

ALAMEDA LITTLE LEAGUE OF ALAMEDA AND

ALAMEDA UNIFIED SCHOOL DISTRICT

**AGREEMENT FOR MAINTENANCE AND SHARED RECREATIONAL USE OF
WOOD MIDDLE SCHOOL BASEBALL FIELDS**

This Agreement for Shared Recreational Use of the recreational baseball fields (the “Fields”) at Wood Middle School, 420 Grand Street, Alameda is made and entered into this 1st day of November, 2014 (“Agreement”), by and between Alameda Little League, Inc., hereinafter referred to as “Alameda Little League” and the Alameda Unified School District, hereinafter referred to as the “District”, collectively referred as the “Parties” or singularly as “Party”.

RECITALS

WHEREAS, the provisions of California Education Code Section 38131 et seq. (the “Civic Center Act”) authorize the District to grant use of school facilities or grounds for recreational use including “Supervised recreational activities including, but not limited to, sports league activities for youths that are arranged for and supervised by entities, including religious organizations or churches, and in which youths may participate regardless of religious belief or denomination”; and

WHEREAS, many District students are participants in Alameda Little League; and

WHEREAS both Alameda Little League and District are vitally concerned with the educational, recreational and social needs and general welfare of Alameda students and residents; and

WHEREAS, the Alameda Little League is willing to contribute certain funding toward the cost of field improvements and ongoing maintenance in exchange for District’s agreement to allow Alameda Little League to use the Fields for public recreational use during certain specified periods; and

WHEREAS, in recognition of the civic contributions of the Alameda Little League to using and maintaining the Fields for the benefit of players and students, this Agreement provides for the Alameda Little League’s reasonable use of the Fields during the time and upon the conditions described in this Agreement;

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and Alameda Little League agree as follows:

AGREEMENT

I. TERM.

The term of this Agreement shall commence on November 1, 2014, and shall remain in effect until October 31, 2019. The Agreement may be renewed for an additional five-year term by action of the governing boards of each Party.

II. SHARED RECREATIONAL USE

The Parties agree to the following terms:

A. District Priority of Use. The District shall have first priority for use as detailed in Section C.

B. Alameda Little League's Use. The Alameda Little League will have the next priority for use as detailed in Section C.

C. Scheduling of Use. The Alameda Little League and District agree that the schedule of use shall be subject to annual review by the Alameda Little League President or designee and the Superintendent of Schools or designee.

1. The District will have exclusive use of the Fields during the instructional day on all days when Wood Middle School and/or Lum Elementary School are in session.
2. Alameda Little League will have priority use of the Fields until 10 o'clock p.m. during the Little League season, except as inconsistent with subsection (1) above.
3. When not in use by the District or Alameda Little League, the Fields shall be made available for use by other groups, consistent with the Education Code and District Board policy.
4. The District and Alameda Little League will meet prior to the start of each Little League season to schedule in accordance with the guidelines outlined above and to mutually agree on any requests not specifically outlined above. The schedule shall be memorialized in a master event permit (the "Master Permit") consistent with the District's event permitting procedures.
5. In the event the District desires to reserve time during the Alameda Little League's priority period, Alameda Little League will make a reasonable attempt to accommodate the District's request.
6. Alameda Little League reserves the right to manage and change the scheduling during its priority use period in accordance with all other procedures of the Agreement, and shall notify the District Facilities Office

of any such changes. If the changes do not conflict with another use described above and do not require additional accommodations from the District related to staffing or security, the District shall revise the Master Permit to reflect the changes.

7. The Alameda Little League shall have the authority to charge admission, user fees, concession sales, or other related fees to the public during its use of the field. The revenue incurred during Alameda Little League programs and activities will remain property of the Alameda Little League. In no event shall the Alameda Little League's fees for use of the field pre-empt the mandated use of the field, if any, by any priority non-profit organizations designated in Education Code section 38134(a).

III. FIELD MAINTENANCE

A. Alameda Little League's Repair of Damage. The Alameda Little League is responsible for exercising reasonable care of the Fields and for repairing damage caused by the Alameda Little League's use and programs. The Alameda Little League agrees to leave the Fields in a clean condition, ready for use by the District. The Alameda Little League agrees to submit written reports to the District within forty-eight (48) hours of the Alameda Little League's discovery of any unusual conditions or damage to the Fields or other District property.

B. District's Repair of Damage. The District shall be responsible for damages incurred during regular school hours or when the Fields are being used for school-related activities.

C. Maintenance plan. The Alameda Little League shall develop, and the District shall approve, an ongoing Maintenance plan for the Fields. All costs for completion of the work under the Project and of the ongoing Maintenance plan shall be borne by the Alameda Little League. The Maintenance plan shall include ongoing work performed by the Alameda Little League to keep the Field in good repair and playable condition. The Maintenance plan shall be developed in consultation with, and approved by, the District and its Maintenance and Operations personnel.

D. Alameda Little League Access to the Fields. Alameda Little League shall be responsible to open and close the Fields during Alameda Little League usage for Alameda Little League programs and activities. The District shall issue keys and other means of access to the Alameda Little League for the Fields as needed for programs and activities. The District will be responsible for locking all gates after regular school hours. The Alameda Little League will only have access to other areas of the school campuses outside of the Field, if otherwise agreed upon by both the District and Alameda Little League, after completion of a Civic Center use application.

E. Reporting Violations of the Law during Alameda Little League Use. All violations of law, abuse or damage to the Fields and/or school sites or injuries to the public or Alameda Little League or District employees during the Alameda Little League's use of the

Fields shall be reported immediately to the District Director of Maintenance and Operations or designated representatives.

IV. CAPITAL AND OPERATING COSTS

A. Capital Contributions. Alameda Little League has agreed to contribute toward the cost of installing lights on one of the Fields (the “Project”).

B. Maintenance, Utilities and Staffing. Alameda Little League shall be responsible for all Fields maintenance, including repair, maintenance, and landscaping services. This shall include maintenance of the Project lights. The Alameda Little League shall pay for all program and staffing costs during Alameda Little League program and activity use. The Alameda Little League agrees to develop, in consultation with the District, a regular maintenance schedule to ensure that the Field is in playable condition at all times. The District shall pay for all program and staffing costs during regular school hours and school-related activities.

C. Shared Maintenance, Utilities and Staffing. Each of the Parties shall be responsible for payment of utility charges in proportion to its use of the Fields.

V. IMPROVEMENTS

A. No Improvements or Alterations without Written Permission. Alameda Little League shall not make alterations, improvements, or additions on the Fields without first obtaining the written permission of the District.

B. Permits. Alameda Little League is responsible for obtaining and/or maintaining all required permits related to any alteration, improvement, or addition made to the Fields under this Agreement or its predecessor agreement, and accepts all liability related to failure to obtain or maintain such permits.

C. Improvements Become District Property. Alameda Little League agrees any fixtures, improvements, or additions made to the Fields under this Agreement or its predecessor agreement shall become District property upon the termination or expiration of this agreement, unless the Parties mutually agree otherwise.

VI. INDEMNITY

The District and Alameda Little League shall indemnify, hold harmless, and defend each other, their officers, agents, and employees, and each of them of and from: any and all claims, demands, causes of action, damages, costs, expenses, losses, or liabilities, in law or in equity of every kind and nature whatsoever arising out of the operation or maintenance of the Field and premises described herein except for liability arising out of the gross, willful, or sole negligence of the other Party, its officers, agents, or employees.

VII. INSURANCE

A. Insurance Coverage Limits. Alameda Little League shall provide, at its own expense, and shall maintain in force during the term of this Agreement, Commercial General

Liability Insurance in the sum of One Million Dollars (\$1,000,000) for injury to or death of any one person, with a General Aggregate Two Million Dollars of \$2,000,000; Fire Damage Insurance in the sum of \$100,000; Medical Expense Insurance in the sum of \$5,000; Workers' Compensation Insurance as required under the law for all employees; and Property Damage and Products Liability insurance in the sum of One Million Dollars (\$1,000,000). The policy or policies of liability insurance shall contain the following special endorsement:

1. The District, its officers, employees, servants, and representatives are included as additional insureds but only insofar as operations under this Agreement are concerned;
2. The insurer will not cancel or reduce the insured's coverage without thirty (30) days prior written notice to the District;
3. District will not be responsible for payment of premiums or assessments on the policy.

B. Certificates of Insurance. A signed and completed certificate of insurance, with all endorsements required by this paragraph, shall be submitted to the District prior to the commencement of activities. At least thirty (30) days prior to the expiration of any such policy, a signed and completed certificate of insurance, showing that such insurance coverage has been renewed or extended, shall be filed with the District.

VIII. NOTICES

Any notices herein provided to be given, or which may be given by either Party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, and addressed as follows:

To the Alameda Unified School District:

Superintendent
2060 Challenger Drive
Alameda, CA 94501

To Alameda Little League, Inc.:

Ron Matthews
2857 Sea View Parkway
Alameda, CA 94502

The address to which notices shall or may be mailed as aforesaid by either Party, may be changed by written notice given by such Party to the other as hereinbefore provided, but nothing herein contained shall preclude the giving of any notice by personal service.

IX. DISCRIMINATION PROHIBITED

Neither Alameda Little League nor District shall discriminate in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religion, sex, sexual orientation, age, physical handicap, or medical condition, in violation of state or federal law, or on any basis otherwise prohibited by state or federal law.

X. SUBLETTING AND ASSIGNMENT

Alameda Little League shall not assign its rights, duties, or privileges under this Agreement nor shall Alameda Little League attempt to confer any of its rights, duties, or privileges under this Agreement on any third Party, without the written consent of the District except that Alameda Little League may schedule third Party use of the Field during Alameda Little League hours of use with District permission.

XI. EFFECT OF WAIVER OF BREACH OR VIOLATION

The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision or law shall not be deemed to be a waiver of any other term, covenant, or condition of law. The subsequent acceptance by either Party of any money that may become due hereunder shall not be deemed a waiver of any preceding breach or violation by the other Party of any term or condition of this Agreement, or of any applicable law.

XII. BREACH; REMEDIES

Failure by either Party to perform its material obligations under this Agreement following notice and expiration of the cure period shall constitute a breach of this Agreement. A Party claiming a breach has occurred shall give written notice to the other Party, specifying the breach complained of. The complaining Party shall not institute any legal action if the other Party, within thirty (30) days following receipt of notice of breach, with due diligence, commences to cure, correct or remedy such failure and diligently pursues such cure, correction, or remedy to completion. Upon the occurrence and failure to cure a material breach, the complaining Party shall have the right to pursue any action at law or in equity to cure, correct, prevent, or remedy any breach, to recover damages for such breach, or to obtain any other available remedy.

XIII. ENTIRE AGREEMENT OF PARTIES

This Agreement represents the entire and integrated Agreement between Alameda Little League and District with respect to the subject matter of this Agreement and supersedes all prior negotiations, representations, or agreements, either written or oral on this subject. All provisions of this Agreement are expressly made conditions.

XIV. NO JOINT VENTURE

This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

XV. SURVIVAL

The Parties' respective obligations under the Indemnity and Insurance provisions of this Agreement are continuing in nature and shall survive any termination or expiration of this Agreement.

XVI. MODIFICATION

Notwithstanding any of the provisions of this Agreement, Alameda Little League and District may hereafter, by mutual consent, agree in writing to any lawful modification, addition, or deletion of the terms and conditions of this Agreement.

XVII. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns.

XVIII. COUNTERPARTS

This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

XIX. SEVERABILITY

Should any provision of this Agreement be determined to be invalid, illegal, or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal, and enforceable.

XX. DISPUTE RESOLUTION

If a dispute arises that is related, in any way, to this Agreement, the Parties agree to attempt first to resolve the dispute through negotiations.

XXI. CALIFORNIA LAW

This Agreement shall be governed by and the rights, duties, and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Alameda County.

XXII. PROHIBITED ACTIVITIES

Use of tobacco products, intoxicants, or narcotics is prohibited on all District property, including in or about the Field, nor shall profane language, quarreling, fighting, or gambling be permitted.

XXIII. CONFLICT OF INTEREST

Alameda Little League agrees that it and its governing board shall avoid any relationship with the District that constitutes or potentially constitutes a conflict of interest between the Alameda Little League, members of its board, if applicable, and the District. This prohibition shall extend to employment with the District, in cases where a conflict of interest may arise from said relationship.

XXIV. APPROVAL

The Parties agree that this Agreement shall not be binding on the Parties until the Agreement is approved by the District's Board of Education and Alameda Little League's Alameda Little League Council.

IN WITNESS THEREOF, the ALAMEDA LITTLE LEAGUE OF ALAMEDA, by order of its Alameda Little League Council, and the ALAMEDA UNIFIED SCHOOL DISTRICT, by order of its Board of Education, have caused this Agreement to be executed on each Party's behalf by its duly authorized officers.

Ron Matthews
President, Alameda Little League, Inc.

Date

Sean McPhetridge
Interim Superintendent, Alameda Unified School District

Date

Margie Sherratt
President, Board of Education
Alameda Unified School District

Date