

AGR 18.270

IHH 18.357

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

This USE AGREEMENT is entered into this SIXTH day OF NOVEMBER, 2018, by and between the **TOWN OF LOS GATOS**, a California Municipal Corporation ("Town"), and **LOS GATOS LITTLE LEAGUE** ("LGLL")

RECITALS

- A. 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 Avenue, commonly known as Balzer Field.
- B. 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 fourteen (14).
- C. LGLL has conducted baseball programs at Baggerly and Balzar Fields under contract with the Town since 1958.
- D. Town and LGLL each desire LGLL to continue to conduct its programs at Baggerly and Balzar Fields..
- E. Town and LGLL each desire a new agreement setting forth the specific terms and conditions under which LGLL may use Baggerly and Balzar Fields, responsibility for maintenance of the fields, responsibility for the cost related to the use of the fields, and the circumstances under which Licensee may make capital improvements to the fields.

AGREEMENT

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **Subject Premises.** The two Premises covered by this Agreement are:

Baggerly Field at Blossom Hill Park, consisting of:

- a. One baseball diamond, including infield and outfield grass, and dirt
- b. Fences and gates surrounding the field of play
- c. All portable and fixed bleachers
- d. One electronic scoreboard
- e. Restroom, snack shack building (includes one storage room and 2 bathrooms)
- f. Two dugouts

Balzar Field at 41 Miles Avenue, consisting of:

- a. One baseball diamond, including infield and outfield grass, and dirt
- b. Fences and gates surrounding the field of play
- c. All portable and fixed bleachers
- d. One electronic scoreboard
- e. One batting cage

ATTACHMENT 1

- f. Restroom, snack shack building (includes one storage room and 2 bathrooms)
 - g. Two dugouts
- 2. Use of Premises. LGLL shall have exclusive use of the Premises, except bathrooms and parking, which are open to the public at large, only during those times and dates:
 - a) **January 1 to January 31:**
 - (i) Saturdays and Sundays from the time of the opening of the Premises pursuant to the policies and procedures of the Town until dusk.
 - b) **February 1 to July 31:**
 - (i) Monday through Friday, from 2:30 p.m. to dusk
 - (ii) 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.
 - (iii) Saturdays and Sundays, from the time of the opening of the Premises pursuant to the policies and procedures of the Town until dusk.
 - c) **August 1 to August 31:**

There shall be no designated exclusive use times. Use may be requested by LGLL through the Town and, granted if the Premises are available.
 - d) **September 1 to October 31:**
 - (i) Monday through Friday, from 2:30 p.m. to dusk.
 - (ii) 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.
 - (iii) Saturdays and Sundays, from the time of the opening of the Premises pursuant to the policies and procedures of the Town, until dusk.
 - e) **November 1 to December 31:**

There shall be no designated exclusive use times. Use may be requested by LGLL through the Town and, granted if the Premises are available.
 - f) Notwithstanding the exclusive right to use the Premises during specified periods as set forth herein, Town retains the right to enter the Premises at any time so long as the entry does not unreasonably interfere with LGLL's use of the Premises. Town reserves the right to enter Premises at any time for emergencies.
- 3. Term of Agreement. Unless terminated sooner pursuant to terms of this Agreement, this Use Agreement remains in effect November 6, 2018 through June 30, 2022, with an option to extend for one additional five (5) year period upon mutual consent of the parties.
- 4. Holdover. LGLL has no right to use the Premises or any part thereof beyond the expiration or earlier termination of this Agreement. If LGLL holds over with the consent of the Town, all terms of this lease shall continue to apply.
- 5. Maintenance. LGLL shall be fully responsible for maintaining the Premises, excluding the restrooms and parking lots. LGLL shall pick up and dispose of liter, trash and recyclables in the restrooms and parking areas during the hours of exclusive use of the Premises as described in Sections 1 and 2 above. The maintenance to the playing facilities shall include but is not limited to: cutting, fertilizing, watering, weed control, irrigation repairs and modifications, and 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 County Clara 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.

6. Capital Improvements and Repairs.

- a) LGLL shall not undertake any capital repairs or improvements to the Premises without first obtaining 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.
- b) Should it become necessary to make any capital repairs or improvements to the common buildings (restrooms/snack shack) of the Premises, including roof or plumbing repairs or replacement, LGLL shall pay its proportional share of those cost which hereby agreed to be fifty (50%), but shall not exceed a total of twenty-five thousand dollars (\$25,000) over the initial term of this agreement. If the event that the cost of any capital repair or improvement exceeds five thousand dollars (\$5,000), LGLL may make periodic payments of the amount in excess of five thousand (\$5000) over the remaining initial terms of this Use Agreement. In no event shall any periodic payment be made in an amount less than five thousand (\$5,000) per year. 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 impact on LGLL's operations. which shall include consulting with LGLL prior to scheduling any such work. LGLL shall cooperate fully reasonable with Town's efforts to complete repairs or replacement. 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.
- c) In no event shall Town be responsible for the cost of any capital improvement 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 (24) hours of occurrence or knowledge by licensee, or, in the case of damage occurring between 5:00 p.m. on Friday through 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 occur not related in any manner from LGLL's use of the Premises.
- d) 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.

7. Utility Costs. Except as provided in paragraph 5(b) of this Use Agreement, LGLL shall pay the cost of providing water, power and sewer services to the Premises which hereby agreed to be three hundred fifty dollars (\$350) per month. The parties shall renegotiate the amount to be paid by

LGLL in the event of a significant increase in the cost of providing water and power to the Premises.

8. Payment. LGLL shall make all payments required pursuant to this Agreement, whether or not invoiced by Town, no later than July 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
Finance Department
P.O. Box 655
Los Gatos, California 95031

9. Assignment. LGLL shall not assign any portion of this Agreement or allow any use of the Premises by any other person or entity contrary to the terms of this Agreement, without 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.

10. 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.

11. Insurance.

(a) Minimum Scope of Insurance:

(i) LGLL agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring LGLL, its officers and employees to an amount not less than: one million dollars (\$1,000,000) 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 the contract, an Automobile Liability insurance policy insuring LGLL, its officers and employees to an amount not less than one million dollars (\$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 effecting coverage. LGLL shall provide all certificates and endorsements before term of Agreement begins.

(b) General Liability:

(i) The Town, its officers, employees and volunteers are to be covered as additional insured as respects 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 officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town,

its officials, employees or volunteers shall be excess of LGLL insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.

(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.

(c) All Coverages. Each insurance policy required in this Paragraph 12 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. 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.

(d) 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 LGLL provide the required Workers' Compensation insurance for their respective employees.

(e) 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.

12. Indemnification. LGLL agrees to indemnify, hold harmless, and defend the Town, its officers, employees, volunteers, 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 LGLL use of the Premises, including use by anyone that 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.

13. Damage and Destruction.

(a) 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 Paragraph 13.

(b) If because of the destruction or damage to the Premises, the Premises is entirely unsuitable or inadequate for the use specified herein, LGLL shall be entitled to a pro rata rebate of the fee paid to the Town calculated by dividing the Annual User Fee by the total number of hours of exclusive use as shown in Attachment A, Annual Schedule and then multiplying this calculated hourly rate by the number of hours remaining on the Annual Schedule after the date of the damage or destruction of the Premises.

(c) 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

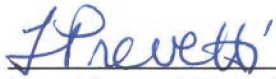
such insurance as LGLL deems appropriate to protect its interests should damage or destruction to the Premises occur.

- (d) 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.
14. Compliance with Town Code. LGLL shall comply with all provisions of the Town Code, including the provisions of Chapter 19 of the Code concerning Parks and Recreation.
15. Termination.
- (a) 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 termination of the Agreement without compensation by 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.
 - (b) 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.
 - (c) 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 purposes of this paragraph, is defined as when the Town Council declares a 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 transition of services and vacation of Premises by LGLL.
 - (d) 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 reason of such default or breach:
 - a. 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.
 - b. 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.
 - c. 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.

- d. 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 to dispose of such property without liability to LGLL or to any person claiming under LGLL, and the Town shall have no need to account for such property.
16. 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 this 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.
17. Notices. Any written correspondence or Notices given under this Agreement shall be addressed as follows:
- | | |
|-----------------------------|--------------------------------------|
| To Los Gatos Little League: | To the Town: |
| President | Director |
| Los Gatos Little League | Department of Parks and Public Works |
| 1190 Saratoga Avenue | Town of Los Gatos |
| San Jose, CA 95129 | 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 deposit in the U.S. Mail.
18. 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.
19. 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 Agreement.

Town of Los Gatos, by:



Laurel Prevetti, Town Manager

Los Gatos Little League, by:



Signature

RICK OLESER, PRESIDENT

Print Name and Title

Recommended by:



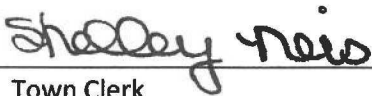
Matt Morley, Director of Parks and Public Works

Approved as to Form:



Robert Schultz, Town Attorney

Attest:



Town Clerk