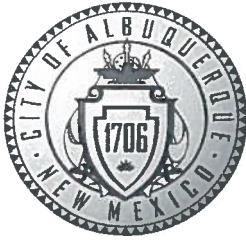


EC-20-46



City of Albuquerque

Albuquerque, New Mexico
Office of the Mayor

Timothy M. Keller, Mayor

Interoffice Memorandum

February 24, 2020

TO: Pat Davis, City Council President

FROM: Timothy M. Keller, Mayor

SUBJECT: Little League Ball Park Agreement between the City of Albuquerque and Little League, Inc. – West Mesa Ball Park

The City owns a tract of land that is presently used for Little League recreation purposes. The City and Little League would like to continue to develop, maintain and operate baseball fields on a portion of the park. Little League improvements are funded with public funds and private funding provide by League and the League has the ability and desire to provide sports education and programming to area youth which is a benefit to the City. The activities and objectives are the League are consistent with furthering the goals and objectives of the City.

In return for the City granting the League the right to enter and use the Premises, the League will perform routine, reasonably appropriate and necessary maintenance of the Premises and Facilities and shall perform other volunteer services. The League shall be responsible for all expense related thereto, all of which shall collectively be considered to be "In-Kind Contributions in Lieu of Rents".

The initial term of the lease is for ten years and provides for two additional five year option for renewal to the League, as long as they are not in default.

This Ball Park Agreement is forwarded to City Council for approval.

Title/Subject of Legislation: Little League Ball Park Agreement between the City of Albuquerque and Little League, Inc. – West Mesa Ball Park

Approved:



2/27/20

 Sarita Nair
Chief Administrative Officer

Date

Recommended:



2/26/20

David Simon, Director
Parks and Recreation Department

Date

Cover Analysis

1. What is it?

Little League Ball Park Agreement between the City of Albuquerque and Little League, Inc. – West Mesa Ball Park

2. What will this piece of legislation do?

The Little League will aid and assist City in the development, operation and maintenance of the tract, and provide sports education and programming to the youth and citizens of Albuquerque.

3. Why is this project needed?

The Department of Parks and Recreation and the Little League are desirous of developing, maintaining and operating baseball fields on a portion of the park. The League has the ability and desire to provide sports education and programming to area youth.

4. How much will it cost and what is the funding source?

N/A

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

The League will perform routine, reasonably appropriate and necessary maintenance of the Premises and Facilities and shall perform other volunteer services. The League shall be responsible for all expense related thereto, all of which shall collectively be considered to be "In-Kind Contributions in Lieu of Rents".

6. What will happen if the project is not approved?

There will be no recreation, sports education, Little League baseball or softball games provided to the youth and citizens of Albuquerque.

7. Is this service already provided by another entity?

No

LITTLE LEAGUE
BALL PARK AGREEMENT

This LITTLE LEAGUE BALL PARK AGREEMENT ("Agreement") by and between the City of Albuquerque, a New Mexico municipal corporation ("City"), and Little League, Inc., a New Mexico non-profit corporation ("League"), is entered into in Albuquerque, New Mexico, and is effective as of the date of the Effective Date (as defined herein).

WHEREAS, City owns a tract of land which is presently used for general park and recreation purposes; and

WHEREAS, City and League are desirous of developing, maintaining and operating baseball fields on a portion of the park; and

WHEREAS, Little League improvements are funded with public funds and private funding provided by League; and

WHEREAS, League wishes to aid and assist City in the development, operation and maintenance of the tract, and to install certain facilities and assist City in fulfilling its recreational needs; and

WHEREAS, League has the ability and desire to provide sports education and programming to area youth, which is a benefit to the City of Albuquerque; and

WHEREAS, the activities and objectives of the League are consistent with furthering the goals and objectives of the City of Albuquerque.

NOW, THEREFORE, City and League agree to the following:

1. Premises. For and in consideration of the mutual benefits to City and League and the terms and conditions set forth below, City hereby grants to League permission to enter and use the Premises, as defined below, for public park and recreation purposes and development of Little League Facilities, as defined below, and activities for the period of time set forth in paragraph 2. The use of the Premises by League shall be limited to playing Little League baseball and softball games and other directly related activities. The premises is the tract of City land as specified in Exhibit A ("Premises"), attached hereto and incorporated by reference.
2. Term. The Term of this Agreement shall begin on the Effective Date, as defined below, and will expire ten (10) years thereafter unless otherwise terminated earlier as provided herein. So long as League is not in default (beyond the

applicable period of notice and cure) at the time of any extension, and so long as authorized representatives of both Parties approve the extension in writing at least sixty (60) days prior to the end of the unexpired initial or extension term, this Agreement may be extended for two (2) additional five (5) year terms. The initial term and all extensions shall be collectively referred to herein as the "Term". The terms and conditions of this Agreement shall apply to both the initial term and any extension terms.

3. Consideration; In-Kind Contributions In Lieu of Rents.

- a. In return for the City granting the League the right to enter and use the Premises, the League will perform routine, reasonably appropriate and necessary maintenance of the Premises and Facilities (subject to paragraphs 6(a) and 8 of this Agreement), and shall perform the other volunteer services as more specifically outlined in paragraph 21 of this Agreement and shall be responsible for all expenses related thereto, all of which shall collectively be considered hereunder to be "In-Kind Contributions in Lieu of Rents" under this Agreement.
- b. The League shall track all such In-Kind Contributions in Lieu of Rents and associated expenses and shall provide quarterly reports to the City on a quarterly basis (each, a "Quarterly Report"). Quarterly reports shall be deemed accepted by the City if the City does not provide comments to the League within fifteen (15) days of receipt.
- c. In each Quarterly Report, the League shall document the In-Kind Contributions in Lieu of Rents and the associated expenses incurred by the League for the applicable, preceding quarter, including specification of the total number of volunteer hours for that quarter, and shall submit the Quarterly Report to the City together with any supporting documentation. If in the opinion of the City additional information or documentation is needed by the City to evaluate a Quarterly Report, the City shall be entitled, within forty five (45) days of its receipt from the League, to request additional information, clarification or documentation from the League, which material shall be provided to the City by the League within forty five (45) days from the City's request.
- d. If upon reviewing a Quarterly Report the City determines that the In-Kind Contributions in Lieu of Rents as reflected in the Quarterly Report are not equal or above the average market rate of properties for the applicable time period, the City will charge the League rent for the difference between the value of the In-Kind Contributions in Lieu of

Rents and the applicable market rate of the facility and League agrees to pay such charge within forty-five (45) days of receipt of invoice¹

4. City Liaison. City will designate and identify for League a City liaison prior to the start of each Little League season, and shall ensure that League has accurate and current contact information for such liaison (the "City Liaison"). League should direct all requests and concerns to and should coordinate through the City Liaison. In the event that the City Liaison changes, the City shall ensure that League is provided with updated information regarding the identity and contact information for the new City Liaison.

5. Use by League and Public; City's Right to Schedule Use.

- a. The permission granted hereunder for the use of the Premises by the League is not exclusive.
- b. The City and League shall make every effort to agree on an annual schedule of use of the Premises by January 1 of each year, which schedule shall reasonably accommodate League's needs for practices, games, maintenance and operations. If the parties do not arrive at an agreed upon schedule by February 15 of a given year, League may be prohibited from use of the Premises unless and until a mutually agreed upon schedule is established.
- c. The League shall have the right to secure the Premises and Facilities, provided that, prior to securing, League displays City approved signage in an open and obvious location containing clear information, in both English and Spanish, regarding how an interested member of the public can inquire regarding scheduling the Premises for public use, and including current contact information of the League for doing so. League shall be responsible, at its expense, for providing and installing such signage.
- d. The City shall have the right to schedule use of the Premises by the City or by the general public.
 - i. Such use by the City or by the general public is permissible hereunder, provided it does not interfere with the League's scheduled and intended use as provided in this Agreement, and;
 - ii. Prior to the City scheduling such use by the City or the general public, the City will first make good faith efforts to coordinate with the League, and if the time period specified for use is during the League's regularly scheduled season, such efforts shall

¹ Market value will be determined by the City's appraiser, pursuant to State law and regulation, which requires application of the national uniform standards of professional appraisal practice (USPAP).

include at least thirty (30) days advance written notice to League, directed to the League President, pursuant to paragraph 31, "Notice." During the League's off-season, the City shall provide at least ten (10) days advance written notice.

6. Facilities.

- a. Consistent with existing practice, the League shall perform routine maintenance necessary for upkeep of the baseball fields and for the other necessary facilities, fixtures and improvements suitable for Little League baseball fields, including but not limited to the following: scorekeeper's boxes, parking space(s), spectator space(s), scoreboard, bleachers, concession stand(s) (if permitted pursuant to Exhibit A), fencing and lighting equipment (collectively, the "Facilities").
- b. During its tenancy, the League may propose to perform certain construction, renovations, improvements, additions and/or installation of fixtures on or to the Premises. All such proposed modifications, removals and/or additions must be approved by the City's Parks and Recreation Department Director pursuant to the following framework:
 - i. League shall provide to City all surveys, designs, layout plans and specifications ("Improvement Documents") for City review and approval of any League-proposed changes to, removal or installation of and/or construction of Facilities, fixtures or improvements on the Premises.
 - ii. The designer shall be a registered landscape architect, architect or civil engineer for work requiring architectural or engineering registration. All such improvements, fixtures and Facilities shall be furnished at the sole and exclusive expense of the League, unless public funds are available or another arrangement has been mutually agreed upon between the City and League.
 - iii. Any construction, additions, improvements, fixtures, permanent renovations and installations not legally constituting personal property or trade fixtures shall become the property of the City upon termination or expiration of this Agreement. All construction, renovation, improvements and equipment added to the Premises which is made possible by the use of grant funds shall become the property of the City upon termination or expiration of this Agreement. Notwithstanding the foregoing, all improvements installed exclusively with League funds, which can be removed without damage to the Premises, shall be deemed chattels and may be removed by League at League's

sole and exclusive expense at the termination or expiration of this Agreement without any payment being made to City.

- iv. Prior to any changes, removal, construction, installation or improvements to Facilities, fixtures or improvements, all Improvement Documents shall be submitted to the City Liaison for consideration by the Director of Parks & Recreation. If the Director, in his or her sole discretion, feels that additional information or documentation is needed in order for a complete review and determination regarding the League's request to be performed, the Director may direct the League to provide such additional information or materials in support of its request.
 - v. Once the League's submission for its request is complete (as determined by a complete submission of all Improvement Documents together with any additional materials and information requested by the Director) the Director shall within fourteen (14) days issue to the League a written determination indicating whether or not the request has been approved.
 - vi. The approval of the League's request by the Director is in his/her capacity as Director of Parks & Recreation and not in any other capacity, including but not limited to permitting and compliance with City building rules, codes and ordinances, and is unrelated to any grant or other funding applications.
 - vii. Prior to any construction, League shall notify the adjoining neighborhoods of the construction plans as required by the Integrated Development Ordinance.
 - viii. The League shall coordinate with the City Liaison to obtain final approval by the Director once the project set forth on the Improvement Documents and approved by the Director has been completed.
- c. The League shall provide, at its sole expense, portable and/or permanent toilet service and/or facilities, including accessible toilets in compliance with the ADA for League-related activities during League's use of Premises. League shall be responsible for service and maintenance of the portable and/or permanent toilets and shall be liable for any claims, violations or penalties arising out of the installation or use of the portable and/or permanent toilet service and/or facilities on the Premises.
 - d. The City will pay water and sewer charges for Premises.

- e. League is required to supply and pay for a dumpster and dumpster service during the season, and may have dumpsters removed during the off season periods.

7. Inspection.

- a. The parties shall conduct an inspection of the fields, Facilities and Premises on an annual basis, prior to the start of the season, and shall coordinate to determine a mutually agreeable date and time for the inspection.
- b. At a minimum, the City shall be represented by the Park Management Area Supervisor at the inspection, and the League field coordinator and/or their representatives shall be the representative(s) for the League at the inspection.
- c. Unless otherwise agreed to by the parties in advance, the City Parks and Recreation Department shall provide the League with the water schedule at the inspection (paragraph 9).
- d. Maintenance needs identified by the parties during the inspection shall be addressed and completed prior to the start of the season.

8. Maintenance and Damage. During the Term of this Agreement:

- a. The League shall maintain all improvements, landscaping, fixtures, installations and Facilities on the Premises, including plumbing located or installed in and on the Premises, in good and safe condition, which shall meet the approval of City, and League shall further be responsible for repairs occasioned by the act or negligence of League, its agents, employees, subtenants, licensees and concessionaires, which repairs shall be made by League. For purposes of clarity, the League shall only be liable for such repairs to the extent that they arise out of the negligent actions or omissions of the League or any party for whom the League is legally responsible. The League will be responsible for weed and vegetation management. Notwithstanding the foregoing, League will not be responsible for maintenance of any irrigation systems; however, the League shall have an affirmative obligation to notify the City immediately upon the discovery of any damage to any irrigation system located on the Premises so that the City can promptly address the issue.
- b. Parks and Recreation Department, Park Management Division ("Park Management") will spray for weeds up to two (2) times a year upon the request of the Little League based on standard operating procedures of the City for weed management.
- c. If maintenance required hereunder is not completed in a timely manner by League, City will give League notice to cure the default in writing, which notice shall include specification of the basis for the default. If

League does not perform the required maintenance and cure the default within sixty (60) days, City, at its sole option, may terminate this Agreement without further notice pursuant to paragraph 25, or may perform the maintenance on behalf of the League. The City is not required to immediately take either of the foregoing actions, and may not choose to perform such work and maintenance, and any failure by the City to perform the League's obligations shall not release the League from liability for any loss or damage caused by the League's failure to perform its obligations. In the event that the City exercises its option to perform the maintenance on behalf of the League, the League shall reimburse the City for the cost of such performance within sixty (60) days after the City submits an invoice to the League for the cost of performing such maintenance. If more than sixty (60) days are required for the League to cure, the League should proceed pursuant to the terms of paragraph 25.

- d. If repairs and maintenance required by the City are not completed in a timely manner by City, League will give City notice to cure the default in writing, to the City Liaison which notice shall include specification of the basis for the default. If City does not perform the required repairs and/or maintenance and cure the default within sixty (60) days, League may perform the maintenance on behalf of the City in order to mitigate any damage to the Premises. The League is not required to immediately take the foregoing action, and may not choose to perform such work and maintenance, and any failure by the League to perform the City's obligations shall not release the City from liability for any loss or damage caused by the City's failure to perform its obligations pursuant to any waivers of immunity. In the event that the League exercises its option to perform the maintenance on behalf of the City, the City shall reimburse the League for the reasonable, verifiable, necessary and documented costs of such performance within sixty (60) days after the City's receipt from the League of an invoice, together with all supporting documentation, itemizing with specificity such costs of performing such maintenance. If more than sixty (60) days are required for the City to cure, the City should proceed pursuant to the terms of paragraph 25.
- e. Any repairs to the electrical systems shall be coordinated through the City Liaison and inspected by Park Management before the work is completed by the League or its contractor. The City retains the right to prioritize maintenance needs identified in the annual inspection. Exhibit A sets forth the specific maintenance area.
- f. Any equipment purchased with state or City funds will be maintained by the League. If the equipment purchased with state or City funds is

essential for maintenance or any other requirement of this Agreement, League will be required to replace damaged equipment if the equipment cannot be repaired.

9. Watering & Utilities.

- a. Watering. The City will be responsible for watering all fields and landscaping on the Premises. The watering schedule will be set by Parks and Recreation and shall be based on the City's water conservation ordinance. The League is not to adjust or modify the irrigation system in any way. If, in the opinion of the League, adjustments need to be made, the League must call Park Management with its request for an adjustment.
- b. Utilities. League shall be responsible for utility charges associated with League activities at the Premises including solid waste pick-up and electricity² during the Term of the Agreement. City will be responsible for water and sewer utility costs.

10. Damages.

- a. League agrees to pay for all damages to third parties from personal injury or property damage that occurs in the Premises caused by the negligence or willful misconduct of League or League's employees, agents, licensees and invitees, including any parties granted permission to use the Premises pursuant to paragraph 14.
- b. League agrees to pay for all damages to the Premises and Facilities caused by the negligence or willful misconduct of League, League's employees, agents, and invitees, including any parties granted permission to use the Premises pursuant to paragraph 14.
- c. League shall pay for all damage, cost, expenses and liability in connection with such damages and shall indemnify, defend and hold City and its officers, agents and employees harmless against all losses, damages, costs expenses and liability arising out of League conduct as more specifically set forth in paragraph 22 arising out of the negligence or willful misconduct of League or any of League's employees, agents, licensees and invitees, including any parties granted permission to use the Premises under paragraph 14 relating to the use, access or occupation of the Premises.
- d. For purposes of this provision "third parties" shall be interpreted as including League employees, agents, licensees and invitees, including

² If electric service is not metered separately, City will prorate the electric usage, exclusive of streetlights, and will invoice the League for the amount owed on a quarterly basis. Payment will be due to the City from League thirty (30) days from the date of the League's receipt of the invoice.

any parties granted permission to use the Premises pursuant to paragraph 14.

- e. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

11. Construction Bonds. For any period of construction improvement financed by League funds, League shall, prior to commencing any activities on the Premises, provide the City's Liaison with both a performance bond and labor and material payment bond in forms suitable to the City.

12. Compliance with Laws. In connection with any site development, construction, improvement, use or maintenance of the premises, League shall comply with all applicable federal, state and local laws, ordinances and regulations, including but not limited to all Americans with Disabilities Act (ADA) requirements, obtaining all necessary permits for its operation and complying with City dust control requirements. League will make a good faith effort to maintain a good relationship with the property owners adjacent to the Premises and with the area residents. League shall notify City of any disputes League cannot resolve so City may, at its choosing, participate in the dispute resolution.

13. Concession Stand Operation. During Little League baseball and softball games, League shall have the exclusive right to operate a concession stand on the Premises for the sale of soft drinks, candy, sandwiches and like articles. Alcoholic beverages shall not be sold on the Premises. During use of the Premises by other groups scheduled by City, City may grant concession rights to others. Such rights will not include the right to use the League's concession stand.

14. Occasional Use; No Assignment or Sublease

- a. With the exception of the occasional use set forth in subparagraph "b", below, League shall not assign, sublease or otherwise transfer its rights in whole or in part under this Agreement without prior written consent of City, at City's sole discretion.
- b. Notwithstanding the foregoing subparagraph, the League may allow other parties to use the Premises during the League's scheduled use of the Premises, for baseball and softball purposes. The occasional use of the Premises by non-League parties will not be considered an assignment or sublease in violation of this paragraph 14.
 - i. The League may charge a maintenance and set up fee to other parties for use of the Premises pursuant to subparagraph "b" as

established by the City and updated from time to time in its softball field usage fee schedule.

- ii. The League shall be liable for and shall indemnify, defend and hold the City, its officers, agents and employees harmless from any and all claims, damages, costs, expenses, injuries, fees, penalties, assessments and liabilities arising out of occasional use of the Premises by non-League parties permitted by the League pursuant to this paragraph 14.

15. Amplification. League shall limit the use of an amplified public address system to League events and only use amplified public address systems between the hours of 8:00 a.m. to 10:00 p.m. Amplification at an earlier time may be requested by League and requires prior written approval from City, to be granted at City's sole discretion. Such public address system shall not be used for play by play announcing except for championship or special games. League must obtain prior written permission from City Liaison, to be granted at City's sole discretion, to use an amplified public address system for play by play or for a particular event.
16. Sunday Activities. The League shall not schedule any activities on Sundays prior to 9:00 a.m. without prior written permission from the City Liaison to be granted at City's sole discretion.
17. Lights. If there are lights on the field, the lights shall be turned off no later than 10:00 p.m. on any day the lights are used. Any inning being played shall not be completed if it requires the lights to remain on past 10:00 p.m.
18. Cleanup by League. League shall be responsible for keeping the Premises free of paper, garbage, weeds and debris, from whatever source for the term of this Agreement.
19. Payment of Fees and Debts. League shall pay promptly when due all taxes, license fees, debts and obligations, including, but not limited to those which could cause a lien to be placed on the real property incurred by it in connection with its improvements, operations or activities under this Agreement. If debts are not paid, the City can suspend use of the Premises by the League until debts are paid in full. If League fails to discharge any such lien, whether valid or not, within 30 days after receipt of notice from the City, the City shall have the right, but not the obligation, to discharge such lien on behalf of League and all reasonable and actual costs and expenses incurred by the City associated with the discharge of the lien, including, without limitation, reasonable attorneys'

fees, which costs and fees shall constitute additional rent hereunder and shall be immediately due and payable to City by League.

20. No Discrimination and Compliance with ADA. League agrees that in the use and occupancy of the Premises it shall neither practice nor permit any illegal discrimination of any kind. League also agrees that the use and occupancy of the Premises shall meet all requirements of the ADA and its regulations, as amended. This includes prohibiting discrimination based on a disability in the solicitation and registration of participants and in the use of City fields and facilities for its practices, games, tournaments and ceremonies.
21. Volunteers. Any benefits received by City under this Agreement are rendered or given voluntarily by League and its members, and such people or entities are volunteers, and not employees or agents of City for any purpose. League further agrees that it and its employees, agents and contractors, if any, are not entitled to any benefits from City under provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinances as now enacted or hereafter amended. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating a relationship of principal and agent, partners, joint ventures or any other similar relationship between City and League. Neither the method of computation of compensation for use of the Premises, nor any other provision of this Agreement, nor acts of parties hereto creates a relationship other than as landlord and tenant.
22. Indemnity. League agrees to defend, indemnify and save harmless the City, its officers, agents, and employees from and against all suits, actions or claims of any character brought because of any injury, including death, or damage received or sustained by any person, persons or property arising out of League's or League's invitees', agents', employees', contractors' and sub-contractors' use of or activities on the Premises or any improvements, fixtures or Facilities on the Premises, or arising out of any condition of the Premises, or by reason of any act or omission, neglect or failure to perform any of the League's obligations and duties or any misconduct of League or of League's agents, contractors, employees, invitees or sub-contractors, and League shall hold City harmless from and against any and all costs, claims, demands and damages, including attorneys' fees and legal costs associated therewith. This indemnity provision shall equally apply to injuries to League's employees and agents occurring on the Premises. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement. Notwithstanding the foregoing, League is not required to indemnify the City for the negligence or intentional acts, errors, or omissions

of the City or of its employees or agents. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

23. Insurance Requirements. League shall procure and maintain at its expense during the Term insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by League or its agents. Upon execution of this Agreement and upon the renewal of all coverage, League shall furnish to the City a certificate or certificates in a form satisfactory to the City, showing that it has complied with this paragraph 23. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, City of Albuquerque, P. O. Box 1293, Albuquerque, New Mexico 87103 and the Real Property Manager, Real Property Division, P.O. Box 1293, Albuquerque, New Mexico, 87103, before a policy is canceled, materially changed, or not renewed. Should League fail to provide satisfactory evidence of all required coverages, City may but shall have no obligation to purchase such insurance for League and at League's sole cost and expense, which shall be immediately due and payable by League upon demand. Various types of required insurance may be written in one or more policies. Kinds and amounts of insurance required are as follows:

Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows (requirements are shown as listed on a standard form certificate of insurance):

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal
\$ 5,000	Medical Payments

The policy of insurance must include coverage for all operations performed by League, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement. The City shall be named an additional insured and the coverage afforded shall be primary with respect to operations provided. Showing the City as a certificate holder is not the same as naming the City as an additional insured and is not an acceptable substitute. If equivalent coverages are provided and the form is approved by the City, League shall provide a general liability policy in a form different from the described above.

24. Default and Termination for Default. If League should fail to perform any of the duties, covenants, provisions or conditions of this Agreement ("Default"), City shall give a (45) forty-five-day written notice of Default and demand for

cure of the Default. Failure of League to cure the Default within a period of (45) forty five consecutive calendar days after receipt of written notice thereof from City may result in the City, at City's sole discretion, terminating this Agreement without further notice, and where the Default relates to maintenance obligations, the additional option set forth in paragraph 8(c) also applies. If the nature of League's Default is such that more than forty –five (45) days are reasonably required for its cure, then League shall not be deemed in Default if League notifies the City in writing within thirty (30) days of the League's receipt of the Default notice of League's intent and planned method to cure the Default, and the League then commences to cure within the forty five (45) -day period, and thereafter diligently and continuously prosecutes such cure to completion to the satisfaction of the City.

25. Termination by City Without Cause. Other than for Default, if City desires to terminate this Agreement early for any reason or for no reason, City may do so by giving written notice to League, and this Agreement will then terminate two (2) years from date of such notice.
26. Relocation. If City exercises its rights to terminate pursuant to paragraph 25, City will reasonably assist and cooperate with League to attempt to locate alternative premises for League.
27. Consolidation. If one or more leagues consolidate, the prevailing league(s) shall have right of first refusal to retain the consolidated league's facilities as practice or game facilities. The consolidated fields will be incorporated into the prevailing league's lease, and upon City approval of the consolidation, all parties shall agree to amend this Agreement to reflect the new entity and/or facilities.
28. Condition of Premises. Upon expiration or termination of this Agreement for any reason, League shall promptly deliver the Premises to City in as good a condition and state of repair as when received, except for ordinary wear and tear, or loss or damage caused by Acts of God or nature, acts of City, and individual acts which are not the responsibility of the League under the terms or this Agreement.
29. Severability. In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended, without material altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provision of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or League in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Agreement.

30. Waiver of Default. No failure by the City to insist upon the strict performance of any term, condition or covenant of this Agreement or to exercise any right or remedy available on the Default thereof, and no acceptance of full or partial rent during the continuance of any Default shall constitute a waiver of any Default or of any term, condition or covenant. No obligation of this Agreement which League is required to perform and no Default thereof, shall be waived, altered or modified, except by written instrument executed by the City.
31. Notice. All notices or payments required by this Agreement to be given any party shall be deemed to have been fully delivered, given, made or sent when made in writing and deposited in the United States mail, certified, with postage prepaid thereon, and addressed to the following unless either the City or League change their respective address by giving written notice of such change to the other:

Notice to League:

West Mesa LL
3301 Coors Boulevard NE
Suite R, Box 294
Albuquerque, New Mexico 87120

Notice to the City:

City of Albuquerque
Parks and Recreation Department
Attn: Department Director
1801 Fourth Street, Building A
Albuquerque, New Mexico 87102

With a copy to:

City of Albuquerque
Real Property Division
Attn: Real Property Manager
PO Box 1293
Albuquerque, NM 87103

With a copy to:

City of Albuquerque
Parks & Recreation Department
Attn: Recreation Division Manager
1801 Fourth Street, NW, Building A
Albuquerque, NM 87103

32. Entire Agreement. This Agreement constitutes the full and final agreement of the parties on all subjects contained within it. All prior negotiations and agreements are merged into this Agreement. No subsequent agreement may modify this Agreement unless it is in writing and signed by authorized representatives or agents of the parties..
33. Modification and Governing Law. This Agreement may be modified only in writing and shall be governed by, construed, and enforced in accordance with the laws of the State of New Mexico. In the event of any conflict arising out of the terms and conditions set forth in this Agreement, the parties agree to first seek a mutually acceptable resolution whenever possible using mediation. The Dispute Resolution Office in the City Legal Department is available to assist in initiating the process. Should no resolution be achieved by the use of mediation, then any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in the Second Judicial District Court located in Bernalillo County, Albuquerque, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of said court.
34. Exhibits. All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, are hereby incorporated into this Agreement by reference and are made a part hereof as though set forth in full in this Agreement to the extent they are consistent with the terms and conditions of this Agreement.
35. Attorney Fees and Legal Costs. If either party to this Agreement institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of any provision of this Lease, for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, each party shall be responsible for its own attorneys' fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses in bringing the action. If the action proceeds to trial, costs and fees will be determined pursuant to law.
36. Counterparts. The Agreement may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document. If so executed, each such counterpart of this Agreement is to be deemed an original for all purposes and all such counterparts will collectively constitute one agreement, but in the making of proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

37. Public Document. City is a municipal corporation under the laws of the State of New Mexico. City and League acknowledge that this Agreement is subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and is a “public record” within the meaning of said Act.
38. Force Majeure. In the event City or League is delayed, hindered or prevented from performing any act or thing required hereunder by reason of strikes, lockouts, labor troubles, casualties, failure or lack of utilities, governmental laws or regulations, riots, insurrection, war, acts of God, or other causes beyond the reasonable control of City or League, neither party shall be liable for the delay, and the period for the performance by either party shall be extended for a period equivalent to the period of such delay. The foregoing shall be inapplicable to the payment of rent by League and to the delivery of the Premises by City.
39. Acceptance of Property. League acknowledges that it has examined the Premises and that it has determined by its own independent evaluation that the Premises are suitable and useable for the purposes, uses and activities intended by League as provided in this Agreement. League acknowledged that the City has made no representations, warranties or guarantees, expressed or implied, that the Premises will be suitable or useable for the purposes or uses, which League intends to make of the Premises.
40. Government Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the City in the Premises or waiving or limiting the City’s control over the management, operations or maintenance of the Premises, except as specifically provided in this Agreement, or impairing exercising or defining governmental rights and the police powers of the City.
41. Interpretation. Whenever the context hereof will so require, the singular will include the plural, the male gender will include the female gender and the neuter and vice versa. The terms "include", "includes", "including" and similar terms will be construed to mean "without limitation". All references to sections, subsections, paragraphs, subparagraphs, Exhibits and articles will be deemed references to sections, subsections, paragraphs, subparagraphs and articles of this Agreement and to Exhibits, which are attached hereto and made a part hereof for all purposes.
42. Headings and Captions. Captions and headings of sections and paragraphs are for convenience, not limitation, and are not be construed as modifying text.

43. Representation. Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this contract. Accordingly, each party hereto represents to the other that it has read and understood the terms of this Agreement, and the consequences of executing this Agreement, and that except as expressly set forth herein, no representations have been made by either party to induce the other party to execute this Agreement.
44. Final Dates. If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word “days” is used herein, it shall be considered to mean “calendar days” and not “business days” unless an express statement to the contrary is made.
45. Audits and Inspections. League understands and will abide by all provisions of the Accountability In Government Ordinance, § 2-10-1 et seq. and Inspection General Ordinance, § 2-17-1 et seq. R.O.A. 1994.
46. Authorization. If League executes this Agreement as a corporation or partnership, then League and the person(s) executing this Agreement on behalf of the League represent and warrant that such entity is duly qualified to do business in the State of New Mexico and that the individuals executing this Agreement on League’s behalf are duly authorized to execute and deliver this Agreement on League’s behalf. City represents that it has all requisite authority and approval to enter into this Agreement.
47. Effective Date. This Agreement will not be binding upon the parties until it is signed by League, and approved by the Albuquerque City Council and signed by the Chief Administrative Officer or her designee (“Effective Date”).

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date indicated by each signature, and being effective after approval by the City of Albuquerque Council and upon the signature of the City’s Chief Administrative Officer or her authorized designee.

(The remaining page is intentionally left blank. Signatures to follow.)

CITY:

CITY OF ALBUQUERQUE,
A New Mexico municipal corporation

Approved by City Council
Date and EC#

Sarita Nair, Chief Administrative Officer

Date: _____

Date: _____

EC# _____

Recommended by:

David Simon, Director
Parks & Recreation Department

Date: _____

LEAGUE:

_____ (Organization name)

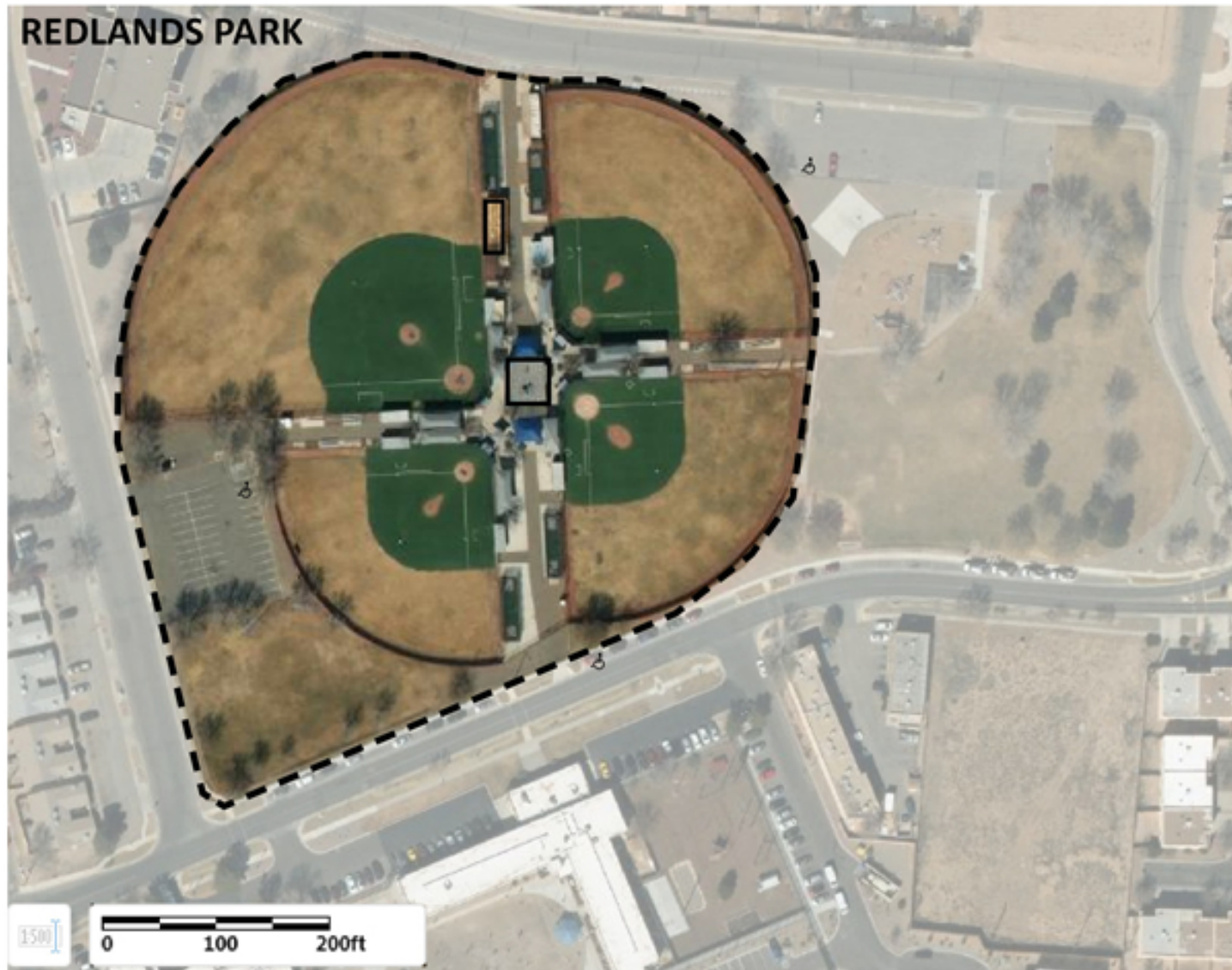
BY: _____ (Signature)

Name: _____ (Print)

Title: _____

Date: _____

WEST MESA LITTLE LEAGUE



LEAGUE RESPONSIBILITY:

1. Natural turf
2. Artificial Turf
3. Infields
4. Storage
5. Concession Stand
6. Weed removal
7. Lighting
8. Dumpster
9. Trees

CITY RESPONSIBILITY:

1. Irrigation Systems
2. Spraying for Weeds by Request
3. Parking Lot