



CITY OF CALISTOGA

7

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Dylan Feik
DATE: September 4, 2018
SUBJECT: Renewal of Use Agreement with Calistoga Little League

SIGNATURE:

DYLAN FEIK, City Manager

DESCRIPTION: Renewal of Use Agreement with Calistoga Little League

RECOMMENDATION: Adopt Resolution.

SUMMARY: Consideration of a Resolution authorizing the City Manager to execute renewal of a Use Agreement with Calistoga Little League for utilization of Tedeschi Field and public property below the Public Works Corporation Yard.

ANALYSIS:

In 2013, the City of Calistoga entered into a use agreement with Calistoga Little League (CLL). CLL uses Tedeschi Field at lower Washington to provide free youth programs. CLL provides maintenance and cleaning services, as well as insurance. Recently in spring 2018, they provided labor and volunteer hours to “spruce up” the facility in preparation for summer activities.

The current lease expires on December 31, 2018 and it is the desire of both parties to extend the agreement for another term. The proposed use agreement would expire on December 31, 2023.

FINANCIAL IMPLICATIONS:

The cost of the use agreement is \$1.00 per year. The reason for such a reduced price is Calistoga Little League provides free programs and services to Calistoga youth.

ATTACHMENTS:

1. Draft Resolution
2. Use Agreement

RESOLUTION 2018 - XXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING A USE
AGREEMENT WITH CALISTOGA LITTLE LEAGUE (CLL)**

Authorizing Agreement No. _____

WHEREAS, on March 1, 2013, the City of Calistoga and Calistoga Little League (CLL), a California Non-Profit Corporation entered into Use Agreement No. 0343-01 to allow CLL to use Tedeschi Field and surrounding City Property for Calistoga Little League Activities; and

WHEREAS, the proposed use agreement anticipates CLL’s presence in Calistoga occupying the land for CLL activities, fundraising events and activities which promote healthy, youth sports and recreation at the south end of Washington Street on City property for all; and

WHEREAS, City staff has negotiated directly with CLL, and has prepared a use agreement at the cost of \$1.00 per year, which has been approved by the City Attorney and PARSAC, the City of Calistoga’s Risk Management Joint Powers Authority; and

NOW, THEREFORE BE IT RESOLVED, that the Calistoga City Council hereby authorizes the City Manager to execute a five-year rental agreement between the City of Calistoga and Calistoga Little League (CLL).

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a regular meeting held this **4th day of September 2018** by the following vote:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

CHRIS CANNING, Mayor

ATTEST:

KATHY FLAMSON, City Clerk

USE AGREEMENT

This Use Agreement (the "**Agreement**") is entered into as of September 4, 2018, 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 commence on September 4, 2018, and terminate on December 31, 2023 (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.
 - (a) The City hereby grants to User the right and privilege of using the Property for public, community and/or recreational purposes in accordance with the terms and conditions of this Agreement and in accordance with applicable law. User will occupy and use and maintain the Property only for Calistoga Little League activities and pursuant to the conditions set forth in Exhibit B, attached hereto and incorporated herein by reference.
 - (b) User agrees to provide the times and programs it anticipates for each regular season (February 1 through July 31) and potential activities that may occur during the off season (August 1 through March 31) by March 1 of each year to City.
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.

Except for City's sole negligence or willful misconduct, User shall defend, indemnify and hold harmless City from and against any and all claims which actually or allegedly arise out of or are related to User's use or occupancy of the Premises, or which actually or allegedly arise out of or are related to the conduct of User's business or which actually or allegedly arise out of or are related to any activity, work or things done or permitted by User, or its employees, contractors or agents, in or about the Premises and shall further indemnify and hold harmless City from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon.

5. Insurance. At its cost and expense, User shall maintain in full force and effect during the Term commercial general liability insurance no less broad than ISO form CG 00 01 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. If User maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by the User. Such insurance shall be endorsed to include the City as additional insureds for ongoing and completed operations, 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 and additional insured endorsements 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. User shall provide the City immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, User shall forthwith obtain and submit proof of substitute insurance.

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 and the User's use to the satisfaction of City and return the Property to the condition as of the Effective Date. User shall not be responsible for damage caused from the City's use of the Property.

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: Joan Johnson, 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: Joan Johnson
Title: President

CITY:

City of Calistoga, a municipal corporation

By: _____
Dylan Feik, City Manager

ATTEST:

By: _____
Kathy Flamson, City Clerk

EXHIBIT A
AREA OF USE

SEE FOLLOWING PAGE

EXHIBIT B

CONDITIONS OF USE

1. User shall use the premises solely for the little league use uses that promote its mission including operation of the existing concession stand, and special fundraising events.
2. The City, at no charge, shall supply both potable and non-potable water to the property and the ability to discharge domestic waste to the sanitary sewer system.
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 and sewer, 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 for weed control as necessary along the fence lines, the ball field warning track, and the gravel parking area. Application shall be applied in strict accordance with the manufacturer's recommendations.
8. User shall not construct new structures, 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.