

RIGHT OF ENTRY PERMIT

33365

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3 THIS RIGHT OF ENTRY PERMIT is issued and granted as of February 13,
4 2014 for reference purposes only, pursuant to minute order adopted by the City Council
5 of the City of Long Beach at its meeting on January 7, 2014, by and between the CITY
6 OF LONG BEACH, a municipal corporation ("City") and LONG BEACH PLAZA LITTLE
7 LEAGUE ("Permittee"), a chartered member of Little League Baseball, Inc., located at
8 3039 Rutgers Avenue, Long Beach, CA 90808.

9 1. Access. City grants to Permittee, its contractors, agents and
10 employees (collectively, the "Permittee Parties"; individually, a "Permittee Party") a
11 nonexclusive right to enter the City-owned property described in Exhibit "A" attached to
12 this Permit and incorporated by reference ("City-owned Property") for the construction
13 and/or installation of various improvements to the baseball and softball fields at Cherry
14 Park as listed on Exhibit "B". City acknowledges that the permission granted by this
15 Permit may include placing, using and leaving equipment and materials provided,
16 however, that the location of equipment and materials shall first be approved by the City
17 Manager or his designee. Permittee shall use its best efforts to limit the entry of
18 Permittee Parties to the City-owned Property and to the extent necessary to meet the
19 purposes stated in this Permit. Entry by Permittee Parties and storage of equipment and
20 supplies shall not create a nuisance or impede the use of Cherry Park or the existing
21 parking lot by the public.

22 2. Time of Use. Permittee Parties shall enter City-owned Property in
23 accordance with this Permit during the normal business hours of Permittee and on forty-
24 eight (48) hours prior notice to the City, which notice may be oral and shall be given to
25 the Manager of Maintenance Operations for the City's Department of Parks, Recreation
26 and Marine, or his designee. Within thirty (30) days after the commencement of this
27 Permit, Permittee shall schedule, or caused to be scheduled, a pre- construction meeting
28 with the Manager of Maintenance Operations for the City's Department of Parks,

1 Recreation and Marine, which shall be held in advance of any modifications to City-
2 owned Property.

3 3. Duration of Permit.

4 A. Permission to enter shall begin on February 13, 2014 and
5 shall end on February 13, 2015, unless sooner terminated as provided in this
6 Permit, unless the services to be performed hereunder or the project is completed
7 sooner.

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

15 4. Plans. City shall have the right to review and approve all final
16 construction documents and/or plans to install a concession stand at Cherry Park in its
17 capacity as a party to this Agreement, separate from and in addition to its right as a
18 municipality acting through its Department of Planning and Building to review and
19 approve those plans.

20 5. Insurance. As a condition precedent to the effectiveness of this
21 Permit, Permittee shall provide evidence of insurance equal to the following insurance
22 coverage:

23 (a) Commercial general liability insurance (equivalent in scope to ISO
24 form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per
25 occurrence and \$2,000,000 general aggregate. The coverage shall include but not be
26 limited to broad form contractual liability, cross liability, independent contractors liability,
27 and products and completed operations liability and shall not exclude coverage for abuse
28 and molestation defense. The City, its officers, employees and agents shall be named as

1 additional insureds by endorsement (an endorsement equivalent in scope to ISO form
2 CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of
3 protection given to the City, its officers, employees and agents.

4 (b) Workers' compensation insurance as required by the California
5 Labor Code and employer's liability insurance in an amount not less than \$1,000,000 per
6 accident or occupational illness.

7 Any self-insurance program or self-insured retention must be separately
8 approved in writing by City's Risk Manager or designee and shall protect the City, its
9 officials, employees and agents in the same manner and to the same extent as they
10 would have been protected had the policy or policies not contained retention provisions.
11 Each insurance policy shall be endorsed to state that coverage shall not be reduced,
12 non-renewed, or canceled except after thirty (30) days prior written notice to City, and
13 shall be primary and not contributing to any other insurance or self-insurance maintained
14 by the City. Permittee shall notify the City within five (5) days after any insurance
15 required in this Permit has been voided by the insurer or canceled by Permittee.

16 Permittee shall require that all Permittee Parties maintain insurance in
17 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or
18 designee.

19 Prior to entry on City-owned Property, Permittee shall deliver to City
20 certificates of insurance or self-insurance and required endorsements, including any
21 insurance required by Permittee Parties, for approval as to sufficiency and form. The
22 certificates and endorsements shall contain the original signature of a person authorized
23 by that insurer to bind coverage on its behalf. In addition, Permittee shall at least thirty
24 (30) days prior to expiration of this insurance furnish to the City evidence of renewal of
25 the insurance. City reserves the right to require complete certified copies of all policies of
26 insurance at any time. Permittee and Permittee Parties shall make available to the City,
27 during normal business hours, all books, records and other information relating to the
28 insurance required in this Permit.

1 Any modification or waiver of these insurance requirements shall only be
2 made by the City's Risk Manager or designee, in writing. The procuring or existence of
3 insurance shall not be construed or deemed as a limitation on liability or as full
4 performance with the indemnification provisions of this Permit.

5 Notwithstanding any other provision of this Permit, if Permittee or a
6 Permittee Party fails to comply with this Section, the City may immediately revoke this
7 Permit and the permission granted by this Permit.

8 6. Permittee's Indemnification of City. Except for the City's sole
9 negligence and intentional acts, Permittee shall indemnify, defend and hold the City, its
10 officers and employees harmless from all liability, loss, damage, claims (including claims
11 under Section 6 for which Permittee has agreed that the City is not liable), demands,
12 penalties, fines, proceedings, causes of action, taxes, assessments, costs, and expenses
13 (including attorney's fees and experts' fees) arising from the right to enter granted by this
14 Permit or the activities of Permittee Parties on the City-owned Property under this Permit.
15 This indemnity shall survive the expiration or revocation of this Permit.

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

23 8. No Title. Permittee and City acknowledge and agree that, by this
24 Permit, Permittee does not acquire any right, title or interest of any kind in the City-owned
25 Property, including but not limited to any leasehold interest. Permittee shall not allow the
26 City-owned Property to be used by anyone other than a Permittee Party or for any other
27 purpose than stated in this Permit. Notwithstanding any language to the contrary in this
28 Permit, if a court of competent jurisdiction deems this Permit to be a lease, then

1 Permittee waives any right of redemption under any existing or future law in the event
2 that the City removes it from the City-owned Property and agrees that, if the manner or
3 method used by the City in ending any right held by Permittee under this Permit gives to
4 Permittee a cause of action similar to or based on damages that would otherwise arise in
5 connection with unlawful detainer, then the total amount of damages to which Permittee
6 would be entitled in such action shall be One Dollar (\$1.00). Permittee agrees that this
7 Section may be filed in such action and that, when so filed, it shall be a stipulation by
8 Permittee fixing the total damages to which Permittee is entitled in such action.

9 9. No Assignment. Permittee shall not assign this Permit or the
10 permission granted by this Permit, except where approved by City Council of the City of
11 Long Beach at its meeting on January 7, 2014. Neither this Permit nor any interest in it
12 shall be subject to transfer by attachment, execution, proceedings in insolvency or
13 bankruptcy, or receivership. Any attempted assignment or other transfer that is not
14 approved by the City Manager shall be void and confer no right of entry on the purported
15 assignee or transferee.

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

20 11. Notice. Any notice or approval given under this Permit shall be in
21 writing and personally delivered or deposited in the U.S. Postal Service, registered or
22 certified, return receipt, to the City of Long Beach, Department of Parks, Recreation and
23 Marine at 2760 N. Studebaker Road, Long Beach, CA 90815, Attn: Contract
24 Management Division. Notice shall be deemed given on the date personal delivery is
25 made or on the date shown on the return receipt, whichever first occurs.

26 12. Consideration. This Permit is granted in consideration for
27 Permittee's installation of various improvements at Cherry Park at no cost to the City.

28 13. Improvements. Permittee Parties shall not install, construct, erect or

1 maintain any structure or improvements on the City-owned Property except as described
2 in this Permit. At the expiration or revocation of this Permit, all improvements to City-
3 owned Property made pursuant to this Permit shall become the sole property of the City,
4 at no charge.

5 14. No Limitations on City. The Permit shall not limit the City's right or
6 power to construct, erect, build, demolish, move or otherwise modify any structures,
7 buildings, landscaping or any other type of improvement on, over, in, or under the City-
8 owned Property.

9 15. No Release. The expiration or revocation of this Permit shall not
10 release either party from any liability or obligation which accrued prior to such expiration
11 or revocation.

12 16. Utilities and Security. Permittee shall not use any City utilities,
13 except those that were approved by City Council of the City of Long Beach at its meeting
14 on January 7, 2014, at any time during this Permit without prior written authorization from
15 the City Manager or his designee. The City shall not have any obligation to Permittee to
16 provide utilities, clean-up, or security on the City-owned Property with respect to the right
17 of entry granted by this Permit. Permittee shall remove all graffiti, trash, and debris from
18 the site within forty-eight (48) hours. The City shall pay for all future electricity to operate
19 this concession.

20 17. Nondiscrimination. In exercising its right of entry and use of the City-
21 owned Property, Permittee shall not discriminate on the basis of race, color, religion,
22 national origin, sex, sexual orientation, age, HIV status, disability or handicap.

23 18. Compliance with Laws. Permittee Parties shall comply with all
24 applicable laws, rules, regulations and ordinances with respect to their activities on the
25 City-owned Property.

26 19. Miscellaneous.

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

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

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

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

E. On the expiration or revocation of this Permit, Permittee agrees to and shall execute such documents, in recordable form if so requested, as the City deems reasonably necessary to end the Permit and remove the Permit as an encumbrance on the City-owned Property.

F. In any action or proceeding to enforce or interpret or revoke this Permit, the prevailing party shall be entitled to attorney's fees and costs.

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

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

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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 IN WITNESS WHEREOF, the parties have executed this Permit on the
2 respective dates set forth opposite their signatures.

3 LONG BEACH PLAZA LITTLE LEAGUE

4 2/14/, 2014

5 By Tom Solwi
6 President

7 Tom Solwick
8 Type or Print Name

9 2/14/, 2014

10 By K. Castaneda
11 Secretary

12 Kim Castaneda
13 Type or Print Name

14 "Permittee"

15 CITY OF LONG BEACH, a municipal
16 corporation

17 2/14, 2014

18 By [Signature]
19 City Manager

20 "Director"

21 This Right of Entry Permit is approved as to form on
22 Feb. 14, 2014.

23 CHARLES PARKIN, City Attorney

24 By [Signature]
25 Deputy

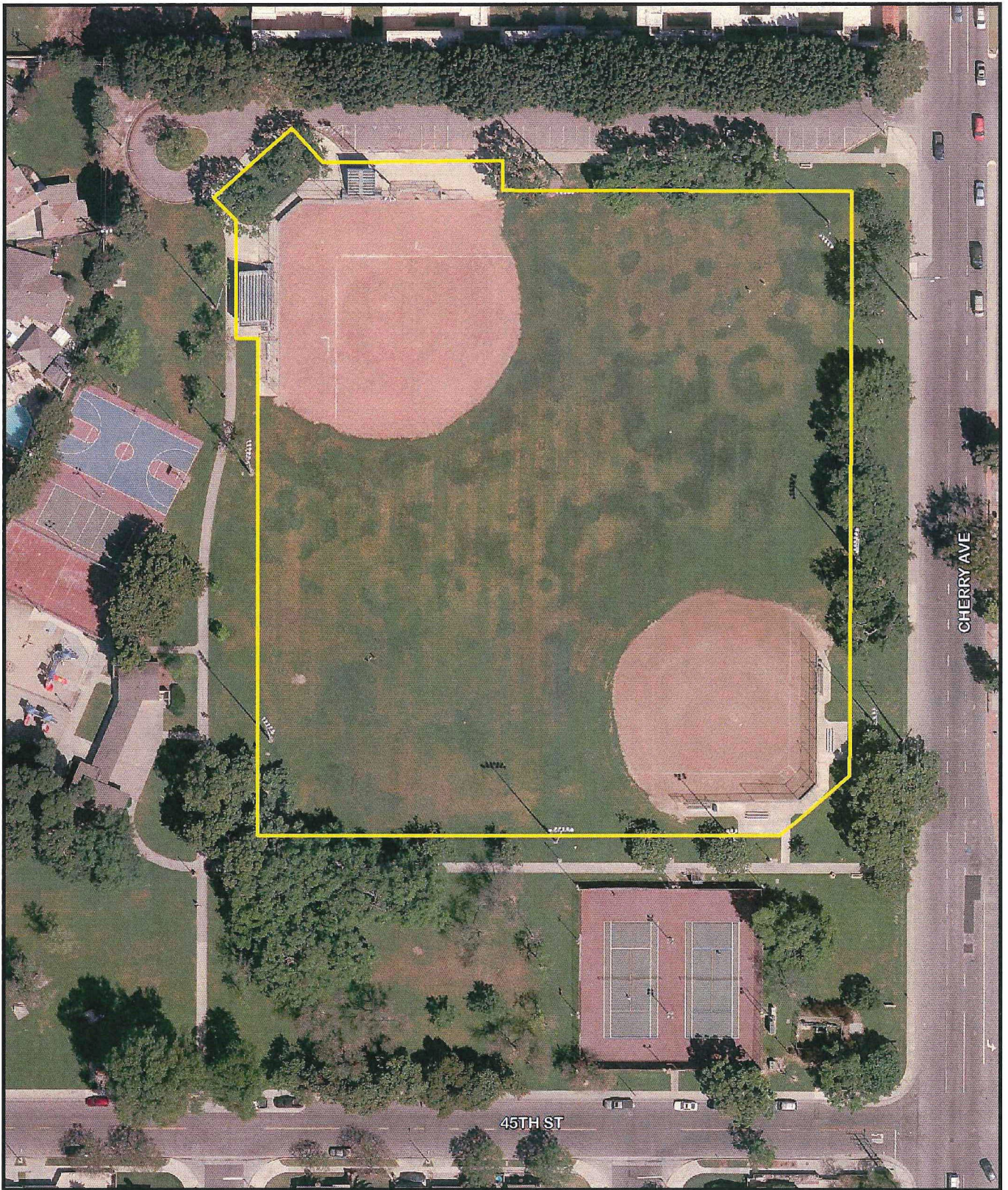


Exhibit A Cherry Park Baseball/Softball Fields



EXHIBIT B

- **Concession Stand Behind Main Field:**

Permittee shall install a modified metal shipping container (Container) with exterior enhancements/façade to serve as a concession stand; install a cement walkway and sewer, water, and electrical services to the Container.

- **Main Field and T-Ball Field:**

- Extend the 3rd base line fence by approximately 95 feet;
- Extend the 1st base line fence by approximately 105 feet;
- Install two 15-foot foul poles;
- Install a permanent T-ball backstop on the southeast corner of the field;
- Install a grass infield and sprinkler system.

- **Softball Field:**

- Extend the fence on the Cherry Avenue side by approximately 110 feet.

- **Utilities:**

Permittee shall, at the discretion of City and Southern California Edison (SCE), use City's existing fresh water line, sewer line, and electrical service to establish the utilities necessary to operate the Container. For the irrigation of the Main Field, Permittee shall utilize City's existing reclaimed water lines.