

**LICENSE AGREEMENT  
REGARDING FIGARDEN LOOP PARK**

This License Agreement ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its Parks, After-school, Recreation, and Community Service Department ("City"), and Bullard Cal Ripken Baseball, a California nonprofit corporation ("Bullard Cal Ripken").

WITNESS

WHEREAS, Bullard Cal Ripken operates a youth baseball league at Figarden Loop Park located at 4265 W. Figarden Drive, Fresno, California; and

WHEREAS, the City owns and operates Figarden Loop Park (the "Park"), as depicted on **Exhibit A** hereto; and

WHEREAS, Bullard Cal Ripken desires to use the baseball field of the Park for games and practices throughout the year, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, the parties agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

City Representative: Kyle Jeffcoach, Recreation Manager  
Parks, After School, Recreation, and Community Services  
Alfonso Hernandez, Jr. Building at Dickey Youth Center  
1515 E. Divisadero Street  
Fresno, CA 93721  
Tel: (559) 621-2900

Bullard Cal Ripken: Stephen Davis  
Bullard Cal Ripken  
2017 W. Bullard Ave. #176  
Fresno, CA 93711  
Tel: (702) 569-7012

2. ROLES, CONTRIBUTIONS, AND RESPONSIBILITIES

A. The City shall:

(1) Assign Bullard Cal Ripken priority status with reservation of the baseball field at Figarden Loop; provided that such priority reservations are limited to use of Figarden Loop Park during the months of May through October during each year of this Agreement, and are further limited to use on Saturdays (during all hours of Figarden Loop Park operation) and on weekdays (up to five hours per day), with no right to priority reservation on Sundays. The City of Fresno PARCS Department will coordinate through Bullard Cal Ripken with all other groups wishing to use the field, but those other

groups wishing to use the field must contact the PARCS Department to ensure that there are no Bullard Cal Ripken baseball functions scheduled during the time that another group wishes to use the field. Bullard Cal Ripken will work with all groups wishing to use the field so that mutually available times can be scheduled for use by other groups when Bullard Cal Ripken baseball is not using the fields. Bullard Cal Ripken shall have access to play under the illuminated night lights during evening baseball functions at no additional cost.

(2) Allow Bullard Cal Ripken to sell and hang banners to hang around the outfield fences of the baseball fields in order to fund raise for its league. Signs shall adhere to City Sign Ordinances. City reserves the right to approve the banners before they are placed at the Park. Advertising shall be limited to commercial advertising involving offering of goods or services for sale, consistent with Constitutional and local law requirements and any and all policies, practices and guidelines promulgated by the City as amended from time to time.

(3) Allow Bullard Cal Ripken the right to operate the snack bar and concessions, and retain all proceeds for the same in order to defer maintenance costs.

B. Bullard Cal Ripken shall:

(1) Provide the landscaping and grass-cutting services for the entire baseball field at the Figarden Loop Park, including mowing, edging, weeding, and addressing any minor sprinkler issues. The landscaping and mowing will be done on a weekly basis and will include the removal of minor graffiti around the park to the extent they can do so, and the repair of above-ground landscaping issues, including sprinkler heads. Bullard Cal Ripken will pay the entire cost of the landscaping, which is initially valued at \$2,291 per month, or \$27,500 per year.

(2) Perform necessary minor repairs to fences and gates around the Figarden Loop Park baseball fields as needed, paying for the parts and labor itself. The estimated expense, based upon similar services provided at neighbor fields for Bullard Cal Ripken, is initially valued at \$27,500 per year.

(3) Provide and maintain the necessary equipment for baseball field operations, and replace the equipment as needed. This will all be done at the expense of Bullard Cal Ripken. Such equipment includes L screens in both batting cages (which Bullard Cal Ripken has already purchased, built and installed), hoses for watering the field, rakes for the field, draggers for dirt preparation for the games, chalk for the lines, chalking machines, bases and base repairs, maintenance and upkeep of the mounds, pitching rubbers, and playing dirt. This will include both the playing field and the bull pens/batting cages. Bullard Cal Ripken will also pay for the services for the workers who will have to spend time working on the repairs and upkeep, as needed. The estimated cost of this equipment and these services, based upon similar expenses made by Bullard Cal Ripken at the other neighboring fields, is initially valued at \$39,500 a year.

(4) Maintain the baseball field playing area in a clean and trash-free manner, including, as needed, providing trash cans, and sending workers to clean trash and debris around the field, at the expense of Bullard Cal Ripken. The estimated cost for the

same, based upon similar expenses by Bullard Cal Ripken at its neighboring fields, is initially valued at \$27,500 per year.

(5) Maintain insurance, naming the City as an additional insured, and maintain additional property insurance covering items of property kept at the fields.

(6) Pay to the City \$2,000, per year, cash, by January 31 of each year, which is to be used to off-set Figarden Loop Park repairs and maintenance. The total expenses for Bullard Cal Ripken to maintain and operate the Figarden Loop baseball fields are initially estimated at \$27,500 per year. The labor and materials provided by Bullard Cal Ripken for these services will not require any funds or labor from the City.

(7) Be responsible for any and all flood damage to the improvements constructed by Bullard Cal Ripken. The City in its sole discretion shall determine if the damage relates to or arises out of flooding.

(8) Adhere to all watering restrictions and guidelines as set forth by the City of Fresno Water Conservation Program.

### 3. TERM

This Agreement shall become effective when this Agreement has been completely executed by the parties' authorized agents. This Agreement shall remain in effect for an initial term running from the effective date through 2027. The parties may extend this Agreement for two five-year terms.

### 4. DEFAULT TERMINATION

Should Bullard Cal Ripken default in the performance of any of the terms and conditions of this Agreement and fail to commence a cure thereof within thirty business days after Bullard Cal Ripken has been served with written notice of such default, the City may terminate this Agreement. Notwithstanding the foregoing, if the breach by Bullard Cal Ripken or any of its officers, directors, employees or agents is such that it threatens the health, welfare, or safety of any person or property, then City may, in its discretion, require that such breach be cured in less than thirty business days or immediately.

City shall be in default under this Agreement if City fails to perform or fulfill any term, covenant, or condition contained in this Agreement and City fails to commence a cure thereof within thirty business days after City has been served with written notice of such default. Nothing herein shall be construed as excusing either party from diligently commencing and pursuing a cure within a lesser time if reasonably possible.

Upon any such termination, all rights and obligations of each party under this Agreement shall cease as of the date of termination, except for those specific obligations that shall survive termination as set forth herein. In addition to the right to terminate this Agreement upon Bullard Cal Ripken's default, the City shall have the right to terminate part or all of this Agreement upon thirty days' notice to Bullard Cal Ripken if the facilities that are the subject of this Agreement are required for public necessity or emergency use. Additionally, upon the termination or expiration of this Agreement, any reservations of Figarden Loop Park made pursuant to this Agreement shall automatically terminate.

5. NON-EXCLUSIVE USE

Bullard Cal Ripken acknowledges that the baseball field is one component in Figarden Loop Park, a public park owned and operated by the City. City shall have the right to use or permit the use of any portion of Figarden Loop Park to any person, firm, or other entity regardless of the nature of the use of such other space, in accordance with the terms of this Agreement. Bullard Cal Ripken agrees to take reasonable efforts to minimize any disturbance to the operation and/or other uses of the Park by City and the public.

6. COMPLIANCE WITH GOVERNING LAW

Each party shall comply with all federal, state and local laws, rules and regulations in its pursuit hereof. No party in its performance of this Agreement shall employ discriminatory practices on the basis of race, religious creed; color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

7. CAPACITY OF THE PARTIES

Each party is acting in an independent capacity. Nothing in this Agreement and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency, or employment relationship, jointly and severally.

In addition and without limitation, each party shall be solely responsible for all matters relating to payment of its employees, including, but not limited to, compliance with applicable social security withholding, worker's compensation insurance, benefits, and all other regulations governing such matters. Personnel supplied by City will not for any purpose be considered employees or agents of Bullard Cal Ripken. The City assumes full responsibility for the actions of such personnel while they are performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits, and the like, as applicable. Conversely, personnel supplied by the Bullard Cal Ripken will not for any purpose be considered employees or agents of the City. Bullard Cal Ripken assumes full responsibility for the actions of such personnel while they are performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits, and the like, as applicable.

The City and Bullard Cal Ripken agree and acknowledge that their relationship is strictly and solely that of an independent contractor to each other. The City's employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment, or disability benefits, to be provided by Bullard Cal Ripken. Bullard Cal Ripken agrees and acknowledges that its employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by the City.

The parties further agree and acknowledge that each party is solely responsible for determining the method and means by which it will fulfill its obligations hereunder. Each shall be solely responsible for payment of all sales, use, or other taxes assessed against or associated with the performance of each party's respective obligations or on the exercise of their rights under this Agreement, including without limitation income, payroll or employment-related taxes and payments.

Neither party shall engage any person or entity to serve in any capacity, or incur any expense or obligation on behalf of the other without the prior written consent of both parties.

#### 8. INDEMNIFICATION

To the furthest extent allowed by law, Bullard Cal Ripken shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Bullard Cal Ripken or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Bullard Cal Ripken's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Bullard Cal Ripken should subcontract all or any portion of the work to be performed under this Agreement, Bullard Cal Ripken shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

#### 9. INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance

or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the City, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Educators Legal Liability (ELL) or a Professional Liability (Abuse & Molestation) Insurance that insures against liability arising out of the bodily injury, personal injury, and third-party property damage occurring because of the wrongful or negligent acts attributable to the institution. This coverage should protect against a wide range of potential claims, including but not limited to athletics, alcohol, campus crime, sexual molestation, and other sexual misconducts.

#### MINIMUM LIMITS OF INSURANCE

Bullard Cal Ripken, or any party Bullard Cal Ripken subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;
  - (iii) \$2,000,000 aggregate for products and completed operations; and,
  - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
2. **COMMERCIAL AUTOMOBILE LIABILITY:**  
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER'S LIABILITY:**
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.
5. **Educators Legal Liability (ELL) or Professional Liability (Abuse & Molestation):**
  - (i) \$1,000,000 per claim/occurrence; and,
  - (ii) \$2,000,000 policy aggregate.

#### UMBRELLA OR EXCESS INSURANCE

In the event Bullard Cal Ripken purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents, and volunteers.

#### DEDUCTIBLES AND SELF-INSURED RETENTIONS

Bullard Cal Ripken shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Bullard Cal Ripken shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or
- (ii) Bullard Cal Ripken shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

#### OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. Bullard Cal Ripken shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, Bullard Cal Ripken's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of Bullard Cal Ripken's insurance and shall not contribute with it. Bullard Cal Ripken shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and

non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Bullard Cal Ripken and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents, and volunteers.

If the ELL or Professional Liability (Abuse & Molestation) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Bullard Cal Ripken.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Bullard Cal Ripken, Bullard Cal Ripken must purchase "extended reporting" coverage for a minimum of five years' completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to City for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days written notice by certified mail, return receipt requested, has been given to City. Bullard Cal Ripken is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Bullard Cal Ripken shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Bullard Cal Ripken shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.



## VERIFICATION OF COVERAGE

Bullard Cal Ripken shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or designee prior to City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Bullard Cal Ripken shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

### 10. ATTORNEY'S FEES

If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its/their reasonable attorney's fees and legal expenses.

### 11. PRECEDENCE OF DOCUMENTS

In the event of any conflict between the body of this Agreement and any exhibit/attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within the exhibit/attachment. Furthermore, any terms or conditions contained within any exhibit/attachment hereto which purport to modify the allocation of responsibility or liability between the parties, provided for within the body of this Agreement, shall be null and void.

### 12. NOTICES

Any notice required or intended to be given to a party under the terms of this Agreement shall be in writing and shall be deemed to be duly delivered the earlier of (a) actual receipt by personal delivery to the representative (as defined herein), as the case may be, or in lieu of such personal service, by way of Federal Express or other similar courier addressed to such party at the appropriate address set forth herein, (b) the date of receipt by facsimile to the City Representative or the Bullard Cal Ripken Representative, or (c) three business days after the date of mailing (postage pre-paid return receipt requested). Either party may change its address for the purpose of this Paragraph by giving written notice of such change to the other.

### 13. BINDING

Once this Agreement is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

### 14. ASSIGNMENT

There shall be no assignment by any party of its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted

assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

15. WAIVER

The waiver by any party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and approved by and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

The payment of any fee or compensation or performance of any obligation hereunder by either party shall not constitute a waiver of any breach by the other party or of any of the rights and remedies which either party may have as a result of such breach. No waiver by either party of breach of the Agreement shall be implied from any failure by the other party to take action on account of such breach if such breach persists or is repeated. Waivers by either party of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

16. GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County.

17. HEADINGS

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

18. SEVERABILITY

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

19. INTERPRETATION

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

20. ENTIRE AGREEMENT

It is mutually understood and agreed that the foregoing along with the attached exhibits constitutes the entire Agreement between the parties. Any modifications or amendments to this Agreement must be in writing signed by an authorized agent of each party.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.  
SIGNATURES APPEAR ON NEXT PAGE.

IN WITNESS THEREOF, the parties have caused their authorized agents to execute this Agreement:

CITY OF FRESNO,  
a California municipal corporation

BULLARD CAL RIPKEN BASEBALL, a  
California nonprofit corporation

By: \_\_\_\_\_  
Kristina Chamberlin, Assistant Director  
Parks, After-school, Recreation and  
Community Services

By: Stephan Davis  
Stephan Davis  
Title: President, Bullard Cal Ripken  
(If corporation or LLC, Board Chair, Pres.  
or Vice Pres.)

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy

Name: STEVEN DIAS  
Title: Secretary  
(If corporation or LLC, CFO, Treasurer,  
Secretary or Assistant Secretary)

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

APPROVED AS TO FORM

By: \_\_\_\_\_  
Brandon M. Collet                      Date  
Deputy City Attorney

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_