

MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CONSERVATION AND RECREATION
AND THE CITY OF SOMERVILLE
FOR OPERATION, MANAGEMENT AND MAINTENANCE OF THE
DILBOY COMPLEX, SOMERVILLE, MA

PARTIES

This Memorandum of Agreement (“Agreement”) is made by and between the Commonwealth of Massachusetts acting by and through its Department of Conservation and Recreation, with offices at 251 Causeway Street, Boston, MA 02114 (“DCR”), and the City of Somerville, a municipal corporation with its principal offices at Somerville City Hall, 93 Highland Avenue, Somerville, MA 02143 (the “City”). The DCR and the City are each referred to as a Party to this Agreement and are collectively referred to as the “Parties” to this Agreement.

AUTHORITY

DCR acts pursuant to its authority set forth in G.L. c. 92, § 33 and 37, c. 132A §§ 2D and 7 and the rules and regulations promulgated thereunder, including those under Titles 302, 304 and 350 of the Code of Massachusetts Regulations as amended, and all other applicable and enabling powers. All obligations of the Department of Conservation and Recreation hereunder are subject to the availability of funds and to such direction and instructions as may have been or are hereinafter provided by the Governor or the General Court. The City enters this Agreement pursuant to its authorized powers as a municipality.

PURPOSES; RECITALS

WHEREAS, the land and facilities known as the “Dilboy Complex” located along Alewife Brook Parkway, in Suffolk County, Massachusetts which includes, from the north to the south: the George Dilboy Memorial Stadium (the “Stadium”) with an adjacent and northerly parking lot and an enclosed track and sports field with lights, bleachers and a sound system; the Dilboy Memorial Swimming and Wading Pool with an adjacent lined parking area; the Dilboy Auxiliary Tennis Courts (two); basketball courts (two); the Dilboy Auxiliary Diamonds (with two skin clay infields); a Playground Area; and all installed equipment, mechanical systems, etc., as indicated in **Exhibit A** attached hereto (the “Premises”), are in the care, custody, and control of the Commonwealth of Massachusetts, acting by and through DCR; and

WHEREAS, the City desires to operate, manage and maintain the Premises;

NOW, THEREFORE, DCR hereby issues this license to the City for the operation, management and maintenance of the Premises in accordance with the terms and conditions set forth below:

1. Term

This Agreement shall commence as of July 1, 2019 and terminate on June 30, 2029, unless sooner terminated in accordance with the provisions of this Agreement.

2. General Management Requirements:

- a. Unless otherwise provided in this Agreement, any and all provisions contained within this document shall be performed and conducted at the sole and exclusive expense and cost of the

City and where such obligations do not have an objective standard, to the reasonable satisfaction of the DCR.

- b. The City hereby agrees to operate, manage and maintain the Premises as facilities available to all citizens of Massachusetts and members of the public equally. . The City hereby agrees not to grant a preference to residents of any municipality over any other resident of the Commonwealth; however, the DCR hereby authorizes the City to provide scheduling preferences to youth and scholastic organizations of Somerville so long as other members of the public (individuals and groups) are provided fair, reasonable and appropriate regular access to the Premises. The City shall be responsible for scheduling all public and private use at the Premises and the settlement of disputes concerning such scheduling.
- c. The Premises are licensed to the City in an "AS-IS, WHERE-IS" condition. The City acknowledges that it has inspected the Premises and agrees that the Premises are in satisfactory condition suitable for the purposes of this Agreement and the City has not relied upon representations or statements of DCR, its officers, employees or agents with respect to the foregoing. It is expressly agreed that DCR has no obligation to make any alterations, repairs, additions or improvements to the Premises. The City shall not to remove or replace fixtures on the Premises (e.g., benches, water fountains, lighting, fencing and installed equipment, etc.) without prior written approval from DCR. Such approval shall not be unreasonably withheld.
- d. Compliance with Laws.
 - i. The City shall comply with all applicable federal, state and local laws, rules and regulations concerning the operation of the Premises. Specifically, the City shall comply with DCR Park Regulations, 302 CMR 12.00 an unofficial copy of which is available at: <https://www.mass.gov/regulations/302-CMR-12-parks-and-recreation> and with laws regarding the safe operation of a public aquatic facility including but not limited to 105 CMR 435.00 of the State Sanitary Code for the Minimum Standards for Swimming Pools, an unofficial copy of which is available at: <http://www.mass.gov/courts/docs/lawlib/104-105cmr/105cmr435.pdf>. The City shall cure any violation of any applicable federal, state and local law, rule or regulation after notice of such violation or suspension is delivered to the City by the authority or DCR. The DCR may temporarily suspend the City's operation of the Premises in the event of the City's non-compliance and failure to cure such violations.
 - ii. The City shall be responsible for obtaining any and all permits, licenses and certificates which may be required to operate the Premises. Any applications for permits, licenses, certificates, or the like which require approval of the "landowner" shall be submitted to, and reviewed by, appropriate staff at DCR and may be signed by the Commissioner of DCR or his authorized designee. DCR agrees to reasonably cooperate in such instances.
- e. Premises Maintenance: The City shall be solely responsible for the following:
 - i. Routine daily cleaning including trash removal and recycling, graffiti removal, sweeping (internal and external) at the Premises and within a reasonable radius around the Premises;
 - ii. Snowplowing, snow and ice removal, sanding and salting where appropriate in the City's discretion;
 - iii. Perform capital repairs or improvements as described in **Exhibit B** attached hereto and incorporated herein by reference, although DCR acknowledges that performance of the

capital projects outlined in Exhibit B is contingent upon City Council appropriation of the funds necessary for the projects;

- iv. Maintenance, re-surfacing, repairs and replacement of existing equipment at and within the Premises;
- v. Pay for the cost of all utilities required to operate the Premises;
- vi. Payment of all other financial responsibilities associated with the daily operation, management and maintenance of the Premises, including but not limited to; providing year round monitoring, additional security, staffing, maintenance, and supplies necessary or appropriate for the operation of the Premises; and

f. Communication

- i. The City shall immediately (within 24 hours) verbally notify the DCR Regional Manager or, as applicable, the DCR Director of Aquatic Resources of any injuries, closures, property damage, theft, vandalism, or related incidents that occur on the Premises and shall provide written notice to the DCR within three (3) calendar days of said incident. The written notice shall provide a detailed account of the incident including but not limited to the nature of the incident, the names, addresses and contact information of any individuals involved and the names of any and all witnesses, and any agencies (federal, state, and/or local) that responded to the incident.
 - ii. If the DCR is notified by any regulatory agency having authority over the Premises that the City's operations are in violation of an applicable rule, regulation or statute, DCR shall immediately verbally notify the City of violations and provide a copy of the notification to the Permittee within five (5) business days. If the City fails to take prompt remedial measures once notified, the DCR may suspend or terminate the City's operations on all or any part of the Premises.
 - iii. Annual Meeting. Regarding Dilboy Pool, the City shall meet with the DCR Aquatics and Engineering staff on an annual basis to review past season operations, provide technical assistance, and participate in planning for future operations or development of the Pool and/or affiliated programs in November of each year. The City and DCR may hold annual joint inspections and meetings each year to discuss use, scheduling, maintenance of the athletic fields and grounds, and other pertinent issues such as snow and ice removal. Additional meetings may be held as needed.
- g. Special Events: Prior to holding any special events on the Premises where more than ten thousand (10,000) people are expected to attend, the City shall submit a Special Events Application found at <http://www.mass.gov/eea/docs/dcr/permits/2016-special-use-permit-application-instructions.pdf>) and receive a Special Use Permit from DCR Office of External Affairs, Special Events Coordinator. No alcohol may be consumed or served on the Premises without proper licensing from the Local Licensing Authority as defined under M.G.L. c.138 and written approval from the DCR Commissioner. The DCR shall have the right to object, with just reason, to any event or particular logistics for the event (e.g., timing, parking, access, number of proposed attendees, etc.). The City shall not use any part of the Premises for snow storage (snow farms), other than in regular logical areas for snow collected on the Premises (e.g., use of parking lot for snow plowed in the parking lot)..

3. Revenue, Fees, Accounting and Reports

- a. The City may charge reasonable fees to persons and/or groups entering or making use of the Premises to offset operating costs and improvement costs to the Premises. The City shall not charge a fee for access to the parking lots or the Playground Area.
- b. The City may enter into sub-license agreements for concessions, vending machines, temporary advertising (flags, banners, logos), and other purposes associated with management, operation, and maintenance on or within the Premises, provided such agreements are subject to this Agreement, and a written copy is provided to DCR in advance.
- c. The City may authorize and permit broadcast and re-broadcast, including granting broadcasting rights to any third-party, in connection with any use of the Premises and revenue therefrom shall inure to the City on such terms and conditions as the City may determine in its discretion. The City shall be responsible for obtaining broadcast waivers or licenses and compliance with copyright laws.

4. Access and Security

- a. The City shall take all necessary and reasonable steps to ensure proper monitoring, protection and security of the Premises and the property of the Commonwealth on a year-round basis throughout the Term of this Agreement and, when necessary, take corrective action(s) to remedy any problem or hazard which may cause damage to the Premises or present a hazard to the public (e.g., ensuring that recording equipment is functioning, maintaining key and access control).
- b. The City shall provide DCR with an emergency after-hours call list annually and upon any changes to the list for use in case of emergency by the police, rangers, or region staff.
- c. The City shall provide the DCR Region Director with one set of keys or fobs to the Premises and hereby agrees to provide keys and lock combinations promptly if locks are changed.

5. Construction, Modifications and Improvements

- a. Prior to undertaking any renovation, rehabilitation or construction work, the City shall apply for a DCR Construction and Access Permit (hereinafter "CAP") by submitting a detailed application and any additional documents requested by DCR Engineering/Construction Access staff. As appropriate, the City shall also submit applications, plans and specifications to other applicable local and state agencies (e.g., Massachusetts Historical Commission, Massachusetts Department of Environmental Protection (MassDEP), Executive Office of Public Safety, Building Inspector). No work may be performed until the City has received an approved and executed CAP. Said CAP will include a provision requiring the City's contractor(s) to provide DCR with performance and payment (labor and materials) bonds in a form acceptable to the DCR, executed by a surety licensed by the Commonwealth of Massachusetts Division of Insurance.
- b. The City will comply with and secure all necessary approvals or environmental reviews under all applicable federal, state, and local laws, regulations, and ordinances including but not limited to the Wetlands Protection Act (G.L. c. 131, s. 40); consultation with the Massachusetts Historical Commission under G.L. c. 9, ss. 26-27C; as well as meeting the

requirements of the federal Americans With Disabilities Act (ADA) and those set by the state Architectural Access Board.

- c. All improvements to the Premises shall immediately become part of the Premises. Personal property or equipment of the City's which is not affixed to the Premises and which can be removed without damage to the Premises shall be removed by the City within fourteen (14) calendar days after termination of this Agreement. Items installed into walls, attached to plumbing or heating systems, or installed in the ground shall become the property of DCR and remain as fixtures unless the Parties otherwise agree in writing. Any damage to any DCR property, real or personal, on the Premises or surrounding area caused by any work performed by the City or its contractors during the installation or removal of an improvement or modification by the City shall be repaired to a condition satisfactory to the DCR at the City's sole expense.
- d. Ordinary and everyday maintenance, such as minor repairs to the Premises may be performed by the City utilizing properly licensed and insured contractors and according to applicable state building code.

6. Leased Equipment

The City shall identify all leased equipment to be used by the City, if any, on the Premises subsequent to the execution of the Agreement. The City shall be responsible for any obligations under such a lease. At the expiration or termination of the Agreement, the City bears the sole responsibility for fulfilling any remaining obligations under any lease, financing or security agreements, or similar so that title to said equipment can be passed directly to the Commonwealth prior to the City vacating the Premises.

7. Hazardous Substances, Pesticides and Safety Procedures

- a. The City shall comply with all applicable local, state and federal laws, rules, and guidelines concerning the use of hazardous materials, substances or wastes on, at and within the Premises, including those laws, rules and regulations concerning storage and communication about such substances. See Massachusetts Right to Know Law, M.G.L. c. 111F, <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111F>, and State Emergency Response requirements, <https://www.mass.gov/service-details/state-emergency-response-commission-serc/resources>, and Federal reporting requirements at 40 CFR 372, <https://www.epa.gov/epcra/epcra-fact-sheet>. For further information on state and federal toxic and chemical substance management requirements, the DEP regulations and standards implementing them, and policy and guidance documents detailing how to comply see <https://www.mass.gov/service-details/toxics-chemicals-laws-rules>, last accessed 2/19/19.
- b. The City shall not use materials to control vegetation or pests without the prior approval of the DCR. Only those materials approved and registered by the Massachusetts Department of Environmental Protection (hereinafter "EPA") for the specific purpose planned shall be considered for use on the Premises. Label instructions shall be strictly followed in the preparation and application of materials, pesticides or other hazardous substances and the disposal of excess materials and containers. Any and all applications shall be duly licensed by the Commonwealth and the EPA.

- c. The City shall follow all applicable and practical workplace safety measures (labeling, carrying MSDS sheets, segregation, and workplace safety reminders) to avoid injury to people and damage to the Premises.

8. Marketing, advertising and signage

- a. The fact that the Premises constitute Commonwealth parklands under the care and control of the DCR shall be made apparent on the City's webpages, in any brochures and advertising, broadcasts including but not limited to print, radio, t.v. and internet, regarding the use and management of the area and facilities. The City hereby shall not install, move or remove any existing DCR signs, logos or emblems, unless the City receives written pre- approval from the DCR Director of External Affairs.
- b. The Permittee may sell commercial advertising on the Premises for local businesses (e.g., restaurants, theaters, retail stores, car dealerships, gas stations, auto mechanics, car washes, non-profit organizations, civic organizations, banks, credit unions, realtors, funeral homes, contractors, salons, spas, gyms, golf courses, yacht and boating clubs, repair shops, dry cleaners, laundry mats, hotels and lodging, medical, dental, and veterinarian offices, etc.). Advertisement of alcoholic beverages, any tobacco related products or item, lottery games and/or tickets, or political signs (e.g., candidate or ballot question signs) on the Premises are strictly prohibited. The City may also display event related signs, advertisements, posters and/or notices on the Premises without prior written approval of the DCR. The City shall withdraw any advertising upon request of the DCR Sponsorship and advertising signs on the Premises shall not be in violation of the policies and regulations of DCR at 302 CMR 12.00 or those of the MassDOT Outdoor Advertising Board (700 CMR 3.00) as applicable. Further, advertising on light poles on the Premises or along Alewife Brook Parkway is prohibited.
- c. The City shall not post "no trespassing" or similarly worded signs on or at the public spaces within the Premises, however, the City may post such restrictive signs in the parking lot and on the pool fence.
- d. In order to reduce unnecessary litter, except for DCR authorized emergency information, the posting, attaching or distribution of flyers on the Premises is strictly prohibited.

9. Land Markers and Monuments

The City shall take reasonable precautions to protect, in place, all public land survey monuments, public land boundary markers and private property corners. In the event that any such markers or monuments are disturbed or destroyed, the City shall take appropriate action to reestablish them in accordance with specifications of, where appropriate, the county surveyor or DCR Planning and Engineering.

10. Parking Lot

- a. The City shall designate areas of the parking lot for team buses and official vehicles so that traffic flow, parking, and public access is not impeded.
- b. When the City declares a snow emergency, it may use a portion of the parking lot for cars towed and for residential off-street parking utilizing the layout shown on Exhibit D subject to the following provisions:
 - i. Entry and exit from the lot shall not conflict with existing traffic patterns or guidance from MassDOT or DCR Traffic Engineering.

- ii. The City may install a small trailer for processing car redemption.
- iii. Any portable lights used in this lot shall be aimed away from nearby residences.
- iv. All inquiries to DCR concerning the City's use of the parking lot during a snow emergency will be redirected to the City.
- v. The City shall be responsible for paving repairs and re-striping of parking lots as needed from damage from additional plowing when using the lot for snow emergency parking and towing.

11. Pool Management Requirements

- a. The City shall operate, manage, and maintain the Dilboy Memorial Swimming Pool, Aquatic Facilities and Associated Buildings (collectively the "Pool"). The City shall operate the Pool in compliance with the standards and regulations established by the DCR and the Massachusetts Department of Public Health (hereinafter "DPH").
- b. Operating Season. The Pool shall be open for use by the general public approximately by the end of the Somerville Public School District's school year, but no later than July 1st in any given year of the Term and shall remain open until at least the third week of August (late June-August collectively referred to as the "Pool Operating Season") provided the City can properly and safely staff the pool with certified lifeguards and personnel.
- c. Employees
 - 1) The City shall provide adequate onsite supervisory staff as appropriate for the hours of operation to provide for the continuous supervision of staff, patrons and public safety. Such supervisory staff shall include a designated Head Lifeguard as well as a pool manager and assistant pool manager certified as either an Aquatic Facility Operator or a Certified Pool Operator to supervise water quality management and technical pool operations. These persons shall monitor pool operations on a daily basis, respond to emergencies and adjust water chemistry as necessary throughout the entire season.
 - 2) The City shall provide an adequate number of lifeguards (i.e., two (2) guards on deck while people are in the water and an additional lifeguard for every additional twenty-five (25) persons) as appropriate for the hours of operation as required by DPH or its local agents. Lifeguard certificates or copies of certificates must be kept onsite. Said lifeguards shall be American Red Cross or YMCA certified.
 - 3) The City shall provide functioning whistles and bull horns or other appropriate voice amplification devices to all lifeguards on duty.
 - 4) The City shall ensure that its employees are aware of and comply with the DCR's standard pool operating procedures and other applicable federal, state, and local laws, regulations and bylaws.
 - 5) The City shall deliver to the DCR Director of Aquatics and Regional Director an up-to-date list of all employees with contact information at the start of each operating season and to notify DCR when changes to the staff are made and provide additional contact information.

d. Pool Procedures and Reporting

- 1) Upon execution of the Agreement, the Department shall provide the City with: a copy of the DCR Operations and Maintenance Manual for the Dilboy Memorial Swimming and Wading Pool; the DCR Pool Log book for the appropriate season; and daily report forms, first aid report forms, the Pool Facility Certification to Open form, the Pool Facility Season Close Out form and other forms and reporting documents (e.g., narrative sheets, police detail forms, and backwash logs).
- 2) DCR in collaboration with DPH conducts a two-day pool practicum (“Pool Practicum”) to review and practice management procedures including lifeguarding responsibilities, water quality testing, incident and first aid response, chemical storage and a walk through of the State Sanitary Code inspection report. The City’s pool manager or assistant pool manager is encouraged to attend the Pool Practicum. If attendance at the scheduled Pool Practicum is not feasible, the City shall discuss alternative modes of training with the DCR Director of Aquatics.
- 3) The City shall maintain operational records according to the standards identified and set forth by DCR in the DCR Log Book, attached hereto and incorporated herein by reference as part of Exhibit F, including the following throughout the Pool Operating Season:
 - i. daily, weekly, and monthly attendance numbers;
 - ii. water quality reports;
 - iii. in-service training reports;
 - iv. detailed listings of programs and attendance; and
 - v. first-aid, rescue, and incident reports.

The DCR Log Book, updated daily, shall be made available for review by DCR’s Aquatics Coordinator and Regional Staff upon inspection with or without prior notice. Copies of the above-described reports and associated data shall be delivered to DCR’s Statewide Aquatics Coordinator no later than November 30th of each year.

e. Pool Facility Maintenance

- 1) The City shall maintain the Pool in a safe and sanitary condition which shall include, but not be limited to, routine daily cleaning, minor repairs, pool water management, lawn and landscape care. Bathrooms shall be cleaned hourly during hours of operation and checked regularly to ensure that there are adequate supplies (e.g., soap, toilet paper, paper towels). Bathroom facility defects (e.g., improper drainage, broken locks, plumbing defects) shall be identified and corrected. Sanitary conditions and the cleaning schedule shall be recorded in the Pool Log Book.
- 2) The City shall maintain the mechanical systems of the Pool and Aquatic facilities in accordance with the DCR Pool Manual. Such maintenance shall include but not be limited to all pool related systems and equipment such as filtration equipment, circulation equipment, chemical feed pumps, chemical feed controllers, CO2 feed systems, sodium hypochlorite tanks, suction prevention devices, surge tanks, pressure gauges, flow meters, pumps, piping, valves, strainers, hoses, injectors, sensor probes,

vacuums, cleaning systems, plumbing, ladders, guard chairs, railings, pool lifts for Universal Access, lane lines, water slides, fixtures, and wires, etc., in a condition equal to or better than when the Agreement Term commenced. The City agrees to replace such equipment lost or damaged due to improper maintenance, use or care.

- 3) The City shall either engage a qualified and insured contractor familiar with large public swimming pool mechanical systems and operations ("Pool Maintenance Contractor") or to demonstrate to and receive approval from the DCR Director of Aquatics that an in-house employee ("Pool Maintenance Employee") or department has comparable skills to conduct the timely and proper seasonal startup (opening) and winterization (closing) of the Pool. The City agrees that if a Pool Maintenance Contractor is engaged, said Contractor is available for the duration of the Pool Operating Season to address maintenance issues.
- 4) Upon request by the City, DCR may provide "in-kind" technical support and oversight for the purpose of ensuring proper operation, start-up, and winterization during the entire Term of the Agreement. The City's Pool Maintenance Contractor or Pool Maintenance Employee(s) shall attend any technical support meetings or visits by DCR.
- 5) Outside the Operating Season, the City hereby agrees inspect the Pool no less than once every six (6) weeks to inspect for winter storm damage and vandalism. The City shall address any damage and vandalism in a timely manner. All the pool mechanical equipment shall be inspected by the City for any problems such as water within the filtration system or current or past filter room flooding, broken piping or other items out the ordinary. Each pump shall be started and run for a 30-45 second cycle.
- 6) The City shall obtain all chemicals including chlorine, CO2 and other equipment, such as rubber gloves, rubber boots and safety aprons, necessary for the operation of the Pool. When ordering new chemicals used in the operation of the Pool, the City shall update all Material Safety Data Sheets ("MSDS sheets").
- 7) The City shall provide and properly care for test kits, chemicals and reagents for testing pool water chemistry and to ensure compliance with the DCR Pool Log, the DCR Pool Manual and the State Sanitary Code for the Minimum Standards for Swimming Pools.
- 8) The City shall provide or replace all safety equipment such as first-aid kits, ring buoys, rescue tubes, rescue hooks and backboards.
- 9) The City shall take all necessary and reasonable steps to ensure proper monitoring, protection and security of the Pool on a year-round basis throughout the Term of this Agreement and, when necessary, take corrective action(s) to remedy any problem or hazard which may cause damage to the Pool or present a hazard to the public (e.g., ensuring that recording equipment is functioning, repairing fences and gates in a timely manner, maintaining key and access control.)

f. Emergency Communication Equipment.

The Pool is equipped with Emergency Communication Equipment to be accessed by either staff or the public to allow convenient, immediate and toll-free communication with emergency medical services, local police, state police and the local fire department. The City agrees to

post the telephone numbers for these emergency services as well as instructions necessary to operate the communication system in a conspicuous place near the communication device or station. The City shall check this equipment on a regular basis.

12. Stadium, Athletic Fields and Courts Management Requirements

- a. Track and Synthetic Turf Field:
 - i. The City or its respective athletic field licensee shall ensure that on-site staffing during school sporting events meets applicable Massachusetts Interscholastic Athletic Association regulations.
 - ii. The City shall use reasonable efforts to maintain track and field facilities consistent with the manufacturer's recommendations as well as any operating and maintenance manuals, provided to the City by DCR. The City hereby agrees not to jeopardize, invalidate or void the warranties provided by the respective field and track manufacturers.
- b. Tennis Courts, Basketball Courts and Baseball Fields: The City hereby agrees not to restrict access to the courts or baseball fields and hereby agrees not to permit exclusive use of said courts and fields except for scheduling preferences allowed pursuant to Paragraph 2(b). The City shall conspicuously post instructions both on the Premises and on its website for obtaining a permit from the Somerville Parks and Recreation Department to reserve use of courts and athletic fields.
- c. Playground: The City shall provide reasonable regular maintenance and bi-seasonal inspections of the Playground Area.

13. Indemnification

- a. The City shall, to the extent permitted by law, assume all risk in connection with any and all activities engaged in on the Premises, and shall be solely responsible and answerable in damages and any other equitable remedies for all accidents or injuries to all persons or property caused by the City's activities. The City shall at no time be considered an agent or representative of DCR or the Commonwealth. The Commonwealth shall not be liable for any costs incurred by the City arising under the Agreement.
- b. The City shall be responsible for the protection of its own assets and property and those of the DCR on the Premises. The Commonwealth shall not be responsible for property of the City's contractors, agents, representatives, employees, permittees, licensees, guests and invitees.
- c. The City shall be responsible for its actions and the actions of its contractors, agents, representatives, employees, licensees, guests, and invitees. The City shall defend, hold harmless and indemnify the Commonwealth of Massachusetts, to the extent permitted by law, including the DCR and its agents, officers and employees for any and all injuries, losses, claims, actions, damages, liabilities, costs, or expenses, including without limitation attorney fees and costs (collectively, "claims") to the extent such claims arise pursuant to this Agreement including any act, failure to act, or occupancy of the Premises and its appurtenances by the City, its contractors, agents, representatives, employees, licensees, guests and invitees, unless said claims arise solely out of or are solely the result of the gross negligence or willful, wanton, or reckless conduct of the DCR or its employees. If any claims are governed by the Massachusetts Tort Claims Act, M.G.L. c.258, section 1 et. seq., the City's liability shall be

limited as specified in the statute.

- d. The City shall not make any claims against the Commonwealth or the DCR for any injury, loss, or damage to persons, including but not limited to bodily injury or death, or damage to property or in connection with compliance with any existing law arising out of the Agreement or the occupancy of the Premises by the City, its contractors, agents, representatives, employees, permittees, licensees, guests and invitees, unless said claim solely arises out of or is the result of the willful, wanton, or reckless conduct of the DCR, and its employees
- e. The indemnification obligations set forth in this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damage compensation, or benefits payable to the City, its officers, employees, representatives, agents, contractors, subcontractors, servants, permittees, and invitees, or by any other person acting for or by permission of the City. DCR shall have the right to review how any claims against DCR, as applicable, in relation to this Agreement are defended.
- f. The obligations of the City under this section shall survive the revocation, expiration or termination of this Agreement with respect to claims which arose prior to such revocation, expiration or termination.

14. Insurance Requirements

The City agrees to provide and maintain insurance by one of the two options outlined below:

Option 1: By third party insurance carrier qualified to conduct business within the Commonwealth:

- a. The City and its sub-licensees, permittees, contractors and vendors shall carry insurance at minimum in the types and amounts as described in this section of the Agreement at their own expense:
 - i. General Commercial/Public Insurance. The City shall carry appropriate General Commercial/Public Liability insurance as to third persons against claims based upon the use of the Premises in the minimum amount of One Million (\$1,000,000) Dollars per occurrence and a minimum of Two Million (\$2,000,000) Dollars in the aggregate, or such higher amounts of liability insurance coverage that are prudent given the risks inherent in the activities and uses of the Premises or that the DCR shall reasonably require from time to time. This insurance must be primary and non-contributory. DCR does not carry insurance.
 - ii. Insurance for Commonwealth Property. The City shall obtain property damage or “all risk” (fire, vandalism, structure, etc.) insurance for the Premises and any Commonwealth and DCR equipment in the minimum amount of Five Million (\$5,000,000) Dollars or such higher amounts of insurance the DCR shall reasonably require from time to time. DCR does not carry property insurance.
 - iii. Insurance for the City Property. The City shall carry sufficient insurance for its own equipment in the amounts of insurance coverage that are prudent given the risks inherent in the use of the Premises.
 - iv. The City shall if necessary purchase and provide proof of additional endorsements that: 1) name the Commonwealth of Massachusetts, Department of Conservation and Recreation as an additional named insured for liability on the commercial and all risk policies; and 2) provide 30 days’ notice to DCR prior to cancellation (10 days for non-payment).

- b. Certificates of Insurance issued by an insurer or insurers qualified to do business in the Commonwealth with an A.M. Best rating of no less than A, Class VI or higher or an equivalent Standard & Poor's Rating of AA +/- or higher shall be provided to the following DCR office prior to execution of this Agreement with annual updates by for each subsequent year of the Term :

Commonwealth of Massachusetts
Department of Conservation and Recreation
ATTN Long Term Leases and Permits Re: Dilboy Complex
251 Causeway Street, Suite 600, Boston, MA 02114
Fax: 617-626-1351 or 1301; E-mail: dcr.permits@state.ma.us.

Kevin Thibeault
Regional Director- Boston Region
165 Day Boulevard
South Boston, MA 02127

Certificates of Insurance must include a site reference. Failure to furnish or maintain said policies of insurance for the entire Term shall be deemed a material breach of the City's duties under this Agreement.

Option 2: Self-Insurance Group or Self Insure:

As a public agency defined in Chapter 7C, Section 1 of the Massachusetts General Laws, the City may self-insure to the extent permitted by law as though it were the insurer and insured under all insurance required for its activities under this Agreement. The City must provide DCR with a letter upon execution of this Agreement affirming its self-insurance status prior to use and occupancy of the Premises. DCR shall be notified in writing of any change in the City's ability to self-insure within thirty (30) calendar days of such change.

15. City is a Licensee

- a. The City and its officers and employees shall not hold itself or themselves out as, or claim to be, an agent, officer or employee of the Commonwealth or DCR and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Commonwealth, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.
- b. The relationship of the DCR to the City is that of a licensor to a licensee. As such this Agreement is a revocable license Nothing herein contained shall create or be construed or implied as an agency relationship or legal partnership between the City and the DCR.
- c. This Agreement does not confer any rights in real property (i.e., leasehold or easement) to the City. The City may enter and use the Premises solely for those purposes contained herein.

16. Assignment

Other than licenses or permits for use of the Premises to individuals or groups, as provided herein the City shall not assign, delegate, transfer or otherwise dispose of its management

responsibilities or of any right, interest or use of the Premises authorized by this Agreement without prior written approval of the DCR Commissioner. Any such assignment, delegation, transfer or disposition without written consent of the DCR shall constitute a material breach of this Agreement.

17. Termination

- a. The City expressly agrees that a material breach as defined herein shall be cause for termination of the Permit. DCR will provide written notice of termination to the City at least thirty (30) calendar days prior to the date of the proposed termination, provided that the City shall be granted the right to cure any such condition, by curing said condition within thirty (30) days of receipt of notice. If the condition cannot be cured within said thirty (30) days, the City must give written notice with an explanation of why additional time is required. The grant of additional time to cure is within the sole discretion of the Commissioner of DCR, but shall not be unreasonably withheld.
- b. Either of the Parties may terminate this Agreement, without cause, upon six (6) months written notice to either Party.
- c. Upon any termination, the Parties shall conduct a walk-through of the Premises to ensure that utilities will be paid up and terminated or transferred as appropriate, clean up and repairs are agreed upon, and any contracts, documents and other information are transferred. The City shall return the Premises to its clean and undamaged condition to the satisfaction of the DCR.

18. Waiver

No waiver by either Party at any time of the terms, conditions or covenants of this Agreement shall be deemed a waiver at any time thereafter of the same provision or of any other provision contained herein or of the strict and prompt performance thereof.

19. Modifications or Amendments

Modifications or amendments to this Agreement shall be in writing and duly executed by both Parties to be effective.

20. Merger clause

The provisions of this Agreement and any exhibits or attachments shall collectively constitute the entire Agreement between the parties for the use of the Premises.

21. Severability

If any provision of this Agreement, or portion of such provision, is held invalid, the remainder of this Agreement shall continue in full effect and force.

22. Force Majeure

Neither party shall be liable to perform its part of this Agreement when such failure is due to flood, war, riot, insurrection or other catastrophe beyond the control of the parties.

23. Forum

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to its principles regarding conflict of laws.

24. Notice

All notices provided pertaining to this Agreement shall be sent in writing, by hand-delivery or postal mail, with copies by fax or e-mail, to the following representatives of the parties:

If to DCR: Department of Conservation and Recreation
Commissioner
251 Causeway Street, Suite 600, Boston, Massachusetts 02114

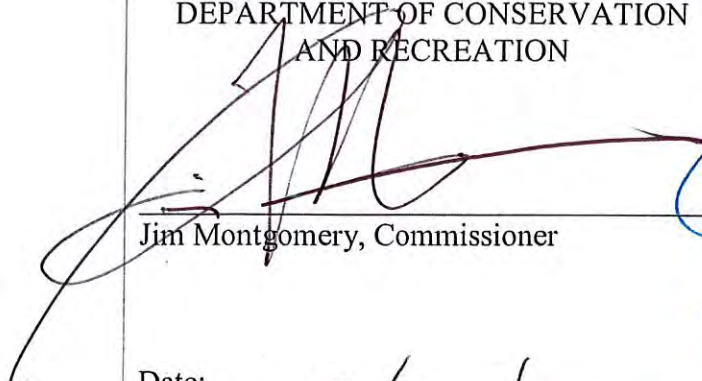
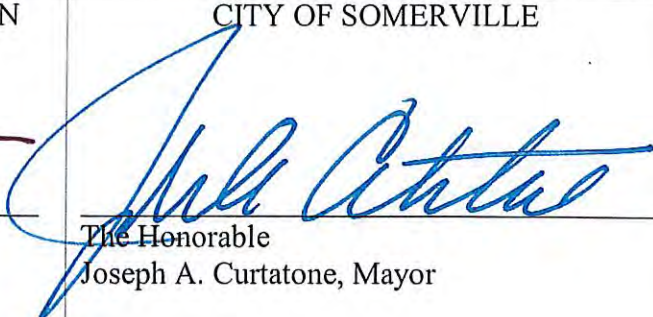
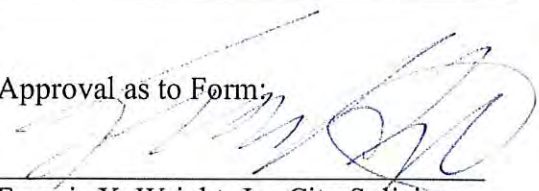
W/ a copy to: Department of Conservation and Recreation
General Counsel
251 Causeway Street, Suite 600, Boston, Massachusetts 02114

If to the City: City of Somerville
Honorable Joseph A. Curtatone, Mayor
City Hall, 93 Highland Avenue, Somerville, Massachusetts 02143

W/ a copy to: City of Somerville
Francis X. Wright, Jr., City Solicitor
City Hall, 93 Highland Avenue, Somerville, Massachusetts 02143

25. Signatures

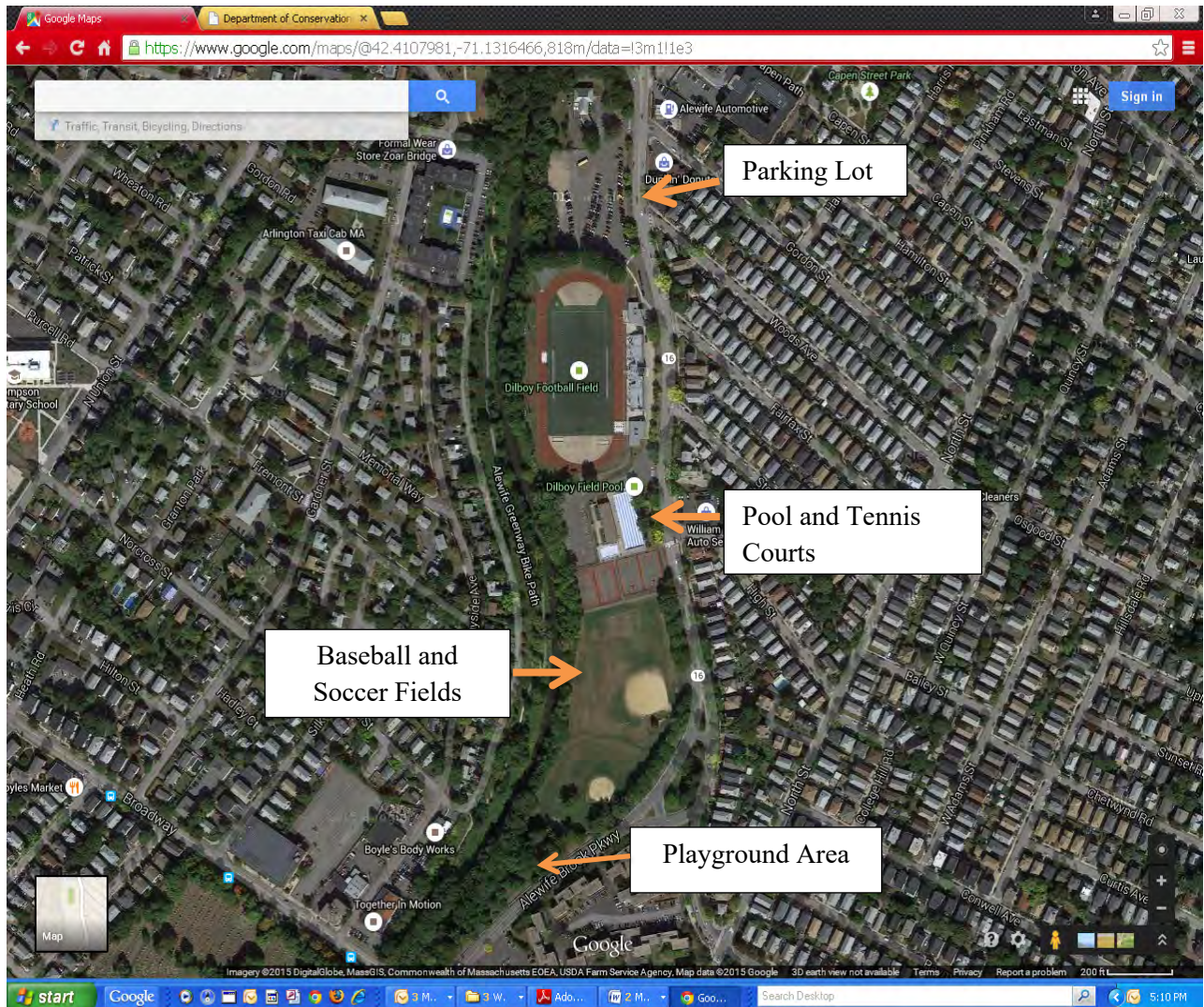
By signing below, the signatories each acknowledge that they have read the foregoing conditions and provisions and that each is duly authorized to act on behalf to sign on behalf of and bind the respective entities set forth below.

DEPARTMENT OF CONSERVATION AND RECREATION  _____ Jim Montgomery, Commissioner Date: <u>8/20/2020</u>	CITY OF SOMERVILLE  _____ The Honorable Joseph A. Curtatone, Mayor Date: _____ Approval as to Form:  _____ Francis X. Wright, Jr., City Solicitor
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Exhibits

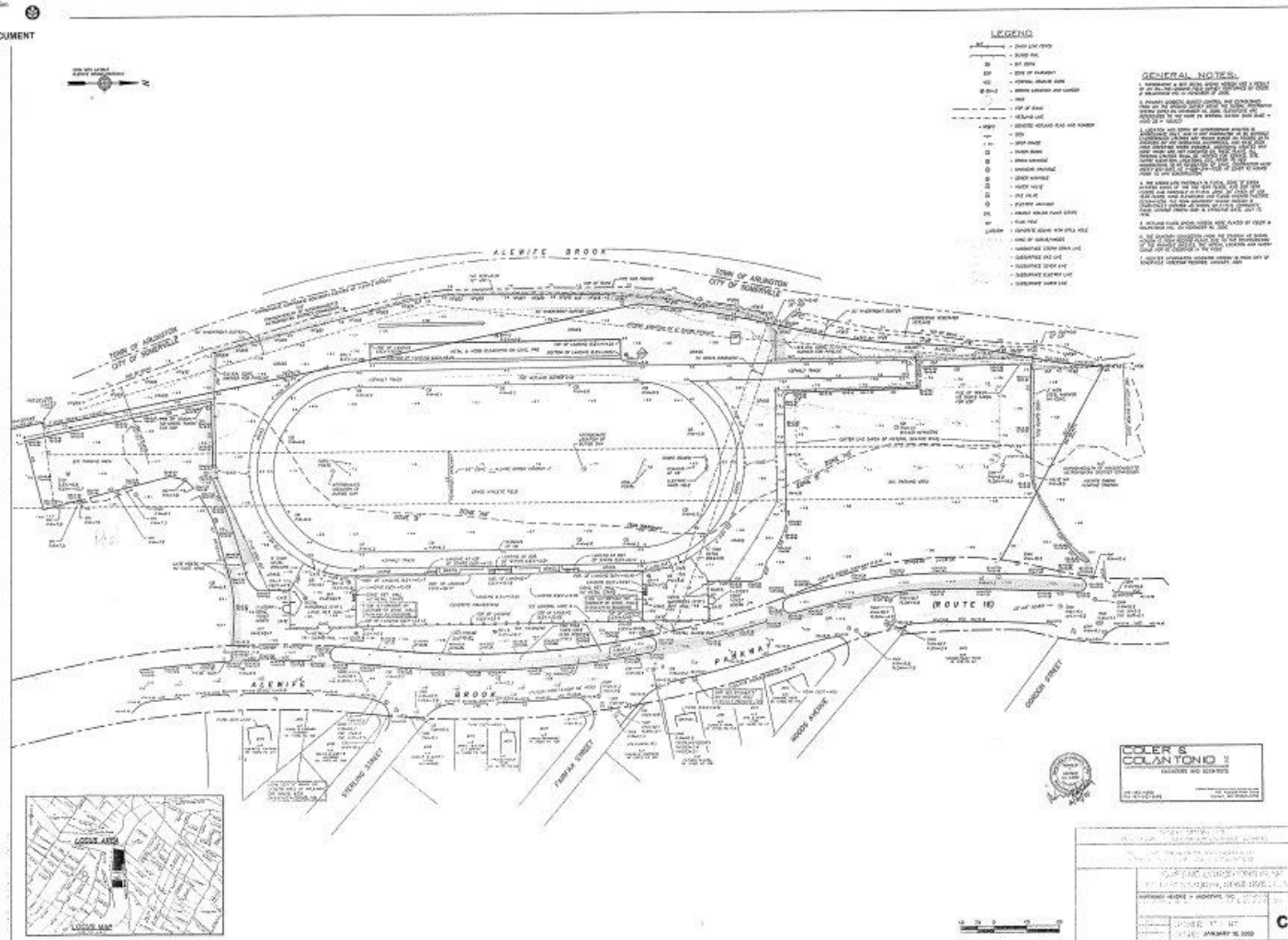
- A. MAPS, PHOTOS AND PREMISES INFORMATION
- B. PROPOSED CAPITAL IMPROVEMENTS
- C. DPH REGULATION GUIDANCE CHART
- D. DILBOY STADIUM PARKING LOT SNOW EMERGENCY OPERATIONS INFORMATION
- E. ADDITIONAL CONTACTS
- F. DCR POOL MANUAL AND LOG BOOK (on a DISC)

A. MAPS, PHOTOS AND PREMISES INFORMATION

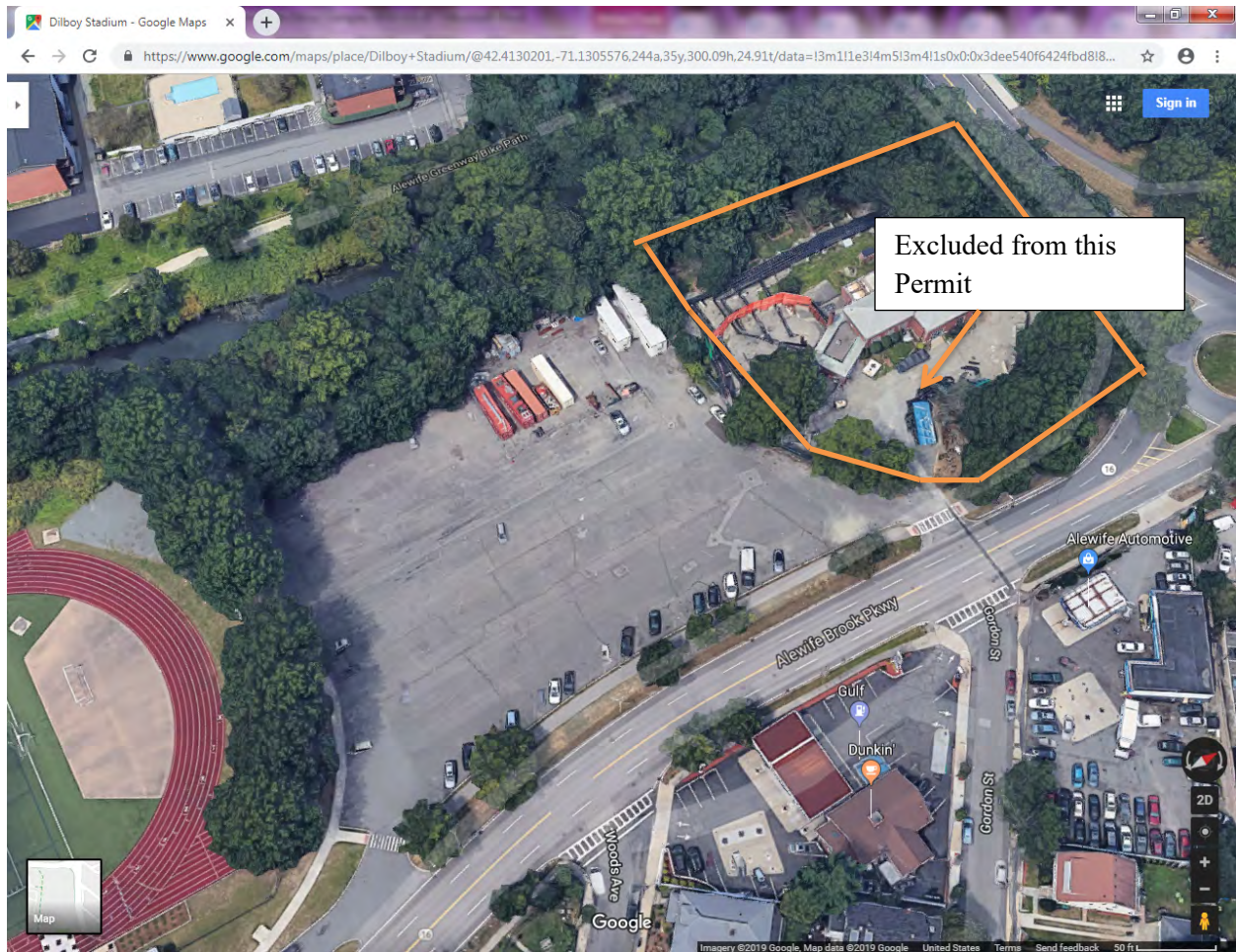


A. MAPS, PHOTOS AND PREMISES INFORMATION Cont'd

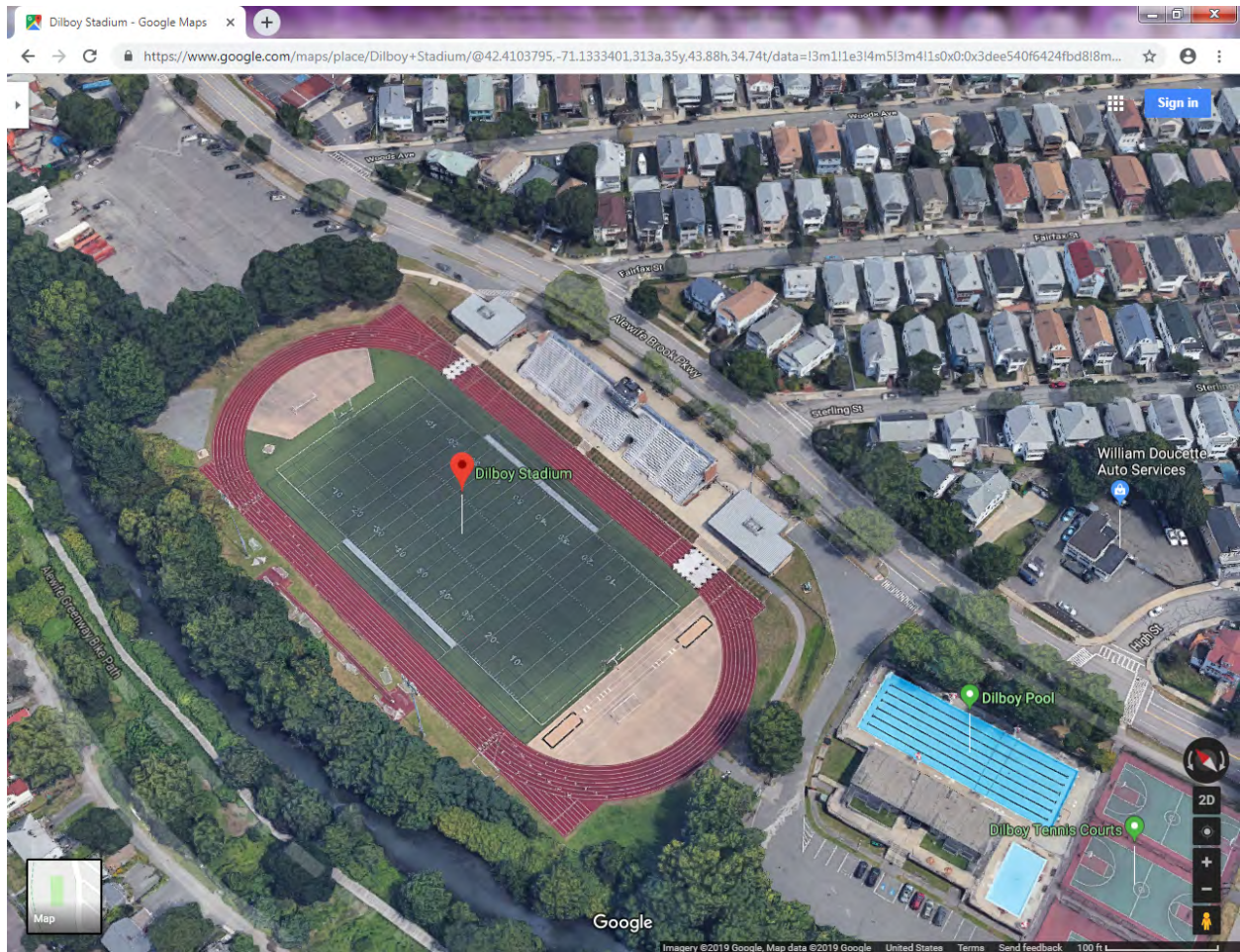
Department of
Cooperation and Recreation
ORIGINAL DOCUMENT



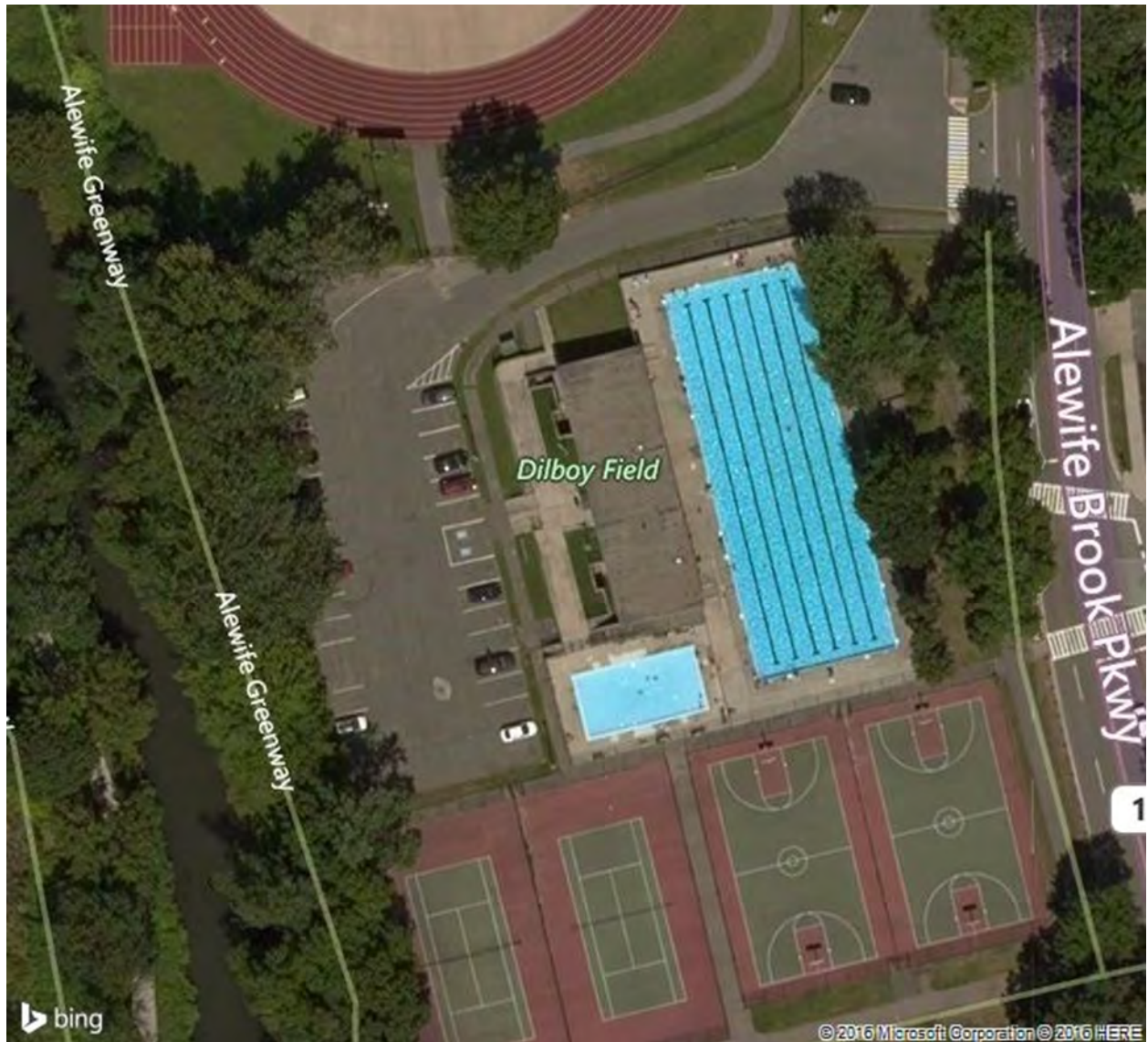
A. MAPS, PHOTOS AND PREMISES INFORMATION Cont'd



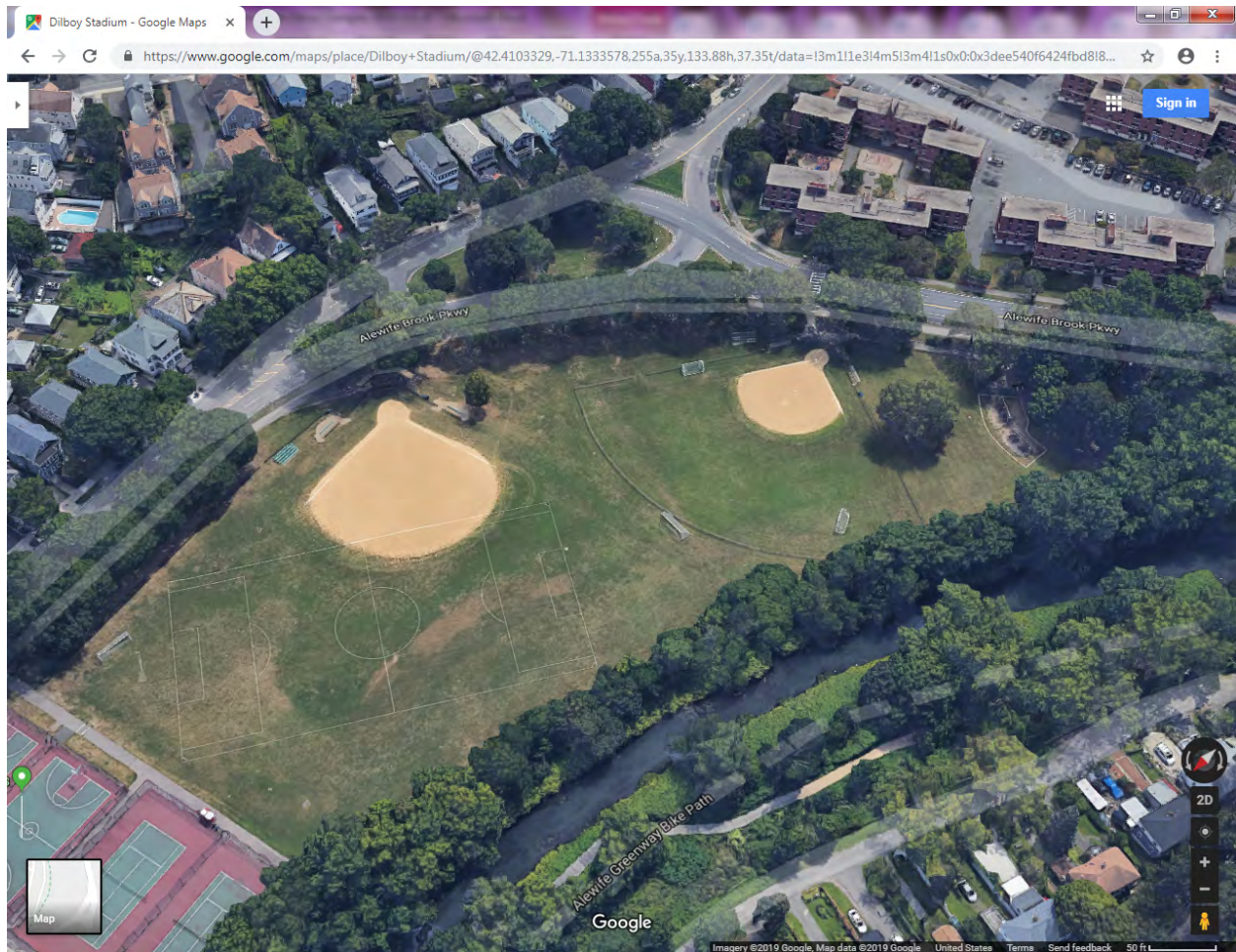
A. MAPS, PHOTOS AND PREMISES INFORMATION Cont'd



A. MAPS, PHOTOS AND PREMISES INFORMATION Cont'd



A. MAPS, PHOTOS AND PREMISES INFORMATION Cont'd



B. PROPOSED CAPITAL IMPROVEMENTS

BY THE CITY

Stadium:

- Replace turf field
- Resurface track

Other Facilities within the Premises:

- Overhaul auxiliary fields as multi-purpose rectangular and diamond fields

C. DPH REGULATION GUIDANCE CHART

Guidance on Responsibilities for DPH Regulatory Requirements at DCR-owned Pools

THIS CHART IS FOR GUIDANCE PURPOSES ONLY. IT IS NOT EXHAUSTIVE NOR DOES IT ADDRESS ALL POSSIBLE POOL SAFETY REGULATIONS.

Construction: §§435.02-435.16

<i>Regulatory Requirement</i>	<i>Regulatory Section</i>	<i>Party Responsible for Compliance</i>	<i>Comments</i>
Pool wall and pool floor surface free of projections except ladders and grab rails	105 CMR 435.05(3)	DCR	
Structural stability of pool maintained (no cracks in pool wall or floor)	105 CMR 435.05(5)	DCR	
Swimming pools equipped with system for recirculation and purification of the pool water.	105 CMR 435.06(1)-(7)	DCR	
Regular maintenance of water circulation and filtration systems	105 CMR 435.06(4)	Permittee	Follow DCR Pool Manual to properly maintain systems.
Proper equipment (e.g., rubber boots, gloves, and safety aprons) available for handling chemicals.	105 CMR 435.06(2)(i)	Permittee	
Dimensions for pool slopes	105 CMR 435.11	DCR	
Water depths plainly marked	105 CMR 435.12	Permittee and DCR	DCR will provide initial markings but Permittee must maintain markings.
Walkways must be slip resistant, unobstructed, and continuous around pool with a minimum width of four feet.	105 CMR 435.13	Permittee and DCR	Permittee for movable items/DCR for fixtures.

Guidance on Responsibilities for DPH Regulatory Requirements at DCR-owned Pools

THIS CHART IS FOR GUIDANCE PURPOSES ONLY. IT IS NOT EXHAUSTIVE NOR DOES IT ADDRESS ALL POSSIBLE POOL SAFETY REGULATIONS.

Operation and Maintenance: §§435.17-435.38

Regulatory Requirement	Regulatory Section	Party Responsible for Compliance	Comments
Pool supervision	105 CMR 435.17	Permittee	
Maintenance of written record of data re: operation and condition of the pool (e.g., daily attendance, closures, water quality test results, cleaning, etc.)	105 CMR 435.21(5)	Permittee	Use DCR Pool Log
Restricting those with communicable disease from entering the pool	105 CMR 435.22	Permittee	Enforcement and signage is the responsibility of the Permittee.
Pool must be staffed with adequate number of lifeguards	105 CMR 435.23(1)	Permittee	
Lifeguards on duty must wear appropriate attire	105 CMR 435.23(4)	Permittee	
Adequate voice amplification for lifeguards provided	105 CMR 435.23 (5)	Permittee	
Accessible safety equipment (e.g., ring buoy)	105 CMR 435.24	Permittee	Ensure ring buoy is accessible and rope untangled.
Operator shall provide first-aid kit	105 CMR 435.25(1)		
Emergency Communication System provided	105 CMR 435.25(2)	DCR for installation/ Permittee for signage	
No waste water from draining pool may be discharged in storm drain or the watershed of a public surface water supply w/o prior approval	105 CMR 435.26	Permittee	
Number of bathers using the pool is limited	105 CMR 435.27	Permittee	
Water Testing/Bacterial Quality	105 CMR 435.28	Permittee	
Water Testing/Water Chemistry	105 CMR 435.29	Permittee	Testing should occur as required in DCR Pool Log to maintain compliance and avoid closure.
Operator shall provide water test kit	105 CMR 435.30	Permittee	
Regulatory Requirement	Regulatory Section	Party Responsible for Compliance	Comments
Water Clarity	105 CMR 435.31	Permittee	

Guidance on Responsibilities for DPH Regulatory Requirements at DCR-owned Pools

THIS CHART IS FOR GUIDANCE PURPOSES ONLY. IT IS NOT EXHAUSTIVE NOR DOES IT ADDRESS ALL POSSIBLE POOL SAFETY REGULATIONS.

Water Quality Maintenance by filtration system	105 CMR 435.32	Permittee and DCR	Permittee is responsible for proper maintenance of filtration system. Provided equipment is maintained in accordance with the DCR Pool Manual, DCR is responsible for necessary replacement.
If pool does not conform water quality requirements (§§435.28-435.30) operator shall close pool.	105 CMR 435.34	Permittee	
Water slide flumes (if applicable)	105 CMR 435.35	Permittee and DCR	Permittee is responsible for water quality requirements. DCR is responsible for structural requirements.
Splash down pools (if applicable)	105 CMR 435.36	Permittee	
General Sanitation (maintaining area in good repair and maintaining clean bathrooms: e.g., no broken windows, ripped screens, standing water in bathrooms, broken sinks and toilets, trip hazards, peeling paint, etc.)	105 CMR 435.38	Permittee	
Thermometer in refrigerator of lifeguard room/first aid room	105 CMR 435.38	Permittee	

D. DILBOY STADIUM PARKING LOT SNOW EMERGENCY OPERATIONS INFORMATION Cont'd

SNOW EMERGENCY USE LAYOUT



E. ADDITIONAL CONTACTS

DCR Aquatics

James Esposito, Acting Director of Aquatic Resources
Department of Conservation and Recreation
Central Regional Office
355 West Boylston St., Clinton, MA 01510
Tel: 978-368-0126; Cell: 857-214-0400
E-mail: james.esposito@mass.gov

DCR Park Operations

Boston Region Director, Kevin Thibeault
Department of Conservation and Recreation
10 North Point Boulevard, Cambridge, MA 02141
Tel: O: 617-727-5290;
E-Mail: kevin.thibeault@state.ma.us

Boston Assistant Regional Director, David Fabiano
Department of Conservation and Recreation
165 William J. Day Blvd., South Boston, MA 02127
Phone: 617-727-5290; Fax: 617-727-7059
E-mail: david.fabiano@state.ma.us

DCR Special Use Permits (Special Events)

Janice Parlon, Special Events Manager
Department of Conservation and Recreation
251 Causeway Street, Suite 600, Boston, MA 02114
Tel: 617-626-1486; Fax: 617-626-1351;
E-Mail: jparlon@state.ma.us

Long Term Permits and Leases

Department of Conservation and Recreation
Long Term Permits and Leases Unit
ATTN: David Farrag, Manager
251 Causeway Street, Suite 600
Boston, Massachusetts 02114-2119
Tel: 617- 626-1250; Fax: 617-626-1351
E-mail: dcr.permits@state.ma.us

City of Somerville

Jill Lathan, C.P.R.E., L.C.S.W., Director, Parks & Recreation
City of Somerville
19 Walnut Street, Somerville, MA 02143
Tel: (617) 625-6600 ext. 2983; TTY: (866) 808-4851
Fax: (617) 625-1023; E-Mail: jlathan@somervillema.gov

F. DCR POOL MANUAL AND LOG BOOK (On a Disc)

The items on the attached disc should be printed out and placed in the Pool Office area. The Pool Log Book should be printed out annually and shall be filled out daily by Pool staff.