

AGREEMENT BETWEEN CITY OF ST. HELENA AND SHLL

This Agreement (the "Agreement") is made and entered into this July 1, 2018 ("Effective Date"), by and between the City of St. Helena, a California municipal corporation ("the City"), and Napa Valley Little League, Inc., a Non-Profit group d.b.a. St. Helena Little League ("SHLL"). City and SHLL are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties".

RECITALS

- A. City owns certain real property in the City of St. Helena, County of Napa, State of California, commonly known Crane Park, which includes two baseball fields (east and west fields) with grandstands for each field, batting cages, a snack bar in between the two fields, the asphalt area between the ballfields and around the grandstands, and parking lots ("Crane Park Baseball Facilities").
- B. City and SHLL hereby wish to enter into an agreement whereby the City authorizes SHLL to use Crane Park as provided in this Agreement

NOW, THEREFORE, in accordance of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed as follows:

1. USE OF REAL PROPERTY.

The City shall permit SHLL to use the Crane Park Baseball Facilities for a youth baseball program. The City and SHLL may also agree to the use of the Crane Park Baseball Facilities for other athletic events subject to prior approval and agreed to by executing a written Addendum to this Agreement.

The use of the Crane Park Facilities shall include such areas as are reasonably necessary for SHLL to enjoy Crane Park Facilities, such as a snack bar, grandstands for each field, the asphalt area between the ballfields and around the grandstands, batting cages, and parking lots.

2. ALTERATIONS, ATTACHMENTS.

Except as otherwise provided herein, all decorations or attachments made by SHLL to the Crane Park Baseball Facilities shall require the City's prior written approval, which approval shall not be unreasonably withheld.

3. RIGHT TO ENTER AND TO EJECT VISITORS.

City has the right to enter any portion of the Crane Park Baseball Facilities during the use of the Crane Park Baseball Facilities by SHLL, as long as such entry does not interfere with SHLL's proper and reasonable use of the Crane Park Baseball Facilities in accordance with this Agreement. City shall also retain the right, but not the duty, and in cooperation with SHLL, to remove any objectionable person from the Crane Park Baseball Facilities.

4. MAINTENANCE OF CRANE PARK BASEBALL FACILITIES

A. City's Rights and Responsibilities:

- 1) Empties all trash cans (daily during Little League season; as needed during the off season).
- 2) Mows baseball field outfields (weekly / twice a week as time permits and if needed during post-season play).
- 3) Maintain irrigation system and make repairs from August 1st until the last City league teams have ceased practices/games.

B. SHLL's Rights and Responsibilities:

- 1) Exclusive Use during the season (February 1 through June 15) and Priority Use (June 16 to July 31).
 - i. "Exclusive Use" means only SHLL can use the two ballfields.
 - ii. "Priority Use" means that SHLL gets first choice at days and times of use for the two ballfields and the City may use the two ballfields when not reserved by SHLL.
- 2) Mow baseball field infields (during the Exclusive Use and Priority Use periods), which will include edging and the disposal of grass clippings into a SHLL provided green waste bin during the season.
- 3) Vandalism mitigation
- 4) Clean the dugouts, snack bar, grandstands, grounds in and around the two baseball fields of trash and beverage spills
- 5) Maintain dugouts, snack bar, grandstands, and grounds in and around the two baseball fields, to an agreed upon standard for safety and appearance
- 6) Paint dugouts and grandstands as needed with like kind paint and color (must provide paint, painting tools and labor)
- 7) Keep clean, maintain and repair batting cages
- 8) Repair all field perimeter fencing (outfield, foul line and backstop)
- 9) Maintain irrigation system and make repairs (must provide replacement irrigation parts) during the Exclusive Use and Priority Use periods.
- 10) Herbicide spraying (this will be shared between the City and SHLL)
- 11) All sign boards removed from the outfield fences at the end of July
- 12) Cinders shall be stored in an area designated by the Parks Maintenance Manager and kept covered when not being accessed for use
- 13) Shall use and maintain storage shed located behind the Head Start building
- 14) Responsible for the ordering and cost of Port-a-Potties, as well as their cleanliness and servicing, which will be removed at the end of Priority Use period. City will pay for a 50% of Port-a-Potty if both parties agree to leave it on site for both City's and SHLL's use; City will pay for 100% if Port-a-Potty left on site or will rent one should SHLL opt to have their unit removed after the Priority Use period.
- 15) If a room is needed to host SHLL board meetings, SHLL will contact the City Recreation Department to discuss their request.

C. Mutual Responsibilities of the City and SHLL:

During the non-use time beginning when City league programming ends and before February 1st, the cost of any necessary repairs that need to be made to the baseball field irrigation system shall be shared up to an amount not to exceed \$500 each.

6. UTILITIES.

City will pay the costs of gas, electric, water, and sewer services for the Crane Park Baseball Facilities.

7. ACTIVITIES.

SHLL shall not conduct or permit any activities or programs on the Crane Park Baseball Facilities that violates any federal, state, or local law or regulation. No alcoholic beverages, illegal substances, advertising, smoking, tobacco products or pets shall be permitted on the Crane Park Baseball Facilities during SHLL's use pursuant to this Agreement.

8. ADMISSION FEES.

SHLL may charge admission fees to athletic events. Such admission fees shall be SHLL's sole property.

9. MEDIA RIGHTS.

SHLL retains all radio, television, and media rights for SHLL athletic events conducted on the Crane Park Baseball Fields and Snack Bar pursuant to this Agreement.

10. STEERING COMMITTEE.

The Parties will hold a non-binding steering committee meeting at least once per year in order to review collaboration between the Parties and to ensure the ongoing success and growth of the relationship between the Parties. The committee is authorized to meet as needed to review issues related to the use and maintenance of the Crane Park Baseball Facilities. The steering committee composition shall consist of the SHLL president and one other board member, and the City's Parks & Recreation Director and Park Maintenance Manager.

11. CONTRIBUTION.

The Parties acknowledge and agree that an integral factor in City allowing the SHLL's use of the Crane Park Baseball Facilities is SHLL's contribution to renovate the Crane Park Baseball Facilities. After the City Council for City approves the construction contract for the Crane Park Baseball Facilities renovation, SHLL shall contribute an amount not less than 50% of the cost in cash and/or professional services in Year 1, and a minimum of 50% of the cost per year in years 2, 3, and 4, for the renovation of the Crane Park Baseball Facilities. SHLL's Contributions made in excess of the 50% of the cost minimum for years 2-4, inclusive, will be mutually agreed upon by the Steering Committee. In the event SHLL fails to provide the services and/or cash on or before the Contribution Date, City may terminate the Agreement after providing SHLL notice of its right to cure under the "REMEDIES" section of this Agreement.

12. INSURANCE AND INDEMNIFICATION.

A. Property Insurance.

At all times during the term of this Agreement, SHLL, at its sole cost and expense, agrees and shall keep and maintain property damage insurance protecting the Crane Park Baseball Facilities from damage.

B. Liability Insurance.

At its sole cost and expense, SHLL shall carry comprehensive general liability insurance for protection of SHLL from any liability arising out of any accidents or other occurrence causing any injury and/or damage to any person or property on the Crane Park Baseball Facilities due directly or indirectly to the use or occupancy thereof by the insured, or any person claiming through or under the insured. SHLL's liability policy shall have limits of not less than \$5 Million per occurrence and \$5 Million annual aggregate, which limit can be met with a combination of primary and umbrella policies. SHLL shall also carry workers' compensation and employers' liability insurance in amounts of not less than \$100,000 per accident per employee / \$500,000 policy limits, and automobile liability coverage with a minimum combined single limit of \$5 Million (for bodily injury and/or property damage). However, to the extent SHLL is self-insured for purposes of workers' compensation, it shall be deemed to be in compliance with the terms of this provision. Policy limits and deductibles shall be reviewed on an annual basis by the Parties and adjusted if commercially reasonable and appropriate.

C. Other Insurance Provisions.

All required insurance shall be obtained from issuers of recognized responsibility licensed to do business in the State of California. SHLL shall furnish to City a certificate of insurance required under subparagraphs A and B of this Section no later than two weeks prior to SHLL's first use of the Crane Park Baseball Facilities and by February 1st of each year thereafter. All such insurance required to be maintained by SHLL shall be primary and not contributing with any insurance which City may maintain. All policies shall contain an agreement by the insurer that such policies shall not be modified, cancelled, or non-renewed except upon at least thirty (30) days' prior written notice to City. A renewal certificate shall be provided prior to expiration of the current policies. SHLL shall cause City and its officials, officers, agents, and employees as an additional insureds on its CGL and property damage insurance policies. SHLL shall cause each policy required to be kept and maintained by it under this Agreement. SHLL shall provide City with copies of the policies of such insurance policies and/or certificates of insurance evidencing such insurance upon execution of this Agreement and from time to time thereafter as reasonably requested by City.

D. Waiver of Subrogation Rights.

City releases the SHLL from any claim for recovery for any loss or damages to any of its property, which is insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance. This waiver applies only when permitted by the applicable policy of insurance. SHLL shall be responsible for the payment of any applicable property deductible.

SHLL's insurance shall contain a provision requiring the insurance carriers to waive their rights of subrogation against City and all City additional insureds, as well as City insurance carriers.

E. SHLL's Indemnification of City.

Except for the City's sole negligence or willful misconduct, SHLL will protect, defend (by counsel reasonably satisfactory to City), hold harmless, and indemnify City and its officials, officers, agents, and employees, and each of them, from and against any and all claims, losses, liabilities, actions, damages, and causes of action, judgments, costs and expenses (including reasonable attorneys' fees and costs) occasioned by, or arising out of, any accident or other occurrence, causing or inflicting bodily injury, death, or damage to any person or property, happening or done in, upon, or about the premises of the Crane Park Baseball Facilities, or due directly or indirectly to SHLL's use of the Crane Park Baseball Facilities or any part thereof by SHLL or any person claiming through or under SHLL. The provisions of this subparagraph shall survive termination of this Agreement with respect to any damage or injury occurring prior to such termination.

13. TERM.

This Agreement shall last for a period of 5-years beginning July 1, 2018 and ending June 30, 2023. If by February 1, 2023 neither Party wishes to make any changes to this Agreement, it shall automatically be renewed for an additional 5-year period, and continuing on in that cycle until one of the two Parties wishes to change the length or nature of the agreement.

14. TERMINATION.

Either Party may terminate this Agreement for any reason by giving the other Party ninety (90) days advance written notice, during which time, pursuant to mutual agreement, the Parties may engage in negotiations for the continuation of the Agreement.

15. SIGNS.

SHLL shall, at its sole cost and expense, have the right and privilege of attaching, affixing, painting or exhibiting SHLL signs on the Crane Park Baseball Facilities provided that: (1) such signs shall comply with City ordinances; (2) such signs shall not change the structure of the Crane Park Baseball Facilities; (3) such signs shall be taken down at the conclusion of the SHLL's season, and no later than July 31st of each year, shall not damage the Crane Park Baseball Fields and Snack Bar or SHLL shall repair any such damage (notwithstanding paragraph 5 herein); and (4) such signs shall be subject to the City's prior written approval, which approval shall not be reasonably

withheld. In addition, SHLL shall have the right to exhibit advertising signs during SHLL events, subject to the City's prior written approval, which approval shall not be reasonably withheld.

16. AMENDMENTS.

This Agreement may be amended only by a written instrument approved by the City and by SHLL.

17. SEVERABILITY.

If any clause, provision or section of this Agreement shall, for any reason, be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein. In case any agreement or obligation contained in this Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Parties, to the full extent permitted by law.

18. ASSIGNMENT.

This Agreement shall not be assigned except with mutual written consent of both Parties.

19. NOTICE.

Any and all notices or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, or by receipted hand delivery, by Federal Express, courier, or other similar and reliable carrier, or by confirmed facsimile or electronic mail which shall be addressed to each Party as set forth as follows:

If to City:

Parks & Recreation Department
André Pichly
1480 Main Street
St Helena, CA 94574
707-968-9222

If to SHLL:

Robbie Meyer
1430 Howell Mountain Road
Angwin, CA 94508
707-312-0633

And a copy to:

Public Works Department
Carlos Uribe
1480 Main Street
St Helena, CA 94574
707-967-2871

Each such notice shall be deemed to have been provided at the earliest of the following: (a) at the time it is actually received; or (b) in the case of overnight hand delivery courier or services such

as Federal Express with guaranteed next day delivery, within one day; or (c) in the case of registered U.S. Mail, within five (5) days. From time to time, the Parties may change the name and address of a Party designated to receive notice. Such change of the designated person shall be in writing to the other Party and as provided herein.

20. REMEDIES.

In the event that SHLL fails to timely make any of the payments required pursuant to this Agreement, and such payments remain unpaid after the City's thirty (30) days written notice, the City may terminate this Agreement upon sixty (60) days advance written notice to SHLL. SHLL's failure to provide insurance certificates and/or copies of the insurance policies evidencing the coverage required herein shall bar SHLL's use of the Crane Park Baseball Facilities until proper evidence of insurance is provided. If default shall be made in the observance or performance of any of the other covenants or conditions in this Agreement, which Agreement is required to observe and perform and such default is not cured within thirty (30) days after SHLL's receipt of the City's written notice (or if such default cannot be reasonably cured within thirty (30) days, then SHLL shall have a reasonable time to cure said default provided SHLL in good faith diligently proceeds to take steps to cure said default within said thirty (30) day period), or if SHLL shall abandon or fail to use or maintain the Crane Park Baseball Facilities as agreed herein during the term of the Agreement, then City may treat the occurrence of any one or more of the foregoing events as a default or breach of this Agreement, and thereupon at its option may terminate this Agreement and/or seek other rights and remedies at law, contract, or in equity. The remedies provided for herein are cumulative and are not exclusive of any other remedies that may be available to any party at law or in equity or otherwise.

21. NO WAIVER; MODIFICATIONS IN WRITING.

No failure or delay by either Party in exercising any right, power, or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any such right, power, or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. No amendment, modification, supplement, termination, or waiver of or to any provision of this Agreement, or consent to any departure therefrom, shall be effective unless the same shall be in writing and signed or on behalf of the Party to be charged with the enforcement thereof. Any amendment, modification or supplement of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given.

22. RATIFICATION OF AGREEMENT.

Except as expressly amended by this Agreement, the Lease (as previously extended by Resolution No.) shall remain in full force and effect, and City and SHLL hereby ratify the same. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs, and assigns.

27. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matters hereof and supersedes all negotiations, preliminary understandings, and all prior or contemporaneous discussions or understandings of the parties hereto in connection with the subject matters hereof.

23. EXECUTION IN COUNTERPARTS.

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have made and entered into this Agreement in the City of St. Helena as of the Effective Date.

CITY OF ST. HELENA

By: Mark Prestwich
Mark Prestwich, City Manager

ATTEST:

By: Cindy Tzafopoulos
Cindy Tzafopoulos, City Clerk

APPROVED AS TO FORM:

By: Thomas B. Brown
Thomas B. Brown, City Attorney

SHLL

By: Jeff Blum
Name: JEFF BLUM
Title: PRESIDENT

By: Matt Haleman
Name: Matt Haleman
Title: Treasurer