

**CONTRACT # \_\_\_\_\_**  
**AGREEMENT FOR SERVICES BETWEEN**  
**THE CITY OF ALBANY AND ALBANY LITTLE LEAGUE**  
**FOR**  
**MAINTENANCE OF OCEANVIEW ATHLETIC FIELD**

This AGREEMENT FOR SERVICES ("AGREEMENT"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2004 by and among the City of Albany, a California charter city ("CITY") and Albany Little League, a non-profit organization hereafter referred to together as "CONTRACTOR."

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**SECTION 1. TERM OF AGREEMENT.**

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of one (1) year from the date of execution of this AGREEMENT, as first shown above. Such term may also be reduced or extended upon written agreement of both parties to this AGREEMENT.

**SECTION 2. SCOPE OF SERVICES.**

CONTRACTOR agrees to perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this AGREEMENT.

**SECTION 3. ADDITIONAL SERVICES.**

CONTRACTOR shall not be compensated for nor obligated to provide any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless such additional services are authorized in advance and in writing by the City Council or City Administrator of CITY. CONTRACTOR shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Administrator.

**SECTION 4. COMPENSATION AND METHOD OF PAYMENT.**

CITY shall pay CONTRACTOR \$1,050 a month, not to exceed \$12,600 for the one year period.

This agreement does not release CONTRACTOR from any other fees which CONTRACTOR may be required to pay to the CITY.

Payment to CONTRACTOR for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONTRACTOR.

#### **SECTION 5. INSPECTION AND FINAL ACCEPTANCE.**

CITY may inspect and accept or reject any of CONTRACTOR's work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONTRACTOR's work within sixty (60) days after submitted to CITY. CITY shall reject work by a timely written explanation, otherwise CONTRACTOR's work shall be deemed to have been accepted. CITY's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONTRACTOR's work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, SECTIONS 15 and 16, pertaining to indemnification and insurance, respectively.

#### **SECTION 6. OWNERSHIP OF DOCUMENTS.**

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONTRACTOR in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the CONTRACTOR. Upon completion, expiration or termination of this AGREEMENT, CONTRACTOR shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

#### **SECTION 7. CONTRACTOR'S BOOKS AND RECORDS.**

CONTRACTOR shall maintain any and all documents and records demonstrating or relating to CONTRACTOR's performance of services pursuant to this AGREEMENT. CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONTRACTOR pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to the CITY for

inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONTRACTOR's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONTRACTOR's business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

### **SECTION 8. STATUS OF CONTRACTOR.**

(a) CONTRACTOR is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. CONTRACTOR shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees or agents, except as set forth in this AGREEMENT. CONTRACTOR shall not at any time or in any manner represent that CONTRACTOR or any of CONTRACTOR's officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither CONTRACTOR, nor any of CONTRACTOR's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. CONTRACTOR expressly waives any claim CONTRACTOR may have to any such rights.

### **SECTION 9. STANDARD OF PERFORMANCE.**

CONTRACTOR represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONTRACTOR shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONTRACTOR shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONTRACTOR under this AGREEMENT.

**SECTION 10. COMPLIANCE WITH APPLICABLE LAWS, PERMITS, AND LICENSES.**

CONTRACTOR shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONTRACTOR shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.

**SECTION 11. NONDISCRIMINATION.**

CONTRACTOR shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this AGREEMENT.

**SECTION 12. UNAUTHORIZED ALIENS.**

CONTRACTOR hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et M., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONTRACTOR so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should the any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONTRACTOR hereby agrees to and shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

**SECTION 13. CONFLICTS OF INTEREST.**

(a) CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONTRACTOR's performance of services under this AGREEMENT. CONTRACTOR further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Administrator. CONTRACTOR agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that CONTRACTOR is, or may be, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties.

CONTRACTOR is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

#### **SECTION 14. CONFIDENTIAL INFORMATION AND RELEASE OF INFORMATION.**

(a) All information gained or work product produced by CONTRACTOR in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONTRACTOR. CONTRACTOR shall not release or disclose any such information or work product to persons or entities other than CITY without prior written authorization from the City Administrator, except as may be required by law.

(b) CONTRACTOR, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Administrator or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONTRACTOR gives CITY notice of such court order or subpoena.

(c) If CONTRACTOR, or any officer, employee, agent or subcontractor of CONTRACTOR, provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from CONTRACTOR for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONTRACTOR's conduct.

(d) CONTRACTOR shall promptly notify CITY should CONTRACTOR, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONTRACTOR or be present at any deposition, hearing or similar proceeding. CONTRACTOR agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONTRACTOR. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

#### **SECTION 15. INDEMNIFICATION.**

(a) CITY and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have

no liability to CONTRACTOR or any other person for, and CONTRACTOR shall indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the CONTRACTOR's performance of or failure to perform any services under this AGREEMENT or by the negligent or *willful* acts or omissions of CONTRACTOR, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONTRACTOR has agreed to indemnify INDEMNITEES as provided above, CONTRACTOR, upon notice from CITY, shall defend INDEMNITEES at CONTRACTOR's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONTRACTOR under SECTION 16 shall ensure CONTRACTOR's obligations under this section, but the limits of such insurance shall not limit the liability of CONTRACTOR hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

(c) The provisions of this section do not apply to CLAIMS occurring as a result of the CITY's sole negligence or *willful* acts or omissions.

## **SECTION 16. INSURANCE.**

CONTRACTOR agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "B" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Administrator. CONTRACTOR agrees to provide CITY with copies of required policies upon request.

## **SECTION 17. ASSIGNMENT.**

The expertise and experience of CONTRACTOR are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONTRACTOR under this AGREEMENT. In recognition of that interest, CONTRACTOR shall not assign or transfer this AGREEMENT or any portion of this

AGREEMENT or the performance of any of CONTRACTOR's duties or obligations under this AGREEMENT without the prior written consent of the CITY. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONTRACTOR, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors. CITY shall be notified in writing of all subcontractors.

#### **SECTION 18. CONTINUITY OF PERSONNEL.**

CONTRACTOR shall make every reasonable effort to maintain the stability and continuity of CONTRACTOR's staff assigned to perform the services required under this AGREEMENT. CONTRACTOR shall notify CITY of any changes in CONTRACTOR's staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

#### **SECTION 19. TERMINATION OF AGREEMENT.**

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONTRACTOR. In the event such notice is given, CONTRACTOR shall cease immediately all work in progress.

(b) CONTRACTOR may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to CITY. In the event such notice is given, CONTRACTOR shall cease immediately all work in progress.

(c) If either CONTRACTOR or CITY fail to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONTRACTOR, or CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONTRACTOR or CITY, all property belonging exclusively to CITY which is in CONTRACTOR's possession shall be returned to CITY. CONTRACTOR shall furnish to CITY a final invoice for work performed and expenses incurred by CONTRACTOR, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

#### **SECTION 20. DEFAULT.**

In the event that CONTRACTOR is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating CONTRACTOR for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONTRACTOR.

**SECTION 21. EXCUSABLE DELAYS.**

CONTRACTOR shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONTRACTOR. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

**SECTION 22. COOPERATION BY CITY.**

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONTRACTOR in every reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

**SECTION 23. NOTICES.**

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage

prepaid and return receipt requested, addressed as follows:

To CITY: Beth Pollard, City Administrator  
c/o Judy Lieberman  
City of Albany  
1000 San Pablo Avenue  
Albany, CA 94706

To CONTRACTOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.



**SECTION 24. AUTHORITY TO EXECUTE.**

The person or persons executing this AGREEMENT on behalf of CONTRACTOR represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONTRACTOR to the performance of its obligations hereunder.

**SECTION 25. BINDING EFFECT.**

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**SECTION 26. MODIFICATION OF AGREEMENT.**

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONTRACTOR and by the CITY. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

**SECTION 27. WAIVER**

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONTRACTOR shall not constitute a waiver of any of the provisions of this AGREEMENT.

**SECTION 28. LAW TO GOVERN; VENUE.**

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in Alameda County. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

**SECTION 29. CLAIMS.**

All claims arising out of or related to this agreement must be presented not later than six (6) months after the accrual of the cause of action. Such claims shall be governed by the provisions of the Albany Municipal Code and such claims shall further be governed by the provisions of section 930.4 of the Government Code for the purposes of filing leave to present a later claim. It is further provided that subdivision (b) of section 911.4 sections 911.6 to 912.2, inclusive and section 946.6 are applicable to all

such claims, and the time specified in this agreement shall be deemed the “time specified” in section 911.2 within the meaning of sections 911.6 and 946.6.

**SECTION 30. ENTIRE AGREEMENT.**

This AGREEMENT, including the attached EXHIBITS "A" through "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONTRACTOR and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

**SECTION 31. SEVERABILITY.**

If an term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

**IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

**CITY OF ALBANY:**

**CONTRACTOR:**

By \_\_\_\_\_  
Beth Pollard, City Administrator

By \_\_\_\_\_  
Albany Little League  
(Authorized Officer)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert Zweben, City Attorney