

**USE AGREEMENT
BETWEEN THE TOWN OF LOS GATOS
AND
LOS GATOS LITTLE LEAGUE**

THIS AGREEMENT is dated for identification this 1st day of July 2022 and is made by and between TOWN OF LOS GATOS, State of California (“Town”) and LOS GATOS Little League (“LGLL”) identified as a California nonprofit corporation and whose address is P.O. Box 93, Los Gatos, CA 95031.

I. RECITALS

- 1.1 Town is the owner of two (2) baseball facilities, one located in Blossom Hill Park, commonly known as Baggerly Field, and one located at 41 Miles Ave, commonly known as Balzer Field.
- 1.2 LGLL is chartered under the rules of Little League Baseball, Inc, and the laws of the State of California, to provide organized baseball team practice and competition for Los Gatos youth aged four (4) to fifteen (15).
- 1.3 LGLL has conducted baseball programs at Baggerly and Balzer Fields under contract with the Town since 1958.
- 1.4 Town and LGLL each desire LGLL to continue to conduct its programs at Baggerly and Balzer Fields.
- 1.5 Town and LGLL each desire a new agreement setting forth the specific terms and conditions under which LGLL may use Baggerly and Balzer Fields, responsibility for maintenance of the fields, responsibility for the cost related to the use of the fields, and the circumstances under which LGLL may make capital improvements to the field.

II. AGREEMENTS

- 2.1 Subject Premises. The Premises covered by this Agreement are depicted in Exhibit A and are as follows:

Baggerly Field at Blossom Hill Park, consisting of:

1. One baseball diamond, including infield and outfield grass, and dirt
2. Fences and gates surrounding the field of play
3. All portable and fixed bleachers
4. One electronic scoreboard
5. One flagpole
6. Restrooms, snack shack building (includes one storage room and 2 bathrooms)
7. Two dugouts

Balzer Field at 41 Miles Avenue, consisting of:

1. One baseball diamond, including infield and outfield grass, and dirt
2. Fences and gates surrounding the field of play
3. All portable and fixed bleachers
4. One electronic scoreboard
5. One flagpole
6. One batting cage
7. Restrooms, snack shack building (includes one storage room and 2 bathrooms)
8. Two dugouts

2.2 Use of Premises. LGLL shall have exclusive use of the Premises, except bathrooms and parking, which are open to the public at large, depicted in Exhibit A and are as follows:

January 1 to January 31:

1. Saturdays and Sundays from the time of opening of the Premises pursuant to the policies and procedures of the Town until dusk.

February 1 to July 31:

1. Monday through Friday, from 2:30 p.m. to dusk.
2. During designated Los Gatos Unified School District Vacation Days, use will be from the time of the opening of the Premises pursuant to the policies and procedures of the Town until dusk.
3. Saturdays and Sundays, from the time of the opening Premises pursuant to the policies and procedures of the Town until dusk.

August 1 to August 31:

1. There shall be no designated exclusive use times. Use may be requested by LGLL through the Town and, granted if the Premises are available.

September 1 to October 31:

1. Monday through Friday, from 2:30 p.m. to dusk.
2. During designated Los Gatos Unified School District Vacation Days, use will be from the time of the opening of the Premises pursuant to the policies and procedures of the Town until dusk.
3. Saturdays and Sundays, from the time of the opening of the Premises pursuant to the policies and procedures of the Town, until dusk.

November 1 to December 31:

1. There shall be no designated exclusive use times. Use may be requested by LGLL through the Town and, granted if the Premises are available.

Baggerly and Balzer fields will remain unlocked and available for public use during LGLL non-exclusive use periods.

Town has the final say in establishing the master schedule. Town will attempt to accommodate user groups at their requested time but reserves the right to propose use hours that balance the needs of all user groups equitably.

- 2.3 Term of Agreement. Unless terminated sooner pursuant to Section 4.3 of this Agreement, the Use Agreement remains in effect from July 1, 2022 through June 30, 2027. The term of this Agreement may be extended for up to two additional five-year periods upon mutual written consent of the parties.
- 2.4 Maintenance. LGLL shall be fully responsible for maintaining the Premises, excluding the restrooms, and parking lots. LGLL shall pick up and dispose of the litter, trash, and recyclables in the restrooms and parking areas during the hours of exclusive use of the Premises as described in Sections 2.1 and 2.2 above. The maintenance of the playing facilities shall include but is not limited to cutting, fertilizing, watering, weed control, irrigation repairs, and modifications, replacing grass areas, dragging and filling holes in dirt areas, repairing and replacing premises fencing and backstops, and maintaining/replacing electronic scoreboards and bleachers. Town shall have the right to approve any vendor used by LGLL for landscape maintenance. LGLL shall submit information to Town about any proposed landscape maintenance vendor not less than 60 days prior to changing landscape maintenance companies. The snack shack shall be maintained in a clean and sanitary condition and shall comply with all Santa Clara County Health Department regulations pertaining to food services. Trash and recyclables must be properly disposed of. At no time during this contract shall LGLL make any changes to the security or modifications to Town owned structures without the consent of Town representatives. This includes and is not limited to interior/exterior locks, walls, and doors.
- 2.5 Capital Improvements and Repairs. LGLL shall not undertake any capital repairs or improvements to the Premises without first obtaining the written consent of Town and without obtaining all permits and approvals as required by Town Code, policies, and guidelines, or as otherwise required by law.

Should it become necessary to make any capital repairs or improvements to the common buildings (restroom/snack shack) of the Premises, including roof or plumbing repairs or replacement, LGLL shall pay its proportional share of the cost which is hereby agreed to be fifty percent (50%), but shall not exceed a total of twenty-five thousand dollars (\$25,000) over the initial term of this Agreement or any subsequent term. In the event that the cost of any capital repair or improvement exceeds five thousand (\$5,000), LGLL may make periodic payments of the amount in excess of five thousand (\$5,000) over the remaining term of this Agreement until the full amount has been paid. In no event shall any periodic payment be made in an amount less than five thousand (\$5,000) per year or the full amount not be paid. The necessity of such repairs or replacement shall be determined at the sole discretion of the Town, which shall provide LGLL with sixty (60) days written notice of its intent to undertake any such project. Town shall make all efforts to schedule repairs and replacements at dates and times that will minimize the impact on LGLL's operations, which shall include consulting with LGLL prior to scheduling any such work. LGLL shall cooperate fully and reasonably with Town's efforts to complete repairs or replacements. Town shall invoice LGLL for its share of repair or replacement cost, which shall be paid by LGLL within thirty (30) days of the invoice date. In no event shall Town be responsible for the cost of any capital improvements or repairs to the Premises other than to the common buildings described herein. LGLL shall be solely

responsible for all damage to the Premises or other property, whether real or personal, including broken glass, resulting in any way from LGLL's use of Premises. LGLL shall report to the Town the occurrences of all such damage within twenty-four (24) hours of occurrence or knowledge by the licensee, or, in the case of damage occurring between 5:00 p.m. on Friday through the dusk the following Saturday, by no later than 9:00 a.m. the following Monday. LGLL shall not be responsible for any damage to the Premises that occurs not related in any manner to LGLL's use of the Premises.

Any capital improvements or repairs, whether undertaken or paid for in part by Town or LGLL, shall be the sole property of the Town and shall remain with the Premises upon expiration or termination of this Licensee.

2.6 Annual Use Fee. Beginning July 1, 2022, and every year thereafter, LGLL shall pay the Town of Los Gatos an Annual Use Fee for the use of the Premises. The initial Annual Use Fee shall be \$6,600. The Annual Use Fee shall be considered full and fair compensation for the exclusive use of the facility for those days and times indicated on the Annual Schedule. On July 1, 2023, and each anniversary thereafter, the Annual Use Fee shall be adjusted according to the percent change in the U. S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, All Urban Consumers, San Francisco-Oakland-San Jose, 1982-84-100 Index.

2.6 Facility Maintenance Fee. Beginning July 1, 2022, and continuing for the full term of this agreement, including any extensions, each participant in programs or classes offered by LGLL on Town premises will be charged a four (\$4.00) Facility Maintenance Fee (FMF) per season. The Facility Maintenance Fee shall be assessed by LGLL at the time of registration or any payment of program fees and shall be retained by LGLL in a separate account and shall be remitted to the Town quarterly. Participants shall be charged an FMF for each distinct season at which registration and fees are typically collected by LGLL.

2.7 Payment. LGLL shall make all payments required pursuant to this Agreement, whether or not invoiced by Town, no later than February 1 of each year payments are due. All payments shall be mailed by first class mail or delivered in person at Town offices and addressed as follows:

Town of Los Gatos
Attn: Finance Department
P.O. Box 697
Los Gatos, California 95031

2.8 Assignment. LGLL shall not assign any portion of this Agreement or allow the use of the Premises by any other person or entity contrary to the terms of this Agreement, without the prior written approval of Town. LGLL is expressly prohibited from use of the Premises for any activity other than activities sanctioned and associated with LGLL.

2.9 Personal Property. Personal property of LGLL shall be LGLL's sole responsibility to acquire, repair, replace and store. LGLL shall remove its personal property at the expiration or

termination of this Agreement. Any personal property not so removed shall become the sole property of Town with no compensation.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. LGLL agrees to have and maintain for the duration of this Agreement, General Liability insurance policies insuring LGLL, its elected and appointed officials, employees, and agents to an amount not less than two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. Insurance is to be placed with insurers with a current Best's rating of no less than B+.
- ii. LGLL agrees to have and maintain for the duration of this Agreement, an Automobile Liability insurance policy insuring the LGLL, its elected and appointed officials, employees, and agents to an amount not less than one million (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. LGLL shall provide to the Town all certificates of insurance, with original endorsements affecting coverage. LGLL shall provide all certificates and endorsements before the term of the Agreement begins.

General Liability:

- i. The Town, its elected and appointed officials, employees, and agents are to be covered as additional insured with respect to liability arising out of activities occurring on or related to the occupancy and use of the Premises by LGLL.
- ii. LGLL insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the Town, its elected and appointed officials, employees, or agents shall be in excess of the LGLL's insurance and shall not contribute to it.
- iii. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Town, its elected or appointed officials, employees, or agents.
- iv. LGLL insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. The LGLL shall ensure that current certification of such insurance is on file at all times with the Town Clerk during the term of this agreement.
- 3.3 Workers' Compensation. Workers' Compensation. In addition to these policies, LGLL shall have and maintain Workers' Compensation insurance as required by California law. Further, LGLL shall ensure that all contractors employed on the Premises by the LGLL provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Property Insurance. Town shall have no obligation to maintain any insurance of the Premises or any personal property placed on the Premises. LGLL shall be solely responsible for obtaining whatever insurance coverage that LGLL believes may be appropriate to protect and indemnify LGLL for loss to the Premises or to any personal property that LGLL may place on the Premises.
- 3.5 Indemnification. LGLL agrees to indemnify, hold harmless, and defend the Town, its elected and appointed officials, employees, and agents, from and against any and all damages, claims or liability, penalties, costs, or expenses in law or equity that may at any time arise from any loss, damage, or injury to persons or property occurring in or about the Premises that arises out of or incident to the LGLL's use of the Premises, including use by anyone that the LGLL has permitted or allowed to use the Premises. This obligation to indemnify, hold harmless, and defend applies whether or not the incident or claim or liability is or may be related to negligence on the part of the Town.

IV. GENERAL TERMS

- 4.1 Damage and Destruction. Damage or destruction of any portion of the Premises by any cause shall not terminate this Agreement or otherwise affect the respective obligations of the two parties, any present or future law to the contrary notwithstanding, except pursuant to the provisions of this Section 4.1.

If because of the destruction or damage to the Premises, the Premises is entirely unsuitable or inadequate for the use specified herein, the Town and/or LGLL shall be entitled to terminate the Agreement.

Under no circumstances does the Town have any obligation to provide LGLL with an alternative property to conduct its operations, and LGLL is solely responsible for obtaining such insurance as LGLL deems appropriate to protect its interests should damage or destruction to the Premises occur.

LGLL shall be liable for any loss, damage or injury to the field and/or Premises as a result of the direct or indirect use of the Premises by LGLL under this agreement.

- 4.2 Facilities Use Policies. LGLL shall comply, without limitation, with all applicable provisions of the Los Gatos Town Code, with special attention to Chapter 19, Parks and Recreation provisions. LGLL shall also comply with any park rules and regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Town Code, including those rules set forth in Attachment A, Town of Los Gatos Park Rules and Regulations. LGLL agrees to apply with the current rules and regulations available at www.losgatosca.gov/parkres as well as any future amendments to those rules and regulations. Failure to comply with these policies may result in suspension and/or termination of this Agreement.

LGLL agrees to comply with the state "Fair Play in Community Sports Act." LGLL will not discriminate on the basis of gender and boys' and girls' teams will have equal access to the

- 4.3 Termination of Agreement. LGLL shall promptly terminate its use of the Premises at the termination of this Agreement, leaving the Premises in the same condition it was received, in good order and repair, reasonable wear and tear, and damage by the elements excepted. All improvements and alterations made by LGLL shall become the property of the Town upon the termination of the Agreement without compensation by the Town. Any personal property not removed by LGLL within thirty (30) days of the termination of this Use Agreement shall become the property of the Town and may be disposed of as the Town in its sole discretion deems advisable.

This Agreement shall continue in full force and effect unless prior to February 1st of any calendar year, either Party provides written notice to the other Party that it desires to terminate the Agreement for convenience and, upon such notice, the Agreement shall terminate on June 30th of the same calendar year.

If Town in its sole discretion determines that it requires the Premises for any public purpose, Town may terminate this Agreement upon one hundred eighty (180) days written notice. In the event of an emergency, Town may terminate this Agreement upon five (5) days written notice. "Emergency," for the purpose of this paragraph, is defined as when the Town Council declares the State of Emergency. Upon termination of this Agreement in the event of an Emergency, Town and LGLL will work cooperatively to develop a written plan for the transition of services and vacation of Premises by LGLL.

In the event of any material default or breach by LGLL, Town may at any time thereafter, following any notice required by statute, and without limiting Town in the exercise of any right or remedy which may have a reason of such default or breach:

Terminate LGLL's right to possession of the Premises by any lawful means, in which case this Agreement shall terminate and LGLL shall immediately surrender possession of the Premises to Town. In such event, Town shall be entitled to recover from LGLL any damages incurred by Town by reason of LGLL's default including but not limited to: the cost of recovering possession of the Premises and reasonable attorneys' fees.

Pursue any other remedy now or hereafter available to Town under the laws of the State of California. Town shall have all remedies provided in law and equity.

LGLL waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179 and any other present, and future law, in the event LGLL is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Agreement by LGLL.

If LGLL fails to remove any personal property belonging to LGLL from the Premises after forty-five (45) days of the expiration or termination of this Agreement, such property shall at the option of the Town be deemed to have been transferred to Town. Town shall have the right to remove and dispose of such property without liability to LGLL or to any person claiming under LGLL, and the Town shall have no need to account of such property.

4.4 No Property Rights. Nothing in this Agreement is in any way intended to establish, convey, create or otherwise grant to LGLL any form of property rights in the Premises, nor shall such rights be established, conveyed, created, or otherwise granted by LGLL's use of the Premises pursuant to the Agreement. LGLL hereby acknowledges that it currently has no property interest in the Premises or any improvements thereto or fixtures location thereon and that any claim it may have to same is hereby and forever waived.

4.5 Notices. Any written correspondence or Notices given under this Agreement shall be addressed as follows:

To Los Gatos Little League:
President
Los Gatos Little League
P.O. Box 93
Los Gatos, CA 95031

To the Town:
Director
Department of Parks and Public Works
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030

Notices shall be delivered by first class, postage prepaid mail, or in person. If mailed, a notice shall be deemed effective on the fifth day following in the U.S. Mail.


4.6 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this License Agreement.

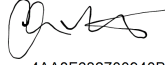
4.7 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between Town and LGLL. No terms, conditions, understanding, or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and LGLL have executed this Use Agreement.


Town of Los Gatos:

Los Gatos Little League:


DocuSigned by:

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Laurel Prevetti, Town Manager

DocuSigned by:

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Chad Kutting, President


Recommended by:

DocuSigned by:

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Nicolle Burnham
Director of Parks and Public Works

Approved as to Form:

DocuSigned by:

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Gabrielle Whelan, Town Attorney

Attest:

DocuSigned by:

BF6EBDE2C214F8...
Wendy Wood, CMC, Town Clerk