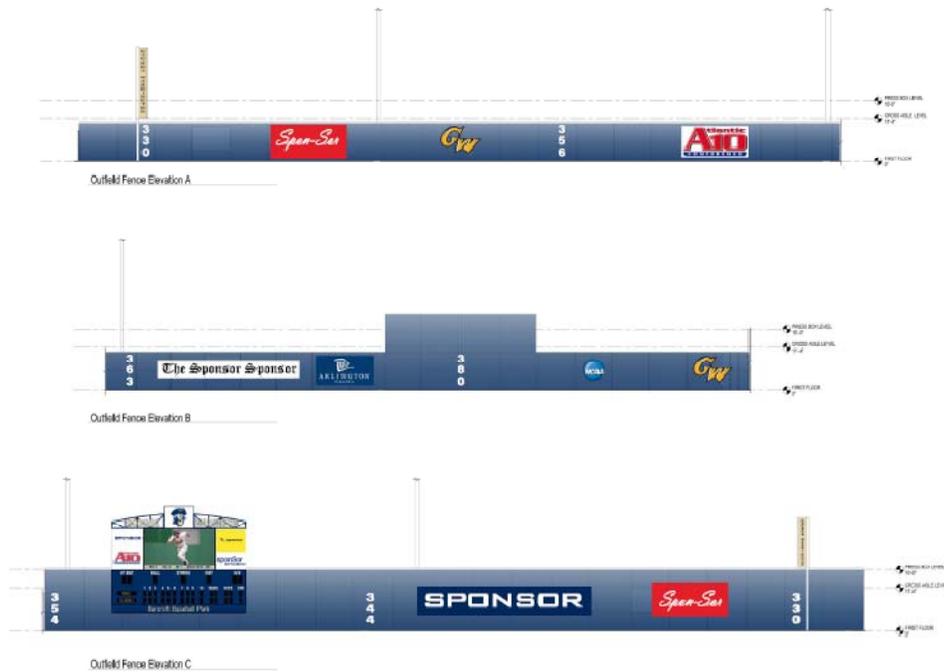
- (a) Identify the need to update or refurbish any of the components described in the *Identity Elements* section of this Plan;
- (b) Review GW's advertising plan for the upcoming baseball season to ensure that proposed sponsors are acceptable to the County Manger or her designee (which acceptance shall not be unreasonably withheld) and that specific advertising elements comport with the guidelines set forth in the *Advertising* section of this Plan; and
- (c) Review the inventory of GW's donor acknowledgment elements (e.g., additions to donor wall and individual donor acknowledgement plaques) as set forth in the *Donor Acknowledgment Opportunities* section of this Plan.

EXHIBITS



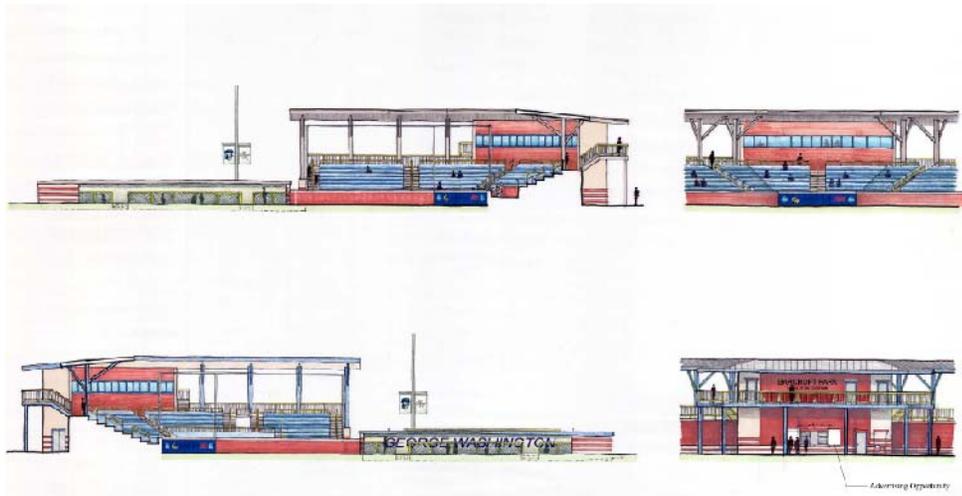
Identity, Advertising & Donor Acknowledgement Plan
Barcroft Park, Arlington VA

Outfield Elevations (Enhanced Existing Scoreboard)
Illustrative Concepts
9.12.11



Identity, Advertising & Donor Acknowledgement Plan
Barcroft Park, Arlington VA

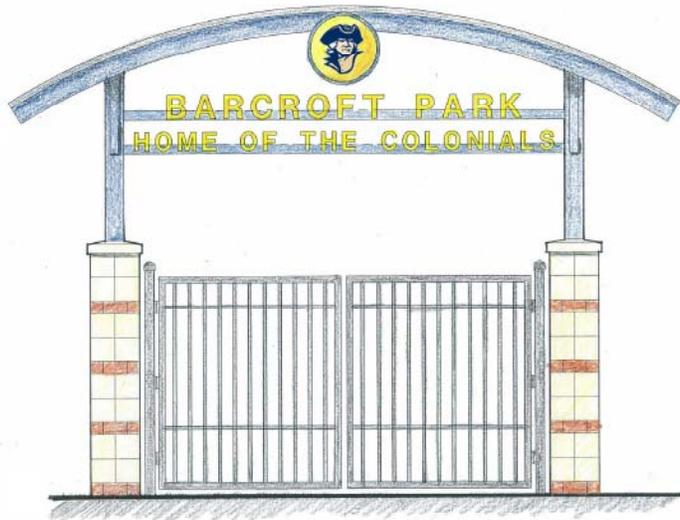
Outfield Elevations (New Scoreboard)
Illustrative Concepts
9.12.11



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Identity, Advertising & Donor Acknowledgement Plan
 Barcroft Park, Arlington VA

Grandstand, Press Box & Concessions
 Illustrative Concepts
 9.12.11



b|g|a

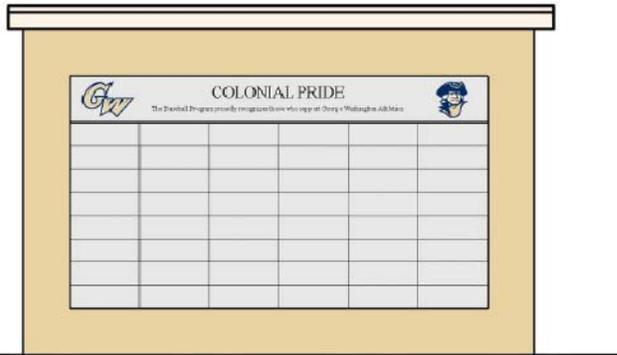
Identity, Advertising & Donor Acknowledgement Plan
 Barcroft Park, Arlington VA

Entry Gate
 Illustrative Concepts
 9.12.11



Identity, Advertising & Donor Acknowledgement Plan
Barcroft Park, Arlington VA

Entry Sign
at South Four Mile Run
Illustrative Concepts
9.12.11



Donor Wall



Plaque



Identity, Advertising & Donor Acknowledgement Plan
Barcroft Park, Arlington VA

Donor Acknowledgement
Elements
Illustrative Concepts
9.12.11

SUPPLEMENTAL EXHIBITS

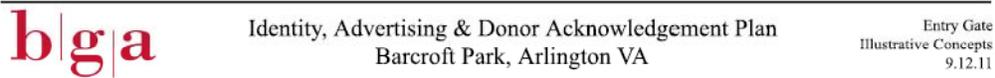
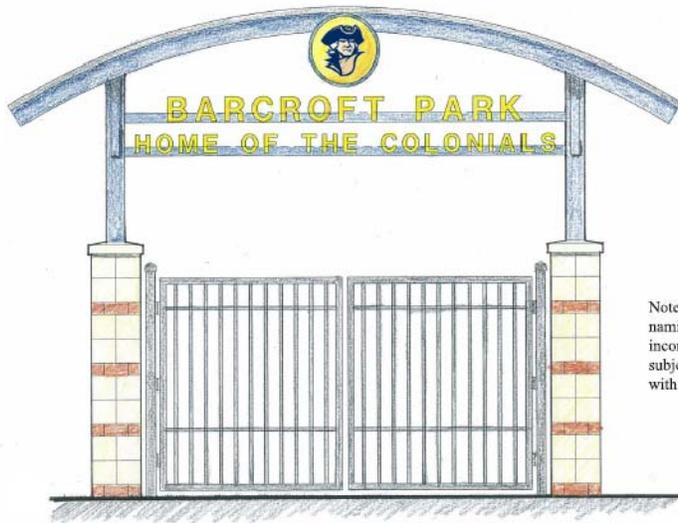
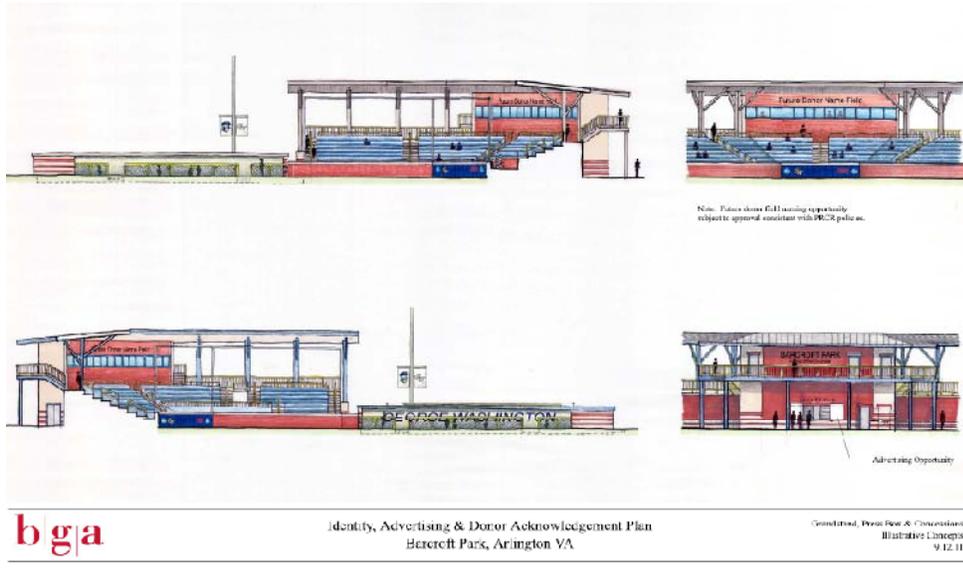


EXHIBIT C - MAP OF BARCROFT #6

