

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 RIGHT-OF-ENTRY PERMIT

2 **32073**

3 THIS RIGHT-OF-ENTRY PERMIT is made and entered, in duplicate, as of
4 March 10, 2011, pursuant to a minute order adopted by the City Council of the City of
5 Long Beach at its meeting on March 1, 2011, by and between EAST LONG BEACH
6 PONY BASEBALL, whose address is P.O. Box 8426, Long Beach, CA 90807
7 ("Permittee"), and the CITY OF LONG BEACH ("City"), a municipal corporation.

8 WHEREAS, Permittee intends to make a non-monetary donation of
9 planning, labor, materials, and improvements of approximately Twelve Thousand Dollars
10 (\$12,000.00) for construction of a batting cage and baseball netting at Heartwell Park,
11 Area 3, Baseball Field Number 6, located at 5801 East Parkcrest Street, in the City of
12 Long Beach ("Premises"); and

13 WHEREAS, because the work is on public property, the City desires to
14 enter this Agreement to allow Permittee or its contractor access to construct a batting
15 cage and baseball netting at Premises on its behalf;

16 NOW, THEREFORE, in consideration of the mutual terms and conditions of
17 this Right-of-Entry Permit, the parties agree as follows:

18 1. Permittee shall donate planning and materials for certain
19 improvements similar to those shown on Exhibit "A" attached hereto and labor for
20 construction of said improvements, and the City accepts same. ("Permittee") shall
21 comply or cause its contractor to comply with all applicable laws and regulations with
22 respect to the installation, including maintaining a safe environment for members of the
23 public in the vicinity of the work.

24 2. Access. City grants to Permittee, its contractors, agents and
25 employees (collectively, the "Permittee Parties"; individually, a "Permittee Party") a
26 nonexclusive right to enter the City-owned Premises for the purpose of constructing a
27 batting cage and baseball netting. City acknowledges that the permission granted by this
28 Permit may include placing, using and leaving equipment and materials, provided the

1 location of equipment and materials shall first be approved by the City Manager or his
2 designee.

3 3. Time of Use. Permittee Parties shall enter City-owned Property in
4 accordance with this Permit during normal business hours of City and on forty-eight (48)
5 hours prior notice to the City, which notice may be oral and shall be given to the Manager
6 of Maintenance Operations for the City's Department of Parks, Recreation and Marine.

7 4. Duration of Permit.

8 A. Permission to enter shall begin on March 1, 2011 and, unless
9 expanded in writing, shall end on February 28, 2013, unless sooner terminated as
10 provided in this Permit, unless the services to be performed hereunder or the
11 project is completed sooner.

12 B. Within fifteen (15) days after written notice to Permittee
13 following expiration or revocation of this Permit, Permittee shall cease entry and
14 shall cause all Permittee Parties to cease entry on the City-owned Property, shall
15 remove all equipment, supplies, and personal property and shall leave the City-
16 owned Property in a clean, neat and safe condition. Any supplies, equipment, and
17 personal property which are not removed with the fifteen (15) day period shall
18 become the property of the City without payment by or liability of any kind on the
19 part of the City.

20 5. Non-Responsibility of City. City, its officers and employees shall not
21 be responsible or liable for loss or damage by theft, fire, flood, burglary, vandalism or any
22 other cause to the supplies, equipment or other personal property of Permittee Parties in
23 or on the City-owned Property, except to the extent caused by the gross negligence of
24 the City, its officers or employees. By executing this Permit and in consideration for
25 being allowed entry to the City-owned Property, Permittee waives all claims against the
26 City, its officers or employees for such loss or damage.

27 6. No Title. Permittee and City acknowledge and agree that, by this
28 Permit, Permittee does not acquire any right, title or interest of any kind in the City-owned

1 Property, including but not limited to any leasehold interest. Permittee shall not allow the
2 City-owned Property to be used by anyone other than a Permittee Party or for any other
3 purpose than stated in this Permit.

4 7. No Assignment. Permittee shall not assign this Permit or the
5 permission granted by this Permit. Neither this Permit nor any interest in it shall be
6 subject to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or
7 receivership. Any attempted assignment or other transfer that is not approved by the City
8 Manager shall be void and confer no right of entry on the purported assignee or
9 transferee.

10 8. Condition After Entry. After the entry of any Permittee Party on the
11 City-owned Property, Permittee shall return the City-owned Property in as good condition
12 or better condition as the City-owned Property was in prior to such entry, reasonable
13 wear and tear excepted.

14 9. Notice. Any notice or approval given under this Permit shall be in
15 writing and personally delivered or deposited in the U.S. Postal Service, registered or
16 certified, return receipt, to the City of Long Beach, Department of Parks, Recreation and
17 Marine at 2760 Studebaker Road, Long Beach, CA 90815 Attn: Contract Management
18 Division and to East Long Beach Pony Baseball at P.O. Box 8426, Long Beach, CA
19 90807. Notice shall be deemed given on the date personal delivery is made or on the
20 date shown on the return receipt, whichever first occurs.

21 10. Consideration. This Permit is granted in consideration for
22 Permittee's donation.

23 11. Improvements. Permittee Parties shall not install, construct, erect or
24 maintain any structure or improvements on the City-owned Property except as described
25 herein.

26 12. No Limitations on City. The Permit shall not limit the City's right or
27 power to construct, erect, build, demolish, move or otherwise modify any structures,
28 buildings, landscaping or any other type of improvement on, over, in, or under the City-

1 owned Property.

2 13. No Release. The expiration or revocation of this Permit shall not
3 release either party from any liability or obligation which accrued prior to such expiration
4 or revocation.

5 14. Utilities and Security. Permittee shall not use any City utilities at any
6 time during this Permit without prior written authorization from the City Manager or his
7 designee. The City shall not have any obligation to Permittee to provide utilities, clean-up,
8 or security on the City-owned Property with respect to the right of entry granted by this
9 Permit. Permittee shall remove all graffiti, trash, and debris from the site within forty-eight
10 (48) hours.

11 15. Compliance with Laws. Permittee Parties shall comply with all
12 applicable laws, rules, regulations and ordinances with respect to their activities on the
13 City-owned Property.

14 16. Miscellaneous.

15 A. This Permit shall be governed by and construed in
16 accordance with the laws of the State of California.

17 B. If any part of this Permit shall be held by a court of competent
18 jurisdiction to be invalid, void or unenforceable, then the remainder of the Permit
19 shall remain in full force and effect and shall not be affected, impaired or
20 invalidated.

21 C. This Permit may only be amended by a written agreement,
22 signed by the City and Permittee after authorization by City's City Council.

23 D. This Permit contains the entire understanding of the City and
24 Permittee and supersedes all other agreements, oral or written, with respect to the
25 subject matter of this Permit.

26 E. On the expiration or revocation of this Permit, Permittee
27 agrees to and shall execute such documents, in recordable form if so requested,
28 as the City deems reasonably necessary to end the Permit and remove the Permit

1 as an encumbrance on the City-owned Property.

2 F. The failure or delay of the City to insist on strict compliance
3 with the provisions of this Permit shall not be deemed a waiver of any right or
4 remedy that City may have and shall not be deemed a waiver of any subsequent
5 or other failure to comply with any provision of this Permit.

6 G. This Permit is not intended or entered for the purpose of
7 creating any benefit or right for any person or entity that is not a signatory or a
8 Permittee Party.

9 17. The Conditions of Acceptance attached hereto as Exhibit "B" are
10 incorporated herein by reference.

11 18. Each party warrants and represents that the person(s) signing on
12 behalf of that party are duly authorized to bind that party to the terms of this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement with all formalities required by law as of the date first stated above.

EAST LONG BEACH PONY BASEBALL

3/15, 2011

By [Signature]

Title PRESIDENT

"Permittee"

CITY OF LONG BEACH, a municipal corporation

4.4, 2011

By [Signature] Assistant City Manager

~~EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.~~
City Manager

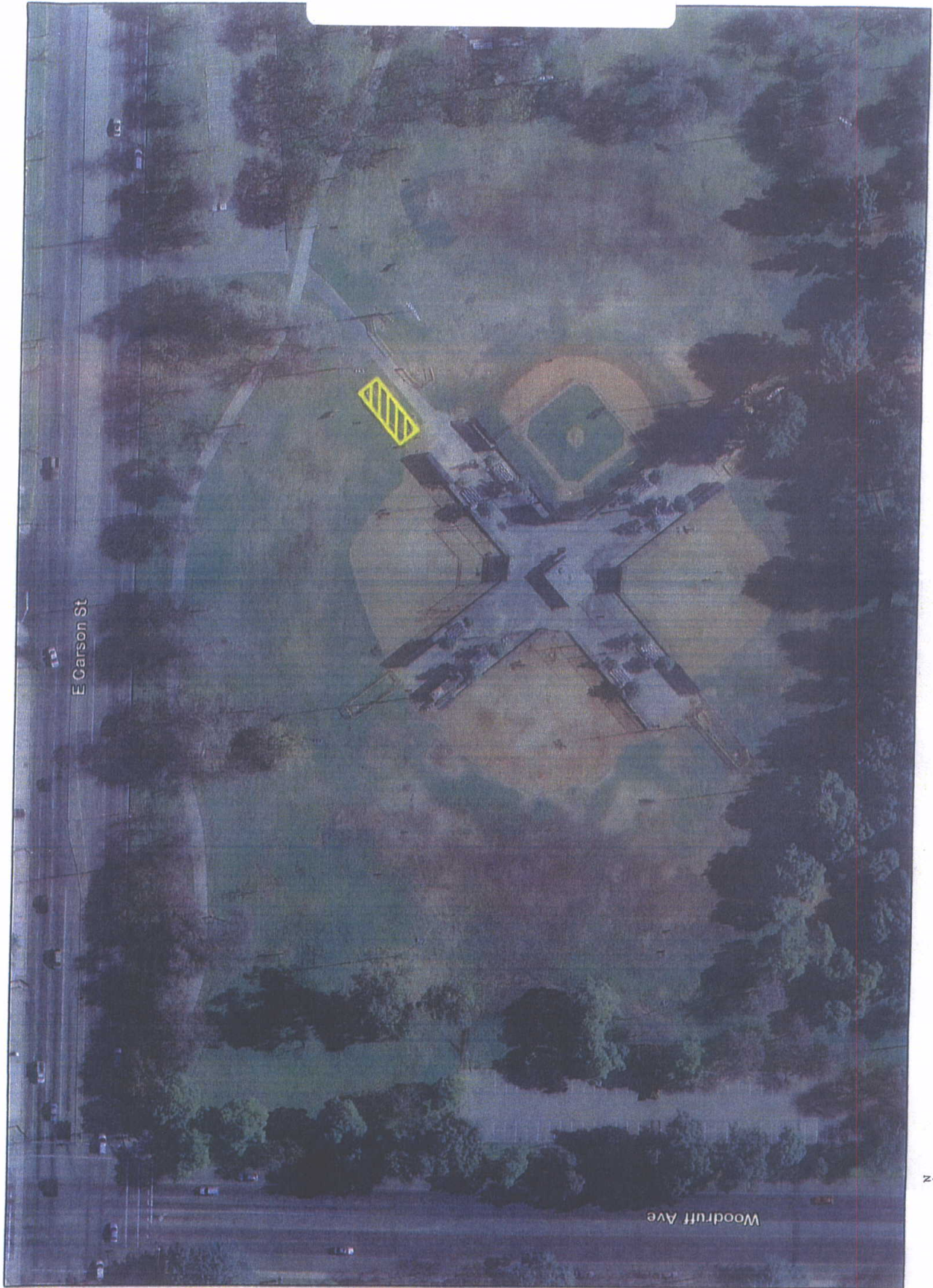
"City"

This Right of Entry Permit is approved as to form on March 24, 2011.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

Attachment A



Heartwell Park Area 3
Baseball Field No.6



EXHIBIT B

1. Minimum 48 hours notice prior to any work on site.
2. Dig Alert shall be completed prior to the commencement of any work. Dig Alert Number shall be provided to the City for verification.
3. Protect all city property, including pavement, turf, irrigation, plants, and structures. If damaged, Permittee shall repair to the satisfaction of the Director at not cost to the city.
4. Permittee shall not use city utilities for construction activities.
5. Permittee shall perform a pre-construction video survey with PLAD prior to commencement of construction.
6. Permittee shall comply with City's storm water permit and install storm water BMPs as required.
7. Construction shall comply with all applicable codes, including all Development Services requirements at no cost to the City.
8. All construction shall comply with the American with Disabilities Act.
9. Permittee shall adequately protect the public from on-going construction with appropriate signage, fencing, etc.