

AGREEMENT FOR JOINT USE AND MAINTENANCE OF THE INGRID B. LACY FIELD BETWEEN THE PACIFICA SCHOOL DISTRICT AND THE PACIFICA NATIONAL LITTLE LEAGUE

This Agreement for joint use and maintenance of the Ingrid B. Lacy field, entered into this 1st day of July, 2017, by and between the Pacifica School District (the "District"), and the Pacifica National Little League. ("PNLL") and, together with the District, the "Parties"):

WITNESSETH

WHEREAS, the District is the owner of certain real property located in the City of Pacifica, California, known as Ingrid B. Lacy Middle School;

WHEREAS, PNLL is a nonprofit corporation;

WHEREAS, the Parties wish to provide for the joint use and maintenance of the Ingrid B. Lacy field and

WHEREAS, the Parties, students, and residents of Pacifica will benefit from the Parties entering into a joint use agreement for its use and maintenance;

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained in this Agreement, the Parties agree as follows:

1. Site: The District agrees to make available, pursuant to Education Code sections 10900, et seq. and 17400, et seq., the Ingrid B. Lacy field to PNLL for T ball and AA at no cost to PNLL.

PNLL acknowledges that aside from the joint use rights provided for herein, this Agreement confers on PNLL no ownership or other rights with respect to any District property.

2. Responsibilities of PNLL: PNLL shall be responsible for regular gopher abatement, weed/broadleaf abatement, fertilization, and reseeded of all worn areas of the Ingrid B. Lacy field after sport seasons. It shall also be responsible for the filling of all gopher holes and any other holes in the field on an ongoing basis. It shall also be given access to the controls of the irrigation system. It is the responsibility of PNLL to inform the District of any observed malfunction of the irrigation system. PNLL is also responsible for the maintenance and upkeep of the infield.

PNLL shall provide the District a written plan or schedule of its maintenance procedures.

PNLL is responsible to utilize only field maintenance practices proscribed by the District's current Integrated Pest Management (IPM) Plan as described in the District's website. Chemical treatment of any type is to be minimized and only utilized when all other methods of treatment have failed. PNLL will submit a request in writing to the District's Director of Facilities in advance of any chemical treatment requesting approval of the requested treatment. The request will specify the applicator, purpose of application, schedule and frequency of application,

chemical name, concentration, quantity, and SDS (Safety Data Sheet) for each product to be applied as part of the request for application. The District retains the right to designate an applicator of its choosing in lieu of any requested by PNLL. All costs associated with field maintenance practices described within this agreement that are the responsibility of PNLL will be borne by PNLL.

PNLL shall provide the District with a schedule of all practices and games in advance of all sport seasons. PNLL shall be responsible for the removal of trash from containers around the field. PNLL shall also be responsible for maintaining the field in a clean and safe condition. PNLL will utilize the outside gymnasium bathrooms and is responsible for their regular cleaning. PNLL agrees that the Ingrid B. Lacy field will not be used for hard ball games or practices.

PNLL will not allow parking on school grounds and will not drive vehicles on lawns without permission from the District.

PNLL will obey all laws and policies that govern school district property including those laws and policies applying to possession and use of alcohol and tobacco (such as, for example, Board Policy 3513.3, Tobacco-Free Schools). PNLL will follow all California Education Code and other local, state, and federal laws and policies that pertain to school property.

3. Responsibilities of the District: The District shall provide water and be responsible for the mowing of the field. Any special requests (i.e. mowing heights) will be discussed with the district maintenance department. The District will also be responsible for all repairs to the irrigation system.
4. Use of Facilities: The Parties agree that the PNLL shall have exclusive use of the Ingrid B. Lacy field during the T ball and AA seasons as long as a softball is used and such use does not interfere with the after school sports program of Ingrid B. Lacy Middle School. The Ingrid B. Lacy after school sports program shall maintain the right to use the field on weekdays until 6:00 PM. The District shall have the right to grant permission for other organizations to use the Ingrid B. Lacy field as long as no such use interferes with PNLL activities or causes damage to the field. PNLL may place a storage shed inside the gated trash enclosure outside the gymnasium.
5. Term:
 - a. This Agreement shall be for a period of 1 year, from July 1, 2017 to June 30, 2018. The Parties shall regularly review the Agreement on a schedule to be agreed upon by the Parties. This Agreement may be terminated by either Party without cause upon the Party mailing written notice of intent to terminate at least 90 days prior to the termination date.
 - b. In the event the District deems PNLL is not maintaining the Ingrid B. Lacy field safely for participating youth, the District may take action to suspend use of the field until such safety issues are addressed.

- c. This Agreement may be amended in writing at any time by the mutual assent of the Parties.
- 6. Purpose: The Parties agree that, during the term of this Agreement, the Premises shall be used by PNLL for recreational and sport purposes by participants in PNLL T-ball and girls softball teams.
- 7. Maintenance and Repairs: PNLL shall notify the District as soon as reasonably possible after learning that any portion of the Premises has been damaged, destroyed, vandalized, is in need of repair, or presents a safety hazard for any user.
- 8. Consent of Parties: Whenever the consent, approval or permission of either Party is required, that Party shall not unreasonably delay or withhold such consent, approval or permission.
- 9. Alterations and Additions: PNLL shall not make any material change to the Premises or any part of the Premises without first obtaining the written consent of the District. In the event District consents to the making of any material change to the Premises, the change shall be made at no expense to the District, and any contractor selected to make the same must be a contractor licensed by the State of California.
- 10. Default:
 - a. Default by PNLL. The occurrence of the following event shall constitute a material default and breach of this Agreement by the League:
 - i. The failure to make use of and maintain the Premises as provided in this Agreement.
 - b. District's Remedies. In the event of any such default and breach by PNLL described hereinabove, District may at any time thereafter terminate the PNLL's right to use of the Premises with a written notice mailed to the League terminating this Agreement upon the 30th day after the notice is mailed.
- 11. Mutual Hold Harmless and Insurance:
 - a. It is agreed that PNLL shall defend, hold harmless and indemnify the District, its officers, agents and/or employees from any and all liability, damage, cost, expense, and/or claims for injuries to persons (including, but not limited to, sports program participants and spectators) and/or damage to property which arise from the PNLL's use or any other community use of the Premises (including ingress and egress to the Premises), and for such liability, damage, cost, expense, and/or claims arising from the negligent acts or omissions of PNLL, its officers, contractors, agents and/or volunteers.
 - b. It is agreed that the District shall defend, hold harmless and indemnify PNLL, its officers, contractors, agents and/or volunteers from any and all liability, damage, cost, expense, and/or claims for injuries to persons (including, but not limited to, sports program

participants and spectators) and/or damage to property which arise from the District's use of the Premises (including ingress and egress to the Premises), and for such liability, damage, cost, expense, and/or claims arising from the negligent acts or omissions of the District, its officers, agents and/or employees.

- c. PNLL agrees to have and maintain, for the duration of the contract, a general liability insurance policy insuring PNLL in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage. This policy may be in the form of self-insurance. PNLL shall add the District as additional insured to this policy. PNLL shall provide the District with an endorsement effecting coverage required by this subparagraph.
- d. District agrees to have and maintain, for the duration of the contract, a general liability insurance policy insuring District in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage. This policy may be in the form of self-insurance.

12. Assignment and Subletting: PNLL shall not assign or encumber its interest in this Agreement or in the Premises without District's advance written consent. Any assignment or encumbrance without District's consent shall be voidable and, at District's election, shall constitute a default. No consent to any assignment or encumbrance shall constitute a further waiver of provisions of this Section.

13. Notices: Any notice, demand, request, consent, approval, waiver, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid mail, and if given by mail shall be deemed sufficiently given when sent by registered or certified mail.

14. Force Majeure:

- a. District shall not be chargeable with, or liable to, PNLL for anything or in any amount for any failure to perform or delay caused by fire, earthquake, explosion, flood, hurricane, the elements, Acts of God or the public enemy, actions, restriction, limitations or interference of governmental authorities or agents; enforcement of applicable law; war; invasion; insurrection; rebellion; riots; strikes or lockouts; inability to perform, control or prevent which is beyond the reasonable control of District; and any such failure or delay due to said causes or any of them shall not be deemed a breach of or default in the performance of this Agreement by the District.
- b. PNLL shall not be chargeable with, or liable to, the District for anything or in any amount for any failure to perform or delay caused by fire, earthquake, explosion, flood, hurricane, the elements, Acts of God or the public enemy, actions, restriction, limitations or interference of governmental authorities or agents; enforcement of applicable law; war; invasion; insurrection; rebellion; riots; strikes or lockouts; inability to perform, control or prevent which is beyond the reasonable control of PNLL; and any such failure or delay

due to said causes or any of them shall not be deemed a breach of or default in the performance of this Agreement by the PNLL.

15. Hazardous Materials Activity: The Parties shall not store, handle or generate hazardous materials/waste/underground tanks on the Premises, without the prior written consent of other Party. In the event that either party does store, handle, or generate hazardous materials on the Premises without the other Party's consent, the offending Party shall be deemed to be in breach of this Agreement and shall be subject to such remedies as are available under law, and as provided herein. Additionally, the offending Party shall be liable for the payment of all costs of investigation and remediation of hazardous materials on the Premises that may be required in the event that the offending Party does store, handle, or generate hazardous materials on the Premises, and shall relieve, indemnify, protect, and save harmless the other Party against any and all claims and liabilities, of any kind or nature whatsoever, arising out of the presence of any such hazardous materials introduced to the Premises by the offending Party.

Hazardous material means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the work place or the environment. Hazardous materials include, but are not limited to, hazardous substances, hazardous waste, and any material which a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the work place or the environment. Examples of such hazardous materials are, but are not limited to: waste oil, solvents, gasoline and compressed gases.

16. General Provisions:

- a. Compliance with Law. The Parties shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.
- b. Rules and Regulations. The Parties agree that the Premises shall be used in compliance with any relevant provisions of law, and that the Parties shall meet and confer to formulate any necessary rules and regulations regarding the use of the Premises.
- c. Authority of Parties.
 - i. Corporate Authority. If either party hereto is a corporation, each party executing this Agreement on behalf of the corporation represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of the corporation or in accordance with the by-laws of the corporation, and that this Agreement is binding upon the corporation in accordance with its terms.
 - ii. Authorized Agreement Representative of the District and PNLL. The

Superintendent or designee shall be the only authorized agent of the District for purposes of giving any notices or exercising any rights, options, privileges or obligations of the District under this Agreement. PNLL President or designee shall be the only authorized agent of PNLL for the purposes of giving any notices or exercising any rights, options, privileges or obligations of PNLL under this Agreement.

- d. Time. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.
- e. Successors and Assigns. The terms, covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.
- f. Prior Agreements. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the Parties or their respective successors in interest. This Agreement shall not be effective or binding on any Party until fully executed by both Parties.
- g. Inability to Perform. This Agreement and the obligations of the Parties hereunder shall not be affected or impaired because the Parties are unable to fulfill any of their obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of Parties.
- h. Negation of Partnership. District shall not become or be deemed a partner or a joint venturer with PNLL by reasons of the provisions of this Agreement. PNLL shall not become or be deemed a partner or a joint venturer with the District by reasons of the provisions of this Agreement.
- i. Separability. Any provision of this Agreement which shall prove to be invalid, void, illegal or unenforceable shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.
- j. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- k. Signs. PNLL shall not place any permanent sign upon the Premises without the District's prior written consent. Any banner placed on the Premises for more than three days shall be subject to prior approval by the District.
- l. Provisions, Covenants and Conditions. All provisions herein, whether covenants or

conditions, on the part of either party shall be deemed to be both covenants and conditions.

- m. Choice of Law. This Agreement shall be construed, interpreted and governed in accordance with the laws of the State of California.
- n. Venue. The venue for any court action to interpret or enforce this Agreement or to litigate any claim arising out of this Agreement shall be had in State Court of the County of San Mateo.
- o. Termination of Prior Agreements. This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the subject matter of this Agreement, and contains all of the covenants and agreements between the parties with respect to the subject matter contained herein. Any prior agreements regarding the subject matter contained herein, promises, regulations or representations not set forth in the Agreement shall have no force or effect.
- p. No employment. Nothing in this Agreement shall be construed as establishing either an employer/employee or joint venture relationship between PNLL and the District.

"DISTRICT"

By: _____
Josephine Peterson
Chief Business Official

"PNLL"

By: _____
Mike Willaims
President PNLL