

**THE CITY OF BURLINGAME AND
BURLINGAME AMERICAN YOUTH
SOCCER ORGANIZATION
USE AGREEMENT**

This USE AGREEMENT (hereinafter, "AGREEMENT") is made and entered into this 19 day of June, 2018, by and between the CITY OF BURLINGAME (hereinafter, "CITY") and BURLINGAME AMERICAN YOUTH SOCCER ORGANIZATION, a non-profit 501(c)(3) corporation (hereinafter, "AYSO"), who are referred to as a "Party" or collectively the "Parties."

RECITALS

WHEREAS, CITY is the fee owner of Bayside Fields, Washington Park, Village Park, Ray Park, Cuernavaca Park, and Murray Field in the City of Burlingame; and

WHEREAS, the CITY and AYSO desire to enter into this AGREEMENT to allow AYSO to use FACILITIES for recreational soccer use and storage.

NOW, THEREFORE, for and in consideration of the following terms and conditions herein contained, the Parties hereto agree as follows:

1. **TERM AND COMMENCEMENT**

This AGREEMENT shall become effective upon execution and end on the date ten years following the effective date, in order to provide a ten (10)-year period for AYSO to amortize its annual capital investments in field improvements. Tenant shall have the option, exercisable by written notice to CITY not later than ninety (90) days prior to the expiration of the term, to extend the term of this Agreement for one (1) further term of five (5) years on the same terms and conditions as provided in this Agreement. If AYSO wishes to extend its use of CITY's facilities under this Agreement beyond the original term and option period, it shall so notify CITY at least ninety (90) days prior to the expiration of the option period. CITY shall then evaluate whether the current Agreement and AYSO's actions under it adequately serve the public. Following this assessment, the parties shall confer on any changes and may, at their mutual option, extend this Agreement for an additional term of five (5) years with an option period of an additional five (5) years.

2. **FACILITIES**

This AGREEMENT covers AYSO's use of six (6) CITY-owned properties, which are collectively referred to as FACILITIES. Each property has unique features and uses, which are more particularly described in the attached exhibits.

- Bayside Fields, 1125 South Airport Blvd. (EXHIBIT A)
- Washington Park, 420 Carolan Ave. (EXHIBIT B)
- Cuernavaca Park, 3075 Alcazar Dr. (EXHIBIT C)
- Village Park, 1535 California Dr. (EXHIBIT D)
- Ray Park, 1525 Balboa Ave. (EXHIBIT E)
- Murray Field, 250 Anza Blvd. (EXHIBIT F)

3. USE OF FACILITIES

a. AYSO shall have use of FACILITIES for soccer activities pursuant to the terms of this AGREEMENT. AYSO is obligated to do the following:

- i. Provide CITY staff with keys and/or codes for all buildings used by AYSO on CITY property.
- ii. Provide at least 24 hours' notice to the City when vehicles will be parked at the FACILITIES overnight.
- iii. Provide all personnel necessary to supervise their activities. All AYSO board members and coaches shall have completed background checks as required by their governing organization.
- iv. Furnish and supply all equipment and expendable materials that may be necessary for their activities.
- v. Prevent any nuisance, such as dust or noise that might be created, affecting adjoining residential and/or other properties.
- vi. Operate any public address system in accordance with the City of Burlingame Municipal Code.
- vii. Ensure that no signs/banners shall be erected or displayed on the premises without the prior written approval of the Parks and Recreation Director, which approval the Parks and Recreation Director will not unreasonably withhold. All signs/banners will comply with all applicable City policies, ordinances and/or regulations, and all applicable state and federal laws or decisions of courts of competent jurisdiction. CITY may revise its policies, ordinances, and/or regulations from time to time within its sole discretion, and those revisions shall apply to AYSO's signs/banners when adopted.
- viii. Ensure that there is no subletting of fields.

b. USE OF STORAGE SHEDS

- i. Only pre-fabricated units, approved by the Parks and Recreation Director, or his or her designee, shall be placed on the FACILITIES. AYSO shall contact, and make arrangements with, appropriate CITY

- staff to obtain supervision and guidance in the placement and/or removal of the storage units.
- ii. Storage units shall be kept in a clean and well-maintained condition. AYSO shall monitor and inspect the storage units on a regular basis throughout the year and immediately remove any graffiti and/or make repairs as needed. AYSO shall paint and/or repair any approved storage units within 72 hours of being notified of needed painting or repairs. This shall include painting and/or removal of graffiti.
 - iii. If AYSO has not taken corrective action for the painting or maintenance of AYSO's storage units within the 72-hour time period set forth above, the Parks and Recreation Director, or his or her designee, at his or her sole discretion, shall take necessary steps to correct the non-compliance through the use of CITY'S employees or the hiring of contractors to perform the necessary work. AYSO shall reimburse CITY for any costs incurred in taking this corrective action, plus a 5% charge for CITY administration of the repairs, which shall be paid by AYSO within ten (10) business days of receipt of a statement of cost from the Parks and Recreation Director.

4. COMPLIANCE WITH ALL LAWS

AYSO, their members, and participants, shall each comply with all the requirements, statutes, and codes of all municipal, state, and federal authorities and agencies now in force, or which may hereinafter be in force, pertaining to the use of FACILITIES.

5. FEES

AYSO agrees to pay the approved per player, per hour, and light fees adopted by the Burlingame City Council as stated in the Master Fee Schedule, as it may be amended from time to time.

6. IMPROVEMENTS

AYSO shall not remove, alter, construct, or add to the FACILITIES without the CITY'S express prior written consent. Any such removal, alteration, construction, or addition of any kind to FACILITIES or grounds without the CITY'S written consent shall be a material breach of this AGREEMENT. In the event of said material breach, CITY may either remove the improvements at AYSO's expense, or CITY may retain such improvements at no cost.

AYSO must provide at least 60-day prior written notification to the CITY and receive CITY'S written consent before making any alterations, additions, or improvements to FACILITIES, which will be at AYSO's sole expense, unless otherwise agreed upon in writing. All alterations, additions, or improvements must comply with all applicable laws. All permits must be obtained and signed off before any removal, alteration, or construction

may begin. No City fees shall be charged to AYSO for such permits. Whenever a physical structure is added to any of the FACILITIES, this AGREEMENT shall be updated to describe the new structure.

Any structure that has a permanent poured foundation requires the approval of the City Council and will become the property of the City once installed. Removable structures (i.e. storage sheds) require the approval of the Director of Parks and Recreation and the ownership will be retained by AYSO. AYSO must remove any structure if requested by CITY.

Once the alteration, addition, or improvement has been approved in writing by the Director of Parks and Recreation and is completed, the Director of Parks and Recreation will update the agreement exhibit to reflect the alteration, addition, or improvement.

AYSO is responsible for all upkeep and maintenance of structures installed on City property.

7. DESTRUCTION OR DAMAGE TO FACILITIES

If, for any reason, there is any destruction or damage to the storage sheds then AYSO is responsible for their repair and/or replacement unless, in the course of an investigation conducted by the CITY or its insurer, it is determined conclusively that another party is responsible for such damage, in which case that party shall bear the cost of repairs. This AGREEMENT does not confer any legal responsibility on the CITY to repair or replace any structure for AYSO's use under the terms of this AGREEMENT.

8. NUISANCE ABATEMENT

CITY has the authority to abate any public nuisance created by AYSO's performance of the terms and conditions of this AGREEMENT and use of FACILITIES. AYSO must reimburse CITY for all reasonable fees and costs associated with nuisance abatement or code enforcement. The normal noises, odors, parking, and crowds associated with AYSO's customary operation, maintenance and use of the FACILITIES shall not be deemed a nuisance as defined in Burlingame Municipal Code section 1.16.010.

9. LIABILITIES AND INDEMNIFICATION

AYSO shall defend, indemnify, hold free and harmless the CITY, its elected and appointed officials, officers, attorneys, agents and employees, at AYSO'S sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the CITY, its elected officials, officers, agents and employees arising out of AYSO'S operation, maintenance, and/or use of FACILITIES or its obligations under this AGREEMENT. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by AYSO, its officers, employees, volunteers and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or

misconduct of AYSO, its officers, employees, volunteers and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the CITY, its elected and appointed officials, officers, agents and employees based upon the work performed by AYSO, its officers, employees, volunteers and/or authorized subcontractors under this AGREEMENT whether or not AYSO, its officers, employees, volunteers and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Under no circumstances shall the CITY be liable for the defense or indemnification of AYSO for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of AYSO. AYSO shall not be liable for damage or injury occasioned by the active negligence or willful misconduct of CITY or its agents, contractors or employees. The obligations under this paragraph shall survive the termination or expiration of this Agreement, and shall apply to claims or allegations that accrue during its effective period.

CITY shall have no responsibility or liability for loss or damage of any personal property placed or stored in any of the FACILITIES, including but not limited to netting, pitching machines, electrical cables, balls, player equipment, or other items.

10. ASSIGNMENTS AND SUBLEASE

Neither CITY nor AYSO may assign or transfer this AGREEMENT, or any part thereof, without the prior written consent of the other Party.

11. NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, appointments, or designations hereunder by either Party to the other will be in writing and will be deemed given and served upon the other Party, if delivered personally or three (3) days after depositing in the United States mail, postage prepaid, addressed to:

If to CITY:

If to Burlingame AYSO:

City of Burlingame Attention: Parks and Recreation Director 850 Burlingame Ave Burlingame, CA 94010 Telephone: (650) 558-7300 E-Mail: mglomstad@burlingame.org	Burlingame AYSO Attn: President Address: <u>P.O Box 1212</u> Burlingame, CA 94011 E-Mail: <u>rc@burlingameayso.org</u>
---	--

12. EMERGENCY REPAIRS

CITY reserves the right to make, or cause to be made, necessary emergency repairs and to access all FACILITIES for such purposes. When feasible, CITY shall provide AYSO verbal or written notice of the need for an emergency repair. If AYSO does not perform the repair within 24 hours of notice, then CITY shall handle the repair. AYSO shall

reimburse the CITY for the total cost of the repair, including labor, materials, and equipment, plus a 5% charge for CITY administration of the repair. AYSO shall reimburse the CITY within ten (10) business days of receipt of an invoice.

13. TERMINATION

This AGREEMENT may be terminated, with or without cause, at any time by either Party. AYSO shall provide six (6) months written notice to the CITY. CITY shall provide six (6) months written notice to AYSO. If CITY transfers ownership, or if part of or all of FACILITIES is condemned, or access to FACILITIES is changed or limited, either Party may, in its sole discretion, terminate this AGREEMENT as it relates to such facilities without any liability by giving the other Party no fewer than ninety (90) days prior written notice. Upon termination, AYSO agrees to remove all AYSO owned equipment/supplies, storage sheds and signage and repair any damage caused to FACILITIES to the extent such damage was not the result of active negligence or willful misconduct by the CITY or its agents, contractors, or employees.

14. INSURANCE

AYSO shall obtain and maintain during the life of this AGREEMENT all of the following insurance coverages:

- i. Commercial general liability including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence and aggregate. If independent contractors are retained by AYSO, they shall be required to carry identical coverage as that required for AYSO naming the CITY as additional insured.
- ii. Workers' compensation insurance as required by the State of California
- iii. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions concerning the CITY:
 1. Additional insureds: AYSO, shall defend, indemnify, hold free and harmless the CITY, its elected and appointed officials, officers; agents and employees
 2. Other insurance: "Any other insurance maintained by the City of Burlingame shall be excess and not contributing with the insurance provided by this policy."

- iv. Certificates of Insurance: Upon execution of this AGREEMENT, AYSO shall provide the CITY with certificates of insurance showing the insurance coverages and required endorsements described above.

15. SEVERABILITY AND APPLICABLE LAW

Whenever possible, each provision of this AGREEMENT will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this AGREEMENT is invalid under applicable law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, or the remaining provisions. This AGREEMENT has been made and entered into in the State of California and the laws of said State will govern the validity and interpretation hereof and the performance hereunder by the parties herein. Venue shall be in San Mateo County.

16. WAIVER

The failure of CITY or AYSO to insist upon strict performance of any of the terms, conditions, or covenants in this AGREEMENT will not be deemed a waiver of any right or remedy which CITY or AYSO may have and will not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, or covenants herein contained.

17. BINDING EFFECT

This AGREEMENT and all the terms, covenants, conditions, and agreements herein contained will be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

18. NO PARTNERSHIP OR JOINT VENTURE

CITY and AYSO are not partners. Nothing herein contained shall be construed to create a partnership or joint venture in any sense.

19. NONDISCRIMINATION

As provided by law, AYSO shall not employ any discriminatory practices in its performance of the terms and conditions of this AGREEMENT, including its employment practices or FACILITIES usage.

20. ENTIRE AGREEMENT

This AGREEMENT expresses the entire agreement between the Parties concerning the subject matter of this AGREEMENT. There are no understandings, agreements, representations, or warranties, express or implied, not set forth or specified in this AGREEMENT. This AGREEMENT supersedes all other agreements, verbal or written. This AGREEMENT may not be amended except in writing signed by both Parties.

IN WITNESS WHEREOF, the Parties have hereunto affixed their name by their officers "hereunto duly authorized," on the day and year written above.

City of Burlingame,
A municipal corporation

Burlingame American Youth Soccer
Association



Lisa K. Goldman
City Manager



Heather Gates
President

Approved as to form:



Kathleen Kane
City Attorney

Attest:

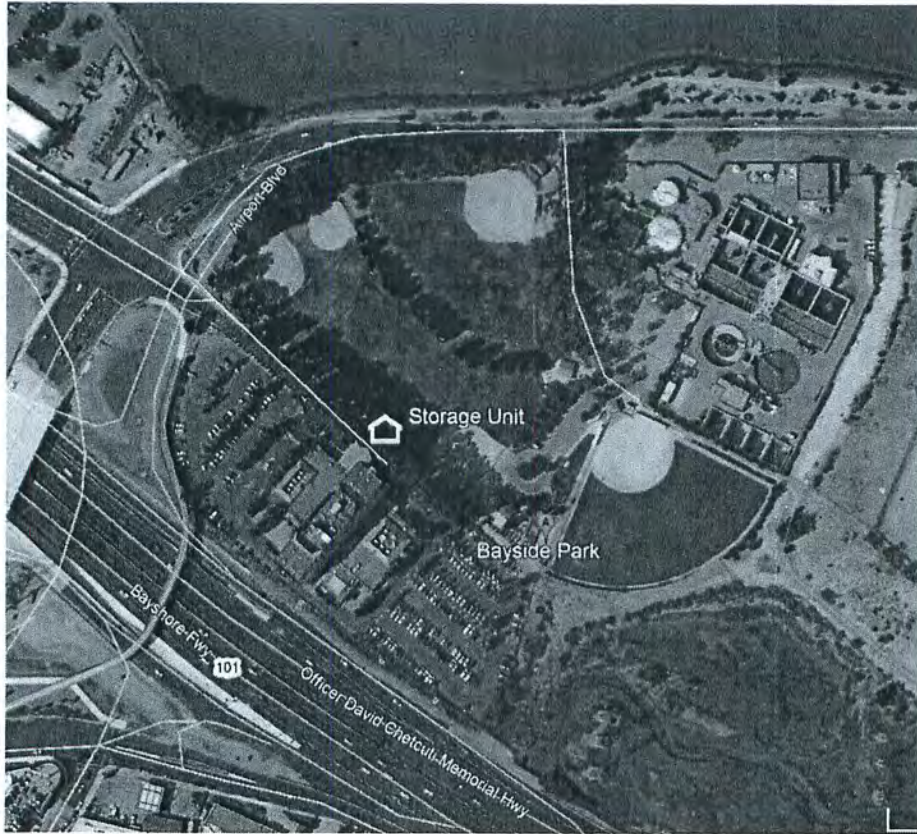


Meaghan Hassel-Shearer
City Clerk

Exhibit A

Bayside Fields

Bayside Fields is located at 1125 South Airport Blvd. This 12 acre facility includes two (2) soccer fields and one (1) AYSO storage unit (Job Box).



AYSO is proposing to remove the Job Box and replace it with a storage unit in the same location similar to the unit at Washington Park.

Exhibit B

Washington Park

Washington Park is located at 420 Carolan Ave. This 10 acre facility includes, ten (10) soccer fields, and one (1) storage unit.



AYSO Storage Unit at Washington Park

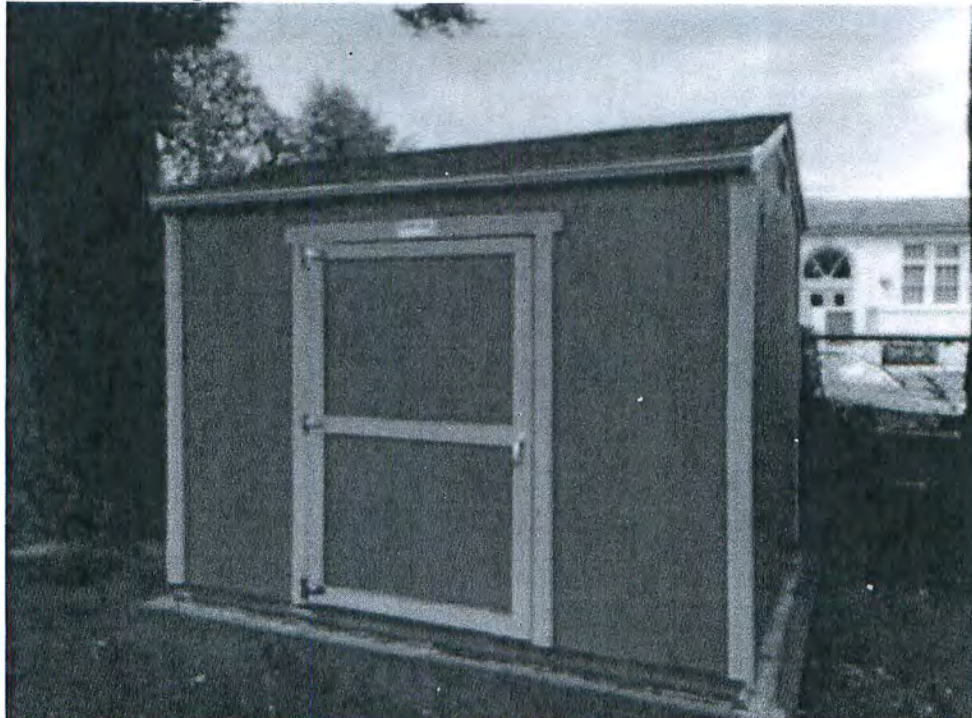


Exhibit C

Cuernavaca Park

Cuernavaca Park is located at 3075 Alcazar Drive. This 5 acre facility includes two (2) soccer fields and one (1) storage unit (Job Box).



AYSO is proposing to remove the Job Box and replace it with a storage unit in the same location similar to the unit at Washington Park.

Exhibit D

Village Park

Village Park is located at 1535 California Dr. This 1 acre facility includes four (4) soccer fields.



AYSO is proposing to add a storage unit in the in the above location similar to the unit at Washington Park.

Exhibit E

Ray Park

Ray Park is located at 1525 Balboa Ave. This 2.5 acre facility includes five (5) soccer fields and one (1) storage unit (Job Box).

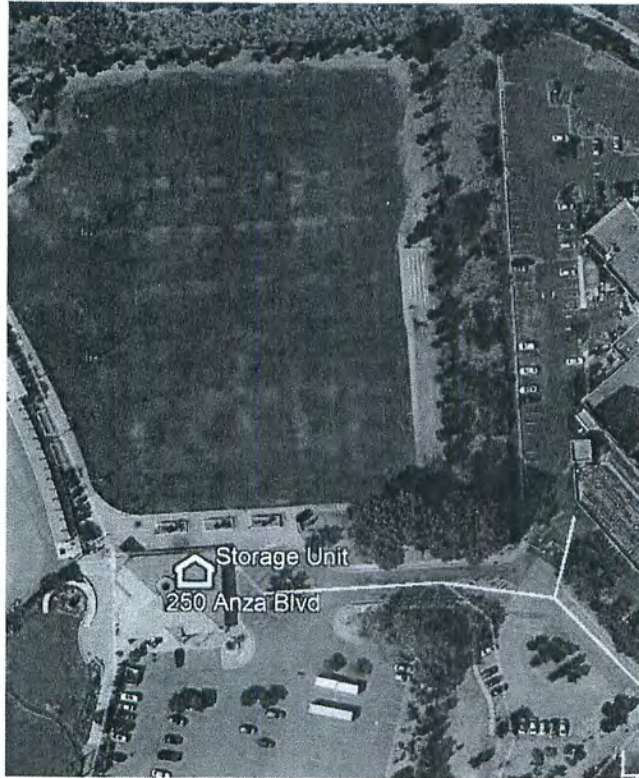


AYSO is proposing to remove the Job Box and replace it with a storage unit in the same location similar to the unit at Washington Park.

Exhibit F

Murray Field (Burlingame Soccer Center)

Murray is located 250 Anza Blvd. This 3 acre facility has an artificial turf field that includes three (3) soccer fields and joint use of the storage closet in the Golf Center building.



Storage Unit at Murray Field

