

1A
5/12/11

LICENSE AGREEMENT

REGARDING Cary Park

CITY OF FRESNO
City Clerk's Office (Original)

This License Agreement ("Agreement") is entered into this 12th day of May 2011, by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its Parks, After-School, Recreation and Community Service Department ("City"), and Cary Little League, a California nonprofit corporation.

WITNESS

WHEREAS, Cary Little League operates a youth baseball league at Cary Park located at 4750 N. Fresno Street, Fresno, California; and

WHEREAS, the City owns and operates Cary Park (the "Park"), and depicted on Exhibit "A" hereto; and

WHEREAS, Cary Little League desires to use the Baseball field of the Park for games and practices throughout the year, from March 1 to July 30 of each year of this Agreement; and

WHEREAS, the City wishes to grant Cary Little League permission to use the Park in exchange for certain maintenance and improvements to the Park; 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. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

City Representatives: Shaun Schaefer, Recreation Supervisor II
Parks, After-School, Recreation and Community Services
Dickey Youth Development Center
1515 E. Divisadero Street
Fresno, CA 93721
Tel: (559) 621-2900

Kyle Jeffcoach, Recreation Supervisor II
Parks, After School, Recreation and Community Services
Ted C. Wills Community Center
770 N. San Pablo
Fresno, CA, 93721

Cary Little League: Robin Gray
Cary Little League
4974 N. Fresno St. #256
Fresno, CA 93700
Tel: (559) 243-5679

2. ROLES, CONTRIBUTIONS AND RESPONSIBILITIES

A. The City will:

Reserve the baseball fields for Cary Little League on a full-time basis from March 1 to July 30 each year of this Agreement, when requested. The City of Fresno PARCS Department will coordinate thru Cary Little League with all other groups wishing to use the fields, but those other groups wishing to use the field must contact the PARCS Department to ensure that there are no Cary Little League baseball functions scheduled during that time that another group wishes to use the field. Cary Little League will work with all groups wishing to use the field so that mutually available times can be scheduled for use by other groups when Cary Little League baseball is not using the fields.

Allow Cary Little League to sell 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. We reserve 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.

Allow Cary Little League to have the right to operate the snack bar and concessions, and keep the profits for the same in order to defer its costs.

Provide janitorial and restroom materials, building keys, trash bags and trash cans. Landscaped Maintenance will continue to mow the Cary Park grass areas and deal with sprinkler maintenance issues as they arise.

Train and indoctrinate Cary Little League the City of Fresno Adopt-A-Park Program. Monitor the park adoption of Cary Park by Cary Little League and make sure that all outlined commitments are being met.

B. Cary Little League will:

Pay the City of Fresno PARCS Department \$500.00 per year, cash, by February 15th of each year for the annual field reservation fee, which will run from March 1 thru July 30. The annual field reservation fee will be used to contribute towards Cary Park repairs and maintenance.

Cary Little League will formally participate in the City of Fresno Adopt-A-Park Program. They will adopt Cary Park for the duration of one (1) year, 17 hours a month of work performed from March 1, 2011 thru February 28, 2012. The 200 hours of park adoption represent a value of \$2,000 park maintenance resources. Cary Little League will abide by the Adopt-A-Park responsibilities and duties, waiver agreements and reporting of volunteer information to PARCS Staff. Cary Little League will provide the landscaping at Cary Park, including edging, weeding, low limb pruning, graffiti removal, trash pickup and reporting of additional Cary Park maintenance issues to PARCS Staff. Landscaping will be done at least on a bi-weekly basis. Cary Little League will perform minor repairs to ball field back stops, dugouts and base pegs.

Cary Little League will provide and maintain the necessary equipment for the baseball field operations and replace the equipment as needed. This would include hoses for watering, field rakes, draggers for infield dirt mounds, pitching rubbers, field chalking, and obtaining field dirt (for mounds and batter boxes).

Cary Little League will maintain the baseball field playing area and remainder of the park in a clean and trash free manner. Also, the restrooms will be cleaned, stocked and maintained as needed along with garbage dumped when needed.

Cary Little League will maintain insurance, naming the City of Fresno as an additional insured, and will maintain additional property insurance covering items kept at the fields.

3. TERM AND EFFECTIVENESS

This Agreement shall be effective upon its complete execution by the parties' authorized agents and shall remain in effect for an initial term running through March 1, 2012. Thereafter, the parties may negotiate an extension of this Agreement for up to three years.

4. DEFAULT, TERMINATION

Should Cary Little League default in the performance of any of the terms and conditions of this Agreement and fail to commence a cure thereof within thirty (30) business days after Cary Little League has been served with written notice of such default, the City may terminate this Agreement. Notwithstanding the foregoing, if the breach by Cary Little League 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 (30) 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 (30) 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 Cary Little League's default, the City shall have the right to terminate part or all of this Agreement if the facilities that are the subject of this Agreement are required for public necessity or emergency use.

5. NON-EXCLUSIVE USE

Cary Little League acknowledges that the baseball field is one component in Cary 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 the 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. Cary Little League 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, workers' 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 Cary Little League. 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 Cary Little League will not for any purpose be considered employees or agents of the City. Cary Little League 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 Cary Little League 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 Cary Little League. Cary Little League 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 AND INSURANCE

To the furthest extent allowed by law, Cary Little League shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and authorized 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, Cary Little League 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 the performance of this Agreement. Cary Little League's obligations under the preceding sentence shall apply to any negligence of City or any of its officers, officials, employees, agents or authorized volunteers, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of City or any of its officers, officials, employees agents or authorized volunteers.

If Cary Little League should subcontract all or any portion of the work to be performed under this Agreement, Cary Little League 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.

The two preceding paragraphs shall survive termination or expiration of this Agreement.

Throughout the life of this Agreement, Cary Little League shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VI" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$2,000,000 aggregate for products and completed operations.

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily and property damage.

(ii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Cary Little League shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and the Cary Little League shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of the City of policy cancellation of coverage, except for the

Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, Cary Little League shall provide a new certificate evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Cary Little League shall file with the City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Cary Little League's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Cary Little League shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of this Agreement. Cary Little League shall furnish City with copies of the actual policies upon the request of City's Risk Manager and this requirement shall survive termination or expiration of this Agreement.

The fact that insurance is obtained by Cary Little League shall not be deemed to release or diminish the liability of Cary Little League or its subcontractors, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officials, officers, employees, agents and authorized volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Cary Little League. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Cary Little League.

If at any time during the life of the Agreement or any extension, Cary Little League fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

If Cary Little League should subcontract all or any portion of the services to be performed under this Agreement, Cary Little League shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Cary Little League and City prior to the commencement of any services by the subcontractor.

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 Cary Little League 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

Cary Little League 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:

Cary Little League
a California nonprofit corporation

Dated: 5-4-11

By: Robin Y. Gray
Robin Gray, President

Dated: 5/5/11

By: Roy Manssanalez
Roy Manssanalez, Vice President

CITY OF FRESNO,
a municipal corporation

Dated: _____

By: Bruce A. Rudd
Bruce A. Rudd, Assistant City Manager

ATTEST

REBECCA E. KLISCH
City Clerk

BY: Sherrin L. Badertscher
Deputy 5/31/11

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: [Signature]
Katherine Doerr, Senior Deputy City Attorney

EXHIBIT A

CARY PARK
4750 N. FRESNO ST.
FRESNO, CA 93710



N Fresno St, Fresno, CA 93710

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Sep 25, 2009

36°48'14.18" N 119°46'48.88" W elev 322 ft

Eye alt 868 ft

AGENDA ITEM NO. 1A
COUNCIL MEETING 5/12/11
APPROVED BY _____

May 12, 2011

DEPARTMENT DIRECTOR _____
CITY MANAGER 

FROM: BRUCE A. RUDD, Assistant City Manager/Interim PARCS Director
City Manager's Office

BY: SHAUN SCHAEFER, Community Recreation Supervisor II 
Parks, After School, Recreation and Community Services Department

SUBJECT: APPROVE A ONE-YEAR AGREEMENT WITH CARY PARK LITTLE LEAGUE FOR THE
CARY PARK YOUTH BASEBALL FIELDS AND THE ADOPTION OF THE PARK

RECOMMENDATION

Staff recommends that the City Council approve the attached one-year agreement with Cary Park Little League (CPLL), allowing priority access to the youth baseball field at Cary Park for games and practices in exchange for maintenance services to the Cary Park Youth Baseball Field.

EXECUTIVE SUMMARY

CPLL agrees to provide cleanup, landscaping, and limited repair services for the Cary Park Little League Youth Baseball Field and surrounding park space in exchange for priority access to the baseball field at the park. The Agreement is for one year. Included in the Agreement are the following terms:

Cary Little League will:

- Pay \$500 per year for the annual field reservation fee which will contribute toward Cary Park repairs and maintenance.
- Participate in the City of Fresno Adopt-a-Park Program for one year beginning March 1, 2011 through February 28, 2012 for a total of 200 hours – average of 17 hours per month. The 200 hours represent an economic value of \$2,000 dollars.
- Provide edging, weeding, low-limb pruning, graffiti removal, trash pickup, reporting of volunteer information and park maintenance issues
- Provide monthly repair and replacement for watering hoses, field rakes, infield dirt draggers, and field chalkers

The City will have the Cary Park Baseball Field reserved for use by CPLL on a priority basis and will coordinate through CPLL with all other groups wishing to use the field. Other groups wishing to use the field must contact the PARCS Department to ensure that there are no CPLL scheduled events during the time that another group wishes to use the field. CPLL will work with all groups wishing to use the field so that mutually available times can be scheduled for use by other groups when CPLL is not using the fields.

Presented to City Council
Date 5/12/11
Disposition Rec. Approved

BACKGROUND

The Cary Park Little League has been in existence for over 40 years and has been a vital part of providing an active way for youth in the Fresno community to participate in youth baseball leagues during the Spring, Summer and Fall.

CPPL has historically utilized Cary Park Baseball Fields that were operated through the City of Fresno PARCS Department. They have 38 teams registered through the CPLL program annually. All games are played Monday through Friday from 3:00 p.m. to 8:00 p.m. and Saturdays from 8:00 a.m. to 8:00 p.m.

Due to organizational downsizing over the last two years, the PARCS Department has had to reduce services in the areas of field and landscape maintenance. The CPLL drags and chalks of the fields daily. When the Adopt-a-Park Program was announced to the community, the CPLL made overtures to take over the maintenance of the Cary Park and the Cary Park Baseball Fields in exchange for a reduced field cost. An agreement was reached which covered the maintenance of the park and fields in exchange for priority field access for the Baseball Fields at Cary Park.

The CPLL contract was crafted in conjunction with other non-profit sports leagues agreements, such as the Quigley Senior Softball and the upcoming Edison Base Ruth. PARCS has a coordinated effort to provide fields for fee, maintenance off-set service, and or a combination of both to youth and adult sports leagues.

This Agreement was reviewed and approved by the City Attorney and Risk Management Offices.

FISCAL IMPACT

There is no adverse impact to the General Fund as a result of approving this Agreement, since CPLL will continue to pay a league fee and will perform over 200 volunteer park cleanup and maintenance hours for one year, as a part of the Adopt-a-Park program. The reduced league fee and the volunteer clean up hours are equivalent to the value of a standard youth baseball reservation fee.

Attachment: License Agreement