

USE AGREEMENT

USE AGREEMENT (this "Agreement") is made and executed as of the 2nd day of August 2011 (Effective Date), by and between the CITY OF PORTLAND, by and through its PARKS and RECREATION BUREAU ("City" or "PPR") and the Native American Youth and Family Center ("NAYA"), collectively referred to as "the Parties" herein.

RECITALS

WHEREAS, City is the owner and/or manager of Whitaker Ponds Natural Area ("PPR Property") located in NE Portland, which, among other things, includes a baseball field and a portion of a second baseball field (Falbo Field);

WHEREAS, NAYA is a tax exempt, non-profit Oregon corporation that works to enrich the lives of Native youth and families through education, community involvement, and culturally specific programming;

WHEREAS, NAYA owns the property at 5135 NE Columbia Blvd. ("NAYA Property"), adjacent to Whitaker Ponds, which also includes several baseball fields;

WHEREAS, Through permits issued by PPR, Lakeside Little League (LLL) has been using the fields on the PPR and NAYA (formerly Portland Public Schools) properties for practices and games for many years;

WHEREAS, the purpose of this Agreement is to define the relationship between the Parties in regard to their respective rights and responsibilities in jointly using a portion of the NAYA and PPR Properties.

NOW, THEREFORE, in consideration of the mutual covenants and benefits stated herein, and in further consideration of the obligations, terms and considerations hereinafter set forth and recited, the Parties agree as follows:

1. **Premise.** This Agreement applies only to the one field that is on both NAYA and PPR Property ("Falbo Field"), and the access route (collectively, the "Field" or "Property"), all as more particularly depicted in Exhibit A of this Agreement.
2. **Term:** The Agreement will have an initial term of five (5) years. So long as neither Party is in default at the expiration of the initial term, the Agreement will automatically renew for one additional five (5) year term. Notwithstanding said term, the intent of the Parties is a long term relationship, including ensuring PPR vehicle access through NAYA owned property to Whitaker Ponds Natural Area.

3. **LLC Use.** It is the intent of the Parties that LLL's historic use of the fields on NAYA owned property and PPR owned property will continue to be accommodated to the extent it is reasonable. PPR will permit the baseball field that is wholly on PPR property, while NAYA will enter into an agreement with LLL for fields on NAYA property as well as Falbo Field, which is partially on PPR property. LLL is responsible for obtaining such permits or agreements from the respective Parties.
4. **Access.** The only vehicle access from a public street to the PPR field is over NAYA Property. With written notice to PPR, NAYA may change the access route for PPR staff and permittees to Whitaker Ponds Natural Area. The following access, along the route depicted in Exhibit A, is granted:
 - A. PPR is granted by NAYA vehicle access to the PPR field and the Whitaker Ponds Natural Area at all times for maintenance purposes. PPR shall make best efforts to not disrupt NAYA activities and uses.
5. **Locks.** The Parties agree to follow any locking procedures established by NAYA for the access gates to NAYA property. In the absence of a procedure, the Parties will continue to each use their own lock, marrying them together so that all Parties can unlock the NAYA gate when necessary. NAYA may cut any lock that is preventing the gate from being unlocked.
6. **Irrigation.** NAYA will install a submeter for irrigation of the Whitaker Ponds Field. NAYA will provide PPR with quarterly readings reflecting the water used on those fields, and an annual invoice for water consumption. PPR will pay such invoice within 30 days of receipt.
7. **Maintenance, Repairs and Improvements.**
 - A. **General Maintenance and Field Preparation.**
 - (1) PPR shall be responsible for the Whitaker Ponds Field and NAYA will be responsible for all fields on its property.
 - B. **Maintenance and Repair of Field Improvements.** Except for Falbo Field, each party shall be responsible for maintenance and repair of improvements that are on property they own. NAYA, or its designee, will be responsible for the maintenance and repair of Falbo Field, which is partially on PPR property.
 - C. **Facility Improvements.** NAYA and PPR will not make improvements on each other's property without the written consent of the owning Party, and will notify the non-owning Party any time a significant repair or improvement is made to one of the fields by the Party owning the field. Unless otherwise agreed, the Party making an improvement will be responsible for maintaining it.
8. **Risk Management**
 - A. **Indemnification.** Any agreement that NAYA enters into with LLL will include the following indemnification: LLL (or it's affiliated Little League International), on behalf of itself, its players, coaches, spectators and parents, shall indemnify, defend, and hold harmless PPR, their directors, officers, employees and agents, against from any and all liabilities, obligations, losses, damages, fines, penalties,

claims, demands, suits, actions, causes of action, charges, judgments, costs and expenses (including all reasonable attorneys' fees and court costs) (collectively, "Losses") of any nature whatsoever that may be imposed upon, incurred or paid by, or asserted against the City, their directors, officers, employees and agents, or LLL to the extent that such Losses are the result of, arise from, or are in connection with LLL's use of PPR Property.

B. To the extent permitted by Oregon law, and subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.300, the City (or its directors, employees, agents, contractors or licensees) shall indemnify, defend and hold harmless NAYA and its directors, officers, agents and employees against any claim, demand, suit or action (including attorney fees through trial and on appeal), to the extent such claim, demand, suit or action arises solely from negligence or willful misconduct of City (or its directors, employees, agents, contractors or licensees).

C. Insurance. During the term of this Agreement, through its agreement NAYA shall require LLL to maintain insurance that satisfies City's standard insurance requirements for field permit holders. It is acknowledged that LLL shall meet its insurance requirements through insurance provided by Little League International, Inc. Such insurance shall name the City, their officers, agents and employees as additional insureds. LLL shall provide PPR a certificate of insurance indicating satisfactory coverages. City may notify NAYA and LLL, from time to time, of changes in City's standard insurance requirements, which NAYA shall require LLL will then comply with.

9. **Compliance with Laws.** The Parties will comply at all times with all applicable federal, state and local laws, rules, regulations, ordinances, statutes and decisions, with said compliance to include, but not be limited to obtaining all necessary permits and other authorizations required for LLL's activities under this Agreement.

10. Termination

- A. This Agreement may be terminated in the event that a Party has breached its obligations under the Agreement and has not remedied said breach within thirty (30) days of being provide written notice from the non-breaching Parties to do so. The Agreement will not be terminated if the breaching Party has initiated efforts to remedy the breach within thirty (30) days of said written notice and is making reasonable progress towards said remedy.
- B. This Agreement may be terminated upon 365 days written notice by PPR or NAYA. In this event, NAYA and PPR may choose to enter into a new agreement for access of PPR to its property through NAYA property.

11. Notices.

All notices under this Agreement shall be in writing and shall be deemed validly given if sent by mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. If any such notice or communication is not received or cannot be delivered due to a change in the address of the receiving party of which notice was not previously given to the sending party or due to a refusal to accept by the receiving party,

such notice or other communication shall be effective on the date delivery is attempted. Notices should be addressed as follows:

<u>PPR:</u>	Portland Parks and Recreation Bureau 1120 SW 5 th Ave., Rm 1302 Portland, OR 97204 Attn: Property Manager Telephone: (503) 823-5229 Facsimile: (503) 823-5570
<u>NAYA</u>	Native American Youth And Family Center 5135 NE Columbia Blvd. Portland, OR 97218 Attn: Lynn Ward Telephone: 503-288-8177 Facsimile: 503-288-1260
<u>LLL:</u>	Lakeside Little League ADDRESS Attention: Telephone: (503) Facsimile: (503)

Any party may change the designated recipient of notices by so notifying the other party in writing.

12. General.

- A. **Mutual Cooperation.** The Parties will cooperate and consult with one another on all matters relating to their mutual interest throughout the term of this Agreement.
- B. **Records.** NAYA and PPR will keep accurate and sufficient records related to agreements and permits related to LLL's activities under this Agreement, and make available these records to the requesting party on thirty (30)-days notice.
- C. **No Property Interest Conveyed.** No property right or interest is conveyed through this Agreement, other than the right to use the Property in accordance with this Agreement. Such rights of use are expressly declared not to be property rights, but are solely contractual in nature.
- D. **Interference with PPR and NAYA Activities.** The Parties' activities authorized hereunder will not interfere with PPR's, NAYA's or their patrons,' customary or ordinary use of the remainder of the PPR or NAYA Properties, of which the fields are a part. Prohibited interference includes, but is not limited to, interference with free and safe ingress and egress, trail usage, and construction or maintenance work.
- E. **Hazardous Materials.** No Party shall not dispose at, on or about the Property any Hazardous Substance (as defined in ORS 465.200, as it may hereafter be amended, and any implementing regulations) and shall handle all Hazardous

Substances in a manner that protects the Property and the environment from accidental spills and releases. No Party nor any of its officers, employees, agents, contractors, subcontractors, servants, successors, assigns, sublessees, licensees or invitees, shall cause or authorize to occur any unauthorized release of a Hazardous Substance or any condition of pollution or nuisance at, on or about the Property, whether affecting surface water or groundwater, air, the land or the subsurface environment.

Any use of fertilizers or pesticides by NAYA or LLL on the PPR property must be approved in writing by Parks. The letter of approval must be in the possession of the person applying fertilizers or pesticides when the work is done.

- F. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Oregon, excluding its choice of law principles.
- G. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties and shall supersede any prior or contemporaneous agreements or negotiations, whether written or oral, between the parties, regarding the subject matter herein.
- H. **No Third Party Rights.** Nothing in this Agreement is intended to create any rights in any third parties.
- I. **Further Documents.** Each party agrees to cooperate with the other in the execution of any documents necessary to protect its rights under this Agreement.
- J. **Illegality.** If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision.
- K. **Waiver in Writing.** No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.
- L. **No Partnership.** Nothing contained in this Agreement is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership or a joint venture between the Parties.
- M. **City Consent.** Unless otherwise stated, whenever consent, approval or direction by City is required under the terms contained herein, all such consent, approval or direction must be in writing from the Director of PPR or a person designated in writing by the Director. The Director is authorized to amend this Agreement, so long as such amendment does not impose significant, unbudgeted financial obligations on City.
- N. **Exhibits.** The Exhibits attached to this Agreement are made a part of this Agreement. This Agreement shall benefit and bind the Parties and their respective personal representatives, heirs, successors and assigns. Time is of the essence of this Agreement. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. This Agreement may not be amended or modified except by a written instrument signed by all Parties.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement in triplicate.

PORTLAND PARKS & RECREATION

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM

Paula M. Heng DL4
CITY ATTORNEY

SUBJECT TO INSURANCE APPROVAL

NATIVE AMERICAN YOUTH & FAMILY CENTER

By: *Nichole J. Maher*

Name: *Nichole J. Maher*

Title: *Executive Director*

Date: *8-2-2011*

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Exhibit A

