

**AMENDMENT AND EXTENSION OF
AGREEMENT FOR RECREATIONAL USE OF BASIN "CN"
CITY OF FRESNO – FMFCD – RIVER PARK LITTLE LEAGUE**

This AMENDMENT AND EXTENSION ("AMENDMENT") of the "AGREEMENT FOR RECREATIONAL USE OF BASIN "CN," dated March 31, 1999 ("AGREEMENT") between the FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California public corporation ("District"), and RIVER PARK LITTLE LEAGUE, a California non-profit corporation ("League"), is now made by and among the League and the CITY OF FRESNO, a California municipal corporation ("City"), with the acknowledgement and consent of the District, this ____ day of _____, 2017.

RECITALS

WHEREAS, the District and the League entered into the AGREEMENT (attached hereto) dated March 31, 1999, for the League's use of a portion of the District's "Ponding Basin CN" (the "Premises"), for Little League baseball and other recreational purposes; the term of the AGREEMENT, with extensions, expires March 31, 2019; and

WHEREAS, the Premises were then deeded from the District to the City pursuant to the "AGREEMENT AMENDING THAT CERTAIN AGREEMENT FOR JOINT MAINTENANCE AND OPERATION OF DRAINAGE BASIN PARKS (DATED AUGUST 26, 1965) AS AMENDED BY AGREEMENTS DATED MARCH 24, 1987, JULY 1, 1995, AND MAY 30, 1998, BASINS "CN" AND FF," dated April 9, 1999; and

WHEREAS, the League has invested nearly \$2 million in improvements, countless additional millions in operations and maintenance, and has served over 1,000 children per year providing youth baseball and Little League Challenger Baseball (for disabled youth) programs; and

WHEREAS, the League, since the inception of the AGREEMENT, has been graciously permitted to utilize the parking lot of an adjacent commercial office complex for all League events; however, the League has been provided notice from the owner of the office complex that permission to use the parking lot will be terminating; and

WHEREAS, without access to parking, continued operation of the League will be impractical, if not impossible, and the millions of dollars invested in the improvements, operations, and maintenance of the League facilities and the important role the League plays in benefitting the community may be lost; and

WHEREAS, the League intends to enter into an agreement with the City to permit the League to construct a parking lot within the adjacent Kaiser Park, a City park, at a substantial cost to the League, and also improve and maintain a soccer field within the park, which will provide adequate parking and additional community benefits; and

WHEREAS, because of the additional substantial investment by the League, the long term successful operation of the baseball facility, and additional community benefits, the parties desire amend and extend the AGREEMENT on the terms stated herein; and

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. AMENDMENT AND EXTENSION

The AGREEMENT shall be shall be amended and extended on the terms stated herein.

2. TERM AND EFFECTIVENESS

This AMENDMENT shall be effective upon its complete execution by the parties' authorized agents and shall remain in effect for a term from the effective date and extending the AGREEMENT for twenty years from March 31, 2019, through March 31, 2039.

3. TERM AND EFFECTIVENESS

All terms stated in the AGREEMENT shall remain in full force and effect, except as expressly amended in this AMENDMENT; should there be any conflict between the terms of the AGREEMENT and the AMENDMENT, the terms of the AMENDMENT shall supersede.

4. INDEMNIFICATION AND INSURANCE

Insurance coverage shall be updated and at least as broad as:

- a. 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."

MINIMUM LIMITS OF INSURANCE

USER, or any party the USER 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.

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.

UMBRELLA OR EXCESS INSURANCE

In the event USER 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

USER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and USER 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 his/her designee. At the option of the CITY'S Risk Manager or his/her 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) USER shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her 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. USER 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, USER'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 USER'S insurance and shall not contribute with it. USER 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.

If the ELL or Professional Liability (Abuse & Molestration) 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 USER.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) 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 (5) 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 USER, USER must purchase "extended reporting" coverage for a minimum of five (5) 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 (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. USER 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, USER 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, USER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) 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

USER 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 his/her 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, USER 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.

9. 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.

10. 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.

11. 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 USER Representative, or (c) three (3) 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.

12. 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.

13. 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.

14. 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.

15. 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, California.

16. 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.

17. 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.

18. 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.

19. REPRESENTATIONS AND WARRANTIES

CCBA represents and warrants that it is a duly authorized and existing California nonprofit corporation in good standing. Each party hereby represents and warrants to the other party, and agrees that it has the full power and authority to enter into this Agreement and perform each of its obligations hereunder, and it is legally authorized

and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement.

20. ENTIRE AGREEMENT

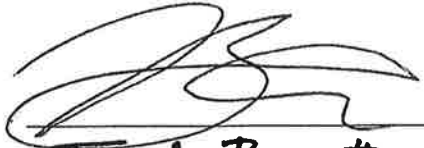
It is mutually understood and agreed that the foregoing along with the attached Exhibits constitutes the entire Agreement between the parties. Any modifications or amendments to this Agreement must be in writing signed by an authorized agent of each party.

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

CITY OF FRESNO,
a California municipal corporation

RIVER PARK LITTLE LEAGUE,
a California nonprofit corporation

By: _____
Manuel Mollinedo, Director
Parks, After-school, Recreation and
Community Services

By: 
Name: Tim A. Bennett
Title: PRESIDENT
(If corporation or LLC, Board Chair, Pres.
or Vice Pres.)


ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: Walter C. Cumiford
Name: WALTER CUMIFORD

By: _____
Deputy

Title: SECRETARY
(If corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  for 6/15/17
Brandon M. Collet Date
Deputy City Attorney