

INSTALLATION/MAINTENANCE AGREEMENT AT
DELANEY PARK

This Installation/Maintenance Agreement at Delaney Park (“Agreement”) is made and entered into this ____ day of July, 2014 (“Effective Date”), by and between the City of Orlando, a municipal corporation organized and existing under the laws of the State of Florida (“City”), and Delaney Park Little League, Inc., a Florida non-profit corporation (“DPLL”).

RECITALS

A. City owns certain property located within Delaney Park, in Orlando, Florida, as more particularly shown in **Exhibit “A”**, attached hereto and incorporated herein, by reference (Park). The Park, known as Delaney Park, is approximately 7.23 acres of land in size.

B. DPLL has requested authorization to install a flag pole in memory of one of its coaches on the site (the “Memorial”) in the Park per City Policy 211.4.

C. The City has approved the request under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and DPLL agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement as if fully set forth herein.

2. Term of License. The term of the Agreement shall begin on the Effective Date and end five (5) years later unless extended or terminated as provided herein. The DPLL must submit and obtain City-approved design drawings within twelve (12) months of the Effective Date and must complete construction within eighteen (18) months of the design approval.

3. Renewal of License. Provided that DPLL is not in breach or default of this Agreement, the term of the Agreement may be renewed for additional five year terms upon the mutual, written agreement of the parties. The Families, Parks and Recreation Director is authorized to execute such renewals, under the same terms and conditions, on behalf of the City without further approval from the Orlando City Council.

4. Installation.

A. The Memorial shall be installed and incorporated into a public site within the section of the Park that has been agreed to and designated by the DPLL and the City; such site is identified and described in **Exhibit “B”**, attached hereto and incorporated herein by reference. To the extent that the City has or commissions a survey of the boundaries of the Memorial site, the City will provide same to the DPLL. DPLL shall provide to the City, for the City’s approval, a written description of the manner in which the Memorial shall be installed, including a statement of details addressing

any site preparatory work which must be performed prior to installation.

- B. The City shall cooperate with DPLL in the preparation of the site prior to installation; however, it shall be the responsibility of DPLL to apply for, pay for, secure, and comply with the conditions and requirements of any permits that may be required by law for such installation.
- C. DPLL and the City shall consult and agree to the date and time for delivery of the Memorial to the site. DPLL shall be responsible for and bear the costs of transportation and installation of the Memorial, including but not limited to costs of permits, labor, and materials.
- D. Preconstruction and installation shall not commence until all funding for purchase and installation is secured (as determined by City) and the Memorial final design and construction plans have been approved by the Parks Division Manager.

5. Final Acceptance; Title of the Memorial to Vest in the City

- A. . During the construction of the Memorial, DPLL shall follow the Parks Division approved design and City-approved construction documents. Upon the completion of the work and installation of the Memorial to DPLL's satisfaction, the City shall inspect the work and present DPLL with a detailed listing of any items not in compliance with the Parks Division approved design and City-approved construction documents, and the DPLL shall correct those items. When the City is satisfied with the work, it shall provide written notice to DPLL of its final acceptance of the work, which notice shall state that the work has been completed and the Memorial has been installed as agreed to by the parties and to the satisfaction of the City.
- B. Upon final acceptance, title to the Memorial shall pass from DPLL to, and vest in, the City. DPLL hereby donates and transfers to the City the DPLL's rights except those limited by this Agreement, title, and interest in and to the Memorial. Thereafter, the City shall retain all written documentation regarding the Memorial, and shall have, for future and historical documentation purposes only, the right to a copy of all drawings, sketches and designs of the Memorial produced prior to final acceptance of the work.
- C. Upon final acceptance, DPLL shall be available for a public dedication of the Memorial; and, in consultation with and approval by the City, shall provide appropriate, on-site signage to identify the Memorial by DPLL's name, the year of fabrication, and other information deemed appropriate by the City.

6. Maintenance, Repair, and Restoration

- A. DPLL shall be solely responsible for the maintenance and repair of the Memorial and its related improvements built by DPLL. DPLL shall maintain the Memorial in a good, safe and sanitary condition throughout the term of this Agreement. DPLL shall

insure that any graffiti be promptly removed.

- B. The DPLL may not make any alterations to the Memorial and its related improvements without prior written approval of the Parks Division Manager. City shall be entitled to inspect the Memorial from time to time and notify DPLL in writing of any items in a state of disrepair. DPLL shall have sixty (60) days from its receipt of the notice to repair the items. If the Memorial's conditions of disrepair are a safety hazard to the public as determined by the City's Risk Management Division, DPLL or the City shall reserve the right to temporarily close the Memorial for repair within thirty (30) days of notification of such condition(s) and during the duration of the repair as required. Provided however, DPLL shall take no longer than sixty (60) days to repair the Memorial or correct a safety issue without written permission from the Parks Division Manager. The failure of DPLL to repair the items within such time period shall be a breach of this Agreement and may result in removal of the Memorial from the Park at the City's discretion. The failure of City to provide a list of repairs to DPLL shall not relieve DPLL of its maintenance and repair obligations.
- C. Other than routine maintenance, DPLL may not make any alterations to the Memorial and its related improvements without prior written approval of the Parks Division Manager. For the purpose of raising funds for the Monument's maintenance, DPLL reserves the rights to add new donor name bricks as provided in the final design and construction plans approved by the Parks Division Manager. Such additions shall be presented to the Parks Division Manager for the City's records.

7. Utilities. DPLL shall be responsible for arranging and paying for the cost of all utilities related in any way to the Memorial.

8. Use of Park. The Park is available for use by the general public for public events, in City's sole and absolute discretion. In order to utilize the Park at times and in manners other than those prescribed by then existing agreements between the City and DPLL for the use of the field and concession stand during its seasons, DPLL must contact the Parks Division Manager at least thirty (30) days in advance of any planned event and submit an application for use of the Park in conformance with the then current park reservation procedures. DPLL shall be responsible for paying the normal and customary fees for using the Park.

9. Termination. This Agreement may be terminated:

- A. By DPLL for any reason upon thirty (30) calendar days prior written notice to City;
or
- B. By City for any reason upon thirty (30) calendar days prior written notice to DPLL.
- C. Upon termination by either party for any reason, DPLL shall have the option to remove the Memorial as soon as reasonably possible at its sole cost and expense, but in any event no later than ninety (90) days after termination and return, to the extent practicable, the site of the Memorial to the condition it was in prior to installation of

the Memorial.

- D. If DPLL opts not to exercise its right to remove the Memorial as provided in 9.C. above, City may elect to keep the Memorial as part of its Park amenities or remove them. In the event that City elects to retain the Memorial, DPLL shall have no further right, title or interest therein. If City so desires, DPLL shall provide appropriate documentation to City confirming its conveyance to City of all right, title and interest in the Memorial.

10. Indemnification. DPLL hereby agrees to indemnify, defend and hold harmless without limit the City, its elected and appointed officials, agents, employees from and against any and all liabilities, losses, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including attorney's fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with the design, installation and maintenance of the Memorial.

11. Copyright and Reproduction Rights

- A. DPLL expressly reserves every right available to DPLL under the Federal Copyright Act and other applicable statutes to control the making or dissemination of copies or reproductions of the Memorial, except the rights which are limited by this Agreement.
- B. The City retains the right to publish and distribute photographs, drawings or other forms of reproductions of the Memorial as installed and formally accepted by the City, for reference, promotional, educational and scholarly purposes. The City agrees to make no commercial use of the Memorial without DPLL's written consent. If such consent is obtained from DPLL, all reproductions of the Memorial by the City shall contain a credit to DPLL that states DPLL's name, year of creation, and the name of the City.
- C. DPLL agrees to include on or in any form of reproduction of the Memorial initiated or authorized by DPLL, a credit to the City, stating that the Memorial is owned by the City.
- D. DPLL shall not use City's name or logo in advertising or promoting the Memorials within the Park without City's prior, written consent.

12. Compliance with Laws

- A. DPLL shall comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations relating to the Park and the construction and installation of the Improvements pursuant to this Agreement, including, but not limited to, the Florida Building Code (FBC), and the Americans with Disabilities Act (ADA). The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be DPLL's sole responsibility.

B. This Agreement is contingent upon DPLL’s maintaining all certificates, permits, and other approvals that may be required by any federal, state, or local authority for the operation of the Licensed Premises and the construction of the Improvements on the Licensed Premises. The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be DPLL’s sole responsibility.

13. Condemnation. In the event the Park is taken by eminent domain, this Agreement shall automatically terminate as of the date title to the Park vests in the condemning authority. DPLL shall be entitled to receive the portion of the condemnation award, if any, which it is entitled to by operation of law and no more. The City shall be entitled to receive the portion of the condemnation award which it is entitled to by operation of law and DPLL hereby expressly waives any right or claim to any portion thereof and all such damages, whether awarded as compensation for diminution in value of the Memorial or Park, shall belong to the City. City will inform DPLL of the commencement of any eminent domain proceedings by any governmental authority.

14. Notices. All notices, requests, demands, and other communications required or given hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to City, to: Parks Division Manager
 City of Orlando Parks Division
 1206 W. Columbia Street
 Orlando, Florida 32805

If to DPLL, to: Delaney Park Little League, Inc.
 P.O. Box 560096
 Orlando, Florida 32856

15. Assignment/Subletting. DPLL shall not assign this Agreement without the prior written consent of City, which may be withheld for any or no reason.

16. Liens. DPLL shall insure that no liens or claims of liens are recorded against Park property due to the construction and installation of the Memorial by any party, and the recording of any such lien, unless removed within thirty (30) days of filing, shall be a default by DPLL of this Agreement.

17. Unlawful Discrimination. DPLL covenants and agrees that no person shall be unlawfully discriminated against in the design, construction, use and operation of the Memorial pursuant to this Agreement.

18. No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between City and DPLL.

19. Miscellaneous.

- A. City and DPLL represent that each, respectively, has full right, power, and authority to execute this Agreement and enter into this Agreement.
- B. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein
- C. This Agreement shall be construed in accordance with the laws of the State of Florida. The location for the settlement of any disputes arising out of this Agreement shall be Orange County, Florida.
- D. City is a Florida municipal corporation whose limits of liability are set forth in Section 768.28, Florida Statutes, and nothing herein shall be construed to extend the limits of liability of City beyond that provided in Section 768.28, Florida Statutes. Nothing herein is intended as a waiver of City's sovereign immunity under Section 768.28, Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, all of City's obligations under this Agreement are limited to the payment of no more than the amount limitation per person and in the aggregate contained in Section 768.28, Florida Statutes, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein.
- E. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

SIGNATURES BEGIN ON NEXT PAGE

CITY OF ORLANDO, FLORIDA

Attest:

Alana C. Brenner, City Clerk

By: _____

Mayor/Pro Tem

Executed on _____, 2014

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the City of Orlando,
Florida, only.

_____, 2014.

Chief Assistant City Attorney

**DELANEY PARK LITTLE LEAGUE, INC., a
Florida non-profit corporation**

By: _____

Name: _____

Title: _____

Witnesses:

Sign: _____

Print Name: _____

Sign: _____

Print Name: _____

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ___day of _____, 2014,
by _____, the _____ of the Delaney Park Little League, Inc., a
Florida non-profit corporation, on behalf of the corporation. He/she is personally known to me
or has produced a valid _____ Driver's License as identification.

Notary Public:

Commission Expires:

(SEAL)