

DATE SUBMITTED 12/12/2019  
 SUBMITTED BY PARKS  
 DATE ACTION REQUIRED 12/18/2019

COUNCIL ACTION (X)  
 PUBLIC HEARING REQUIRED ( )  
 RESOLUTION ( )  
 ORDINANCE 1<sup>ST</sup> READING ( )  
 ORDINANCE 2<sup>ND</sup> READING ( )  
 CITY CLERK'S INITIALS zy

**IMPERIAL CITY COUNCIL  
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: FACILITY USE AGREEMENT BETWEEN CITY OF IMPERIAL AND IMPERIAL LITTLE LEAGUE;  1. APPROVAL OF AGREEMENT BETWEEN CITY OF IMPERIAL AND IMPERIAL VALLEY CHALLENGER LEAGUE FOR THE TERM OF SIX MONTHS	
DEPARTMENT INVOLVED: PARKS	
BACKGROUND/SUMMARY:  The Imperial Valley Challenger Little League is an adaptive baseball program for individuals with physical and intellectual challenges. The Little League Challenger Division accommodates players ages 4 to 18; or up to 22 if still enrolled in school. The league traditionally serves 25 players who reside throughout the Imperial County. To serve the public interest and to provide the program in accordance with the terms of its charter, a facility use agreement is recommended in order to guarantee the league use of the City's baseball facilities identified.	
FISCAL IMPACT: N/A	FINANCE INITIALS _____
STAFF RECOMMENDATION: It is recommended that the City Council approves the agreement between the Challenger League and City to better serve youth programs in our community.	DEPT. INITIALS _____
MANAGER'S RECOMMENDATION: Agrees with staff's recommendation.	CITY MANAGER'S INITIALS <u>ab</u>
MOTION:   SECONDED: _____ AYES: _____ NAYES: _____ ABSENT: _____	
APPROVED ( )      REJECTED ( ) DISAPPROVED ( )      DEFERRED ( )  REFERRED TO: _____	



## CITY OF IMPERIAL

### FACILITY USE AGREEMENT FOR IMPERIAL VALLEY CHALLENGER LITTLE LEAGUE

THIS AGREEMENT, made and entered into this 18<sup>th</sup> day of December, 2019, by and between the City of Imperial, a municipal corporation duly organized and existing under the laws of the State of California (hereinafter referred to as "AGENCY" and Imperial Valley Challenger Little League, (hereinafter referred to as "ORGANIZATION").

#### RECITALS:

- A. It is the AGENCY's desire to serve the public interest of the community by facilitating a program of organized youth sports; and
- B. ORGANIZATION has been duly chartered for the 2020 Little League season by Little League International. The goal and purpose of the ORGANIZATION is to provide a little league season in accordance with the terms of its charter.
- C. In consideration of the mutual covenants and conditions contained herein, the parties do hereby agree as follows:

#### I. TERM OF AGREEMENT

The AGENCY grants ORGANIZATION the right to use Evans Park (hereinafter "Subject Facility"), for a period of time, commencing January 1, 2020 and terminating June 1, 2020.

#### II. USE OF FACILITY

The ORGANIZATION shall have the non-exclusive right to use the Subject Facility. ORGANIZATION's right to use the Subject Facility will begin on the above stated date and upon submission of the following to the Agency:

- A. Facility Use Form.
- B. Complete list of names, addresses and telephone numbers of the current Board of Directors or other responsible persons of the ORGANIZATION.
- C. 501(c)(3) designation from the IRS or a nonprofit designation from the California Franchise Tax Board and/or the California Secretary of State.
- D. Master calendar of events.

- E. One copy of the Certificate of Insurance listing the AGENCY as an additional insured and a copy of all applicable endorsements.

The above requested documents must be submitted at least two weeks prior to use. If the documents are not submitted, the AGENCY may withhold use of the Subject Facility.

### III. RESPONSIBILITY FOR ACTIVITIES

The ORGANIZATION shall provide the personnel necessary to supervise and conduct the activities as set forth in this Agreement at the Subject Facility, and shall furnish and supply any and all equipment and material, which may be necessary for such activities conducted at the Subject Facility. Athletic Field Lining and Marking - Permanent marking of athletic fields must be done with prior written approval of the AGENCY. Any user failing to comply with established guidelines and notification is subject to invoicing for all damages occurring to fields and termination of this Agreement.

### IV. RESPONSIBILITY FOR SAID LEAGUES

- A. ORGANIZATION agrees to observe all rules and regulations as set forth in this Agreement.
- B. Modifications to Park Fields and Facilities - The removal, alteration, painting or addition to any facility or grounds, and construction of any kind to existing structures must be approved by AGENCY. This will include any proposed changes altering design or appearance of the existing landscape of demised premises. No trees, shrubs, or ground covers shall be planted, trimmed or removed without written consent from the AGENCY. Any requests to modify or improve park fields and facilities shall be submitted for approval to the Community Services Department, at least sixty (60) days prior to the date of any proposed changes.
- C. ORGANIZATION agrees to erect no fences or advertising matter of any kind on AGENCY grounds without prior approval by the Community Services Department (or applicable department).
- D. Closure of Fields - Fields may be scheduled for closure and rehabilitation to allow for recovery due to heavy usage. The dates and times of closure to be determined by the Community Services Departments.
- E. There will be no use of AGENCY athletic fields when facilities are unplayable due to rain or other conditions. Any user failing to comply with a decision to postpone use is subject to invoicing for all damages

occurring to the field and termination of this Agreement and the ability to use the Subject Facility.

- F. NO altering of sprinklers without authorization.
- G. Any damages to the Subject Facility or appurtenant AGENCY facilities caused by ORGANIZATION or its use of the Subject Facility, will be the ORGANIZATION's responsibility to replace or repair. In the event ORGANIZATION fails or refuses to replace or repair damage, AGENCY may cause such replacement and/or repair to be undertaken and ORGANIZATION agrees to reimburse AGENCY for the costs incurred to do so.
- H. All locks must be standard agency locks and must not be replaced by any other lock.
- I. All leagues are responsible for cleaning areas used, including daily trash produced by league or ORGANIZATION.
- J. Leagues are responsible for controlling their players and parents while using the Subject Facility.
- K. Any violation of this Agreement by ORGANIZATION and/or any league run by ORGANIZATION using the Subject Facility shall lose their privilege and use of the Subject Facility.

**V. LEGAL RESPONSIBILITIES**

The ORGANIZATION shall keep itself informed of Agency, State and Federal Laws, ordinances and regulations, which in any manner affect the performance of its activities pursuant to this Agreement. The ORGANIZATION shall at all times observe and comply with all such laws, ordinances and regulations. Neither the AGENCY, nor its officers, volunteers, attorneys, agents or employees shall be liable at law or in equity as a result of the ORGANIZATION's failure to comply with this section.

**VI. USE OF PREMISES**

- A. The Subject Facility shall be used only for those athletic events as set forth in Paragraph 2 above. ORGANIZATION shall not permit the Subject Facility or any part thereof to be used for:
  - 1. The conduct of any offensive, noisy or dangerous activity.
  - 2. The creation or maintenance of a public nuisance.
  - 3. Anything which fails to comply with public regulations or rules of any public authority at any time, applicable to the Subject Facility.

4. Any purpose or in any manner which will obstruct, interfere with or infringe upon the rights of the residents of adjoining properties.

## **VII. EXCLUSIVE RIGHT**

This Agreement does not give the ORGANIZATION any right to the exclusive use of the Subject Facility, restrooms, or any other public facility. ORGANIZATION agrees that the rights herein granted shall not be assigned to or transferable to any persons, teams, or leagues.

## **VIII. MAINTENANCE**

- B. ORGANIZATION shall be responsible for all damages or injury to property or equipment caused by the ORGANIZATION, its agents, employees, volunteers, participants and/or any other individual at the Subject Facility during ORGANIZATION's use of the Subject Facility.
- C. All maintenance such as field preparation, lining of the fields; marking of the fields, and set up of temporary equipment will be performed by ORGANIZATION.
- D. ORGANIZATION is responsible for the facility being free of trash and/or debris caused by group usage upon conclusion of each day's use.
- E. ORGANIZATION is required to report any damage to persons or property or acts of vandalism to the AGENCY immediately.

## **IX. INSPECTION**

- F. ORGANIZATION shall inspect the Subject Facility prior to each use by ORGANIZATION to ensure that it is free from any defects and/or hazards that may pose a danger to participants, spectators and/or any other person who is at the Subject Facility as part of the ORGANIZATION's use of the Subject Facility. ORGANIZATION shall immediately notify AGENCY of any defect or hazard identified so that the AGENCY has sufficient time to warn of the defect or hazard and/or remediate the defect or hazard prior to ORGANIZATION's use of the Subject Facility. ORGANIZATION agrees that should it fail to conduct any such inspection and/or fail to timely notify AGENCY of any defect or hazard identified, ORGANIZATION shall be solely responsible for any damage or injury, whether to persons or property, arising from the defect or hazard.
- B. AGENCY shall have the right to enter the Subject Facility utilized

hereunder as needed. However, AGENCY's exercise of the right to enter shall not create any duty on the party of the AGENCY to inspect the Subject Facility for defects or hazards under Section A herein.

**X. IMPROVEMENTS**

The removal, alteration, or addition to any facility or grounds and construction of any kind to existing structures must be approved and performed by the AGENCY. This shall include any proposed changes that would alter the design or appearance of the existing landscape of the Subject Facility. No trees, shrub, or ground covers shall be planted, trimmed or removed without written consent from the AGENCY.

Furthermore, all requests for removal, alternation, or addition to any facility or grounds or for construction and painting of any kind to existing structures must be submitted to the AGENCY for consideration and review at least sixty (60) days prior to the date any proposed change(s) is needed.

Assistance by the ORGANIZATION, its agents, employees, or its participants with any such removal, alteration, addition, painting or construction shall be solely at the discretion and with prior written consent of the AGENCY.

Nothing in this section shall be interpreted as prohibiting the normal maintenance of the facility by the ORGANIZATION as specified in section

**XI. TITLE TO IMPROVEMENTS**

All alterations and additions to the Subject Facility or surrounding grounds and all construction of any kind to existing structures of the Subject Facility shall become the property of the AGENCY. Nothing contained in this paragraph shall authorize the ORGANIZATION to make or place any alterations, changes or improvements on the Subject Facility without the prior written consent of the AGENCY.

**XII. SIGNS**

Except as specifically set forth herein, no signs shall be erected on the Subject Facility unless written approval is obtained from the AGENCY. Such a request for approval shall be directed to the Community Services Director. Sponsor recognition signs may be installed at locations approved by AGENCY. All signs shall be removed upon termination of the 2019 little league season.

**XIII. TERMINATION OF THIS AGREEMENT**

ORGANIZATION or AGENCY may, at any time, terminate this Agreement by serving on the other party such written termination at least fifteen (15) days In advance of the effective date of such termination.

**XIV. NOTICE**

A. All notices respecting this Agreement shall be served by certified mail, postage prepaid, addressed as follows:

B. To AGENCY: City of Imperial  
420 S. Imperial Ave.  
Imperial, CA 92251  
Attention: Community Services Director

C. To ORGANIZATION: Imperial Little League  
580 Sunflower Way, Imperial, CA 92251  
Attention: I.V. Challenger Little League  
President

Notice shall be deemed to have been served seventy-two (72) hours after the same has been deposited in the United States Postal Service.

**XV. ATTORNEYS FEES**

Should any litigation or other legal action be commenced between the parties hereto to interpret or enforce the provisions of this Agreement, in addition to any other relief to which the party may be entitled in law or equity, the prevailing party in such litigation or legal action shall be entitled to recover costs of suit and reasonable attorney's fees.

**XVI. GOVERNING LAW**

This Agreement will be governed by and constructed In accordance with the laws of the State of California.

**XVII. ASSIGNMENT**

Neither this Agreement nor any duties, rights or obligations under this Agreement may be assigned by ORGANIZATION, either voluntarily or by operation of law without the express written consent of the AGENCY.

**XVIII. INSURANCE**

ORGANIZATION shall maintain insurance in conformance with the requirements set forth in Exhibit A. ORGANIZATION will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth herein, ORGANIZATION agrees to amend, supplement or endorse the existing coverage to do so.



ORGANIZATION acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to ORGANIZATION in excess of the limits and coverage identified in this Agreement and which is applicable to a given loss, claim or demand, will be equally available to AGENCY.

**XIV. INDEMNIFICATION**

ORGANIZATION shall indemnify, defend, and hold harmless AGENCY, its Board or City Council, members of boards and commissions, its officers, agents, employees and volunteers from and against any and all liability, claims, allegations, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, economic loss, death, personal injury, property damage, loss of use, or property loss. The ORGANIZATION's obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of ORGANIZATION, its officers, employees, agents, participants, representative or vendors. It is further agreed, ORGANIZATION's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent active or passive negligence on the part of AGENCY, its Board or City Council, or its officers, agents employees, and volunteers except for liability resulting from the sole negligence or willful misconduct of AGENCY, its officers, employees or agents relating to ORGANIZATION's use of the Subject Facility under this Agreement. In the event the AGENCY, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by AGENCY, ORGANIZATION shall have an immediate duty to defend the AGENCY at ORGANIZATION's cost or at AGENCY's option, to reimburse AGENCY for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

**XX. INDEPENDENT CONTRACTOR**

Volunteer administrators, volunteer coaches, parents, contractors, employees and/or officers and directors of the ORGANIZATION shall not be deemed to be employees or agents of the AGENCY as a result of the performance of this Agreement.

**XXI. ENTIRE AGREEMENT OF THE PARTIES**

This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the use of the Subject Facility by ORGANIZATION and contains all of the covenants and conditions between the parties with respect to the use of the Subject Facility. Each party to this

Agreement acknowledges that no representations, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement has been made by the parties. Modification of this Agreement can only be made in writing, signed by both parties to this Agreement.

ORGANIZATION: Imperial Valley Challenger Little League

By: \_\_\_\_\_  
Tony Ojeda, President

AGENCY: City of Imperial  
A Municipal Corporation

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
Debra Jackson, City Clerk

APPROVED AS TO FORM:

Agency Attorney

By: \_\_\_\_\_  
Dennis H. Morita, APC  
City Attorney

## **EXHIBIT A**

### **INSURANCE REQUIREMENTS**

ORGANIZATION shall provide the following types and amounts of insurance:

**General liability insurance.** Organization shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile liability insurance.** Organization shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Vendor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

**Umbrella or excess liability insurance.** [Optional depending on limits required]. Organization shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrence of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

**Workers' compensation insurance.** Organization shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Organization shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.

## **Other provisions or requirements**

**Proof of insurance.** Organization shall provide certificates of insurance to Agency as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by Agency's Risk Manager prior to commencement of event. Current certification of insurance shall be kept on file with Agency at all times during the term of this contract. Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of coverage.** Organization shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the event hereunder by Organization, his agents, representatives, employees or volunteers.

**Primary/noncontributing.** Coverage provided by Organization shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency's own insurance or self-insurance shall be called upon to protect it as a named insured.

**Agency's rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Agency has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Agency will be promptly reimbursed by Organization. In the alternative, Agency may cancel this Agreement.

**Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

**Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Organization hereby waives its own right of recovery against Agency, and shall require similar written express waivers and insurance clauses from each of its sub-organizations.

**Enforcement of contract provisions (non estoppel).** Organization acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Organization of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

**Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Organization maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Organization. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

**Notice of cancellation.** Organization agrees to oblige its insurance agent or broker and insurers to provide to Agency with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

**Additional insured status.** General liability policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, agents and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

**Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to AGENCY and approved of in writing.

**Separation of insureds.** A severability of interests provision must apply for all additional insureds ensuring that (Organization's/sub-organization's) insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass through clause.** Organization agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Organization, provide the same minimum insurance coverage and endorsements required of Organization. Organization agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Organization agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to Agency for review.

**Agency's right to revise specifications.** The Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Organization ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Organization, the Agency and Organization may renegotiate Organization's compensation.

**Self-insured retentions.** Any self-insured retentions must be declared to and approved by Agency. Agency reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by Agency.

**Timely notice of claims.** Organization shall give Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Organization's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional insurance.** Organization shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.