

## USE AGREEMENT

This Use Agreement (the "**Agreement**") is entered into as of March 1, 2013, the Effective Date, by and between the City of Calistoga, a municipal corporation ("**City**") and Calistoga Little League, a California Non-Profit Corporation ("**User**") (each, a "**Party**" and collectively the "**Parties**").

### RECITALS

User desires to use the City property located at 414 Washington Street, Calistoga; a portion of APN 011-260-003 and 011-260-002, as generally set forth in Exhibit A (the "**Property**") for the purpose of Calistoga Little League events and City has agreed to such use at a rate of \$1.00 per year.

The parties desire to formalize their understandings regarding the use of the Property.

### TERMS

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the parties agree as follows:

1. Term. The term of this Agreement shall be for five years, commencing on March 1, 2013, and terminating on December 31, 2018 (the "**Term**").
2. Payment. User covenants and agrees to pay City the sum of \$1.00 per year with such payments sent to: City of Calistoga, 1232 Washington Street, Calistoga, CA 94515, Attention: Finance, by the second day of January of each year.
3. Use of Property. User will occupy and use and maintain the Property only for Calistoga Little League activities, and for no other purpose, and pursuant to the conditions set forth in Exhibit B, attached hereto and incorporated herein by reference.
4. Waiver and Indemnity. User hereby waives and releases City and its respective employees, officers, agents, boards, commissions, and assigns (hereinafter collectively referred to as "**Released Parties**") from any and all manner of rights, liabilities, claims, actions, causes of action, suits, proceedings, demands, damages, costs, expenses (including attorney fees and costs) or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent ("**Claims**"), including without limitation any damage to User's belongings or property or for any harm, injury, or death to the User's employees, officers, agents or assigns, that User may have or which may arise in the future arising out of, directly or indirectly, or in any way connected with this Agreement or User's use of the Property, except for Claims arising out of the sole negligence or willful misconduct of City.

To the fullest extent permitted by law, User shall indemnify, defend and hold harmless the Released Parties from and against any and all Claims of any kind or nature arising out of this Agreement or User's use of the Property, except for Claims arising out of the sole negligence or willful misconduct of City.

5. Insurance. At its cost and expense, User shall maintain in full force and effect during the Term commercial general liability insurance with minimum limits of \$1,000,000 per

occurrence and \$2,000,000 general aggregate for bodily injury, personal injury and property damage insuring against claims which may arise from or in connection with User's occupancy and use of the Property. Such insurance shall be endorsed to include Released Parties as additional insureds, shall be primary and noncontributory with City insurance and shall provide severability of interests between or among insureds. User shall deliver certificates of insurance evidencing such insurance prior to the first date of the Term. The insurance shall be issued by insurers licensed to do business in the state of California and which are rated A:X or better by Best's Key Rating Guide and shall be endorsed to provide at least 30 days prior notification of cancellation or material change in coverage.

6. Disclaimer of Condition of Property. City makes no warranty or representation of any kind or nature regarding the Property or the fitness of the Property for the use intended by User. User has inspected the Property, knows and accepts its condition and waives any express or implied warranty against the City.

7. Removal of User's Property. User understands and agrees that User is responsible for removing its belongings and personal property from the Property prior to the end of the Term or earlier termination of this Agreement, or as provided in Exhibit A. In addition, User shall repair any damage to the Property that arises out of this Agreement to the satisfaction of City and return the Property to the condition as of the Effective Date.

8. Compliance With Laws. User will comply with all applicable local, state and federal laws and regulations with respect to the terms and conditions of this Agreement, including, if applicable, the requirement to obtain a City of Calistoga business license.

9. Assignment. User may not assign this Agreement or any part of it without the prior written consent of City.

10. Amendments. This Agreement may be amended by mutual consent of City and User. Any amendment will be in writing, signed by both Parties.

11. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

12. Termination. City or User may terminate this Agreement at any time upon written notice to the other Party, with such termination effective in sixty (60) days. User will pay for use of the Property up to the effective date of the termination.

13. Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally, or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

For City:

City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515  
Telephone: (707) 942-2803  
Attention: City Clerk

For User:

Calistoga Little League  
P.O. Box 212  
Calistoga, CA 94515  
Telephone: 942- 6386  
Attention: Cindy Yant, President

Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

This Agreement is executed by User and City as of the Effective Date.

**USER:**

**Calistoga Little League**, a California Non-Profit Corporation

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Cindy Yant  
Title: President

**CITY:**

**City of Calistoga**, a municipal corporation

By: \_\_\_\_\_  
Richard Spitler, City Manager

ATTEST:

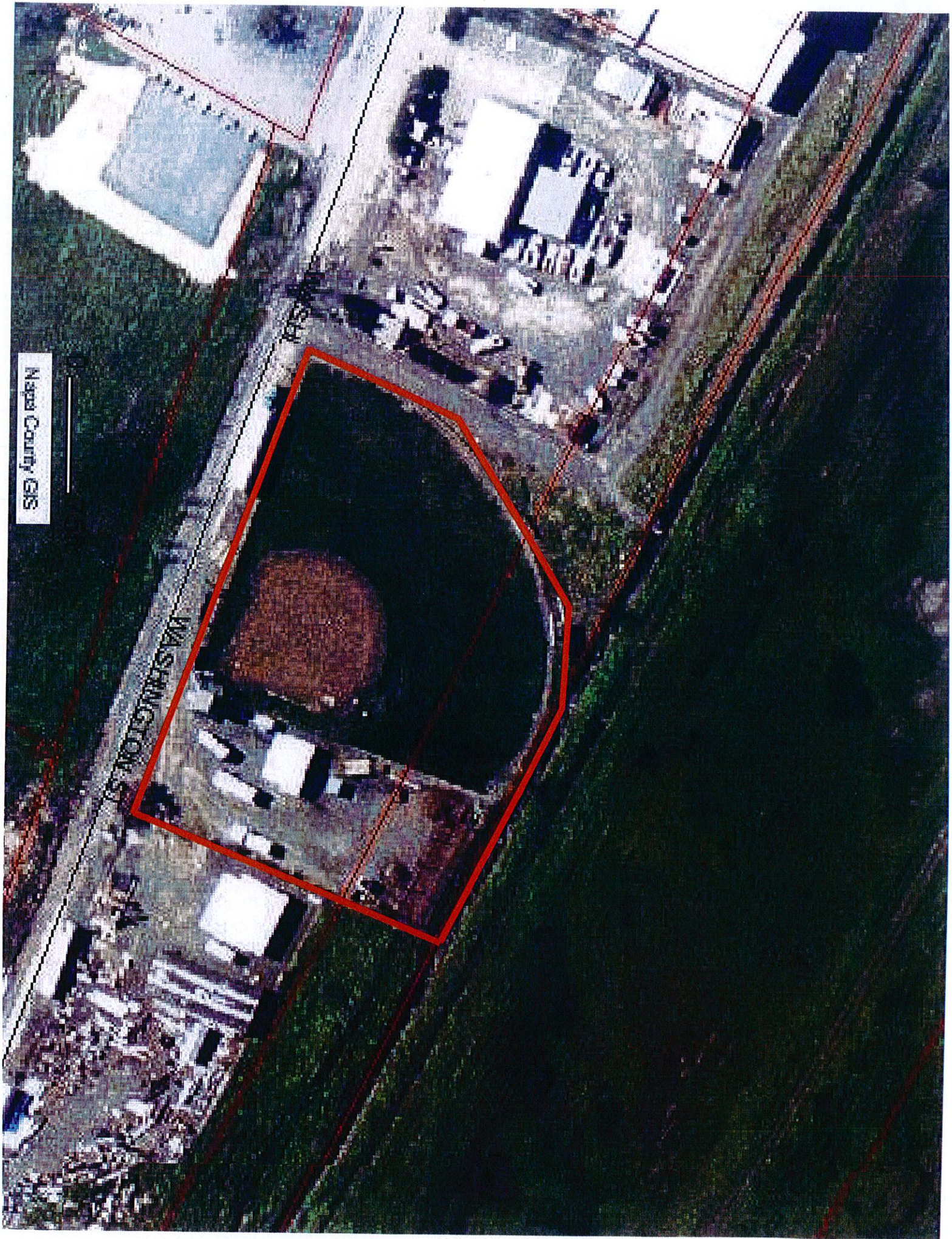
By: \_\_\_\_\_  
Amanda Davis, Deputy City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michelle M. Kenyon, City Attorney

EXHIBIT A  
**AREA OF USE**

**SEE FOLLOWING PAGE**



Napa County GIS

## EXHIBIT B

### **CONDITIONS OF USE**

1. User shall use the premises solely for the little league use, including operation of the existing concession stand.
2. The City, at no charge, shall supply both potable and non potable water to the property.
3. User shall make all arrangements for and pay any connection, service and termination charges levied in connection with all utilities and services, other than water, furnished to or used in connection with the premises.
4. The City shall be responsible to regulate irrigation on turf areas.
5. The City shall fertilize and mow the turf areas.
6. All other maintenance, including but not limited to painting, striping, fencing, garbage and trash removal, safety issues, etc., shall be the sole responsibility of User.
7. User shall spray glyphosate (Roundup) for weed control as necessary along the fence lines, the ball field warning track, and the gravel parking area. Glyphosate shall be applied in strict accordance with the manufacturer's recommendations.
8. User shall not make any alterations to the premises nor construct any improvements upon the premises without the City's prior written consent. The City shall have no obligation to give such consent. All construction and alterations shall, at the option of the City, remain on and be surrendered with the premises upon expiration or terminations of this Agreement.
9. User understands and agrees that User is responsible for removing its belongings and personal property from the Property prior to the end of the Term or earlier termination of this Agreement