



AGENDA ITEM NO.	1	D
COUNCIL MEETING	4/07/11	
APPROVED BY		
DEPARTMENT DIRECTOR		
CITY MANAGER 		

April 7, 2011

**FROM:** BRUCE A. RUDD, Assistant City Manager / Interim PARCS Director  
City Manager's Office

**BY:** PAUL A. MELIKIAN, Administrative Manager   
KYLE B. JEFFCOACH, Community Recreation Supervisor II  
Parks, After School, Recreation and Community Services Department

**SUBJECT:** APPROVE A ONE-YEAR AGREEMENT WITH FRESNO SENIOR SOFTBALL LEAGUE  
FOR THE USE AND MAINTENANCE OF THE QUIGLEY SOFTBALL FIELD

**RECOMMENDATION**

Staff recommends that the City Council approve the attached one-year agreement with Fresno Senior Softball League (FSSL), allowing priority access to the softball field at Quigley Park for games and practices in exchange for maintenance services and improvements to the Quigley Softball Field.

**EXECUTIVE SUMMARY**

Fresno Senior Softball League agrees to provide maintenance, landscaping, and repair services for the Quigley Park Softball Field, in exchange for priority access to the softball field at the park. The Agreement is for one year, with the option of up to three one-year extensions. Included in the Agreement are the following terms:

Fresno Senior Softball League will:

- Run and operate their own senior softball leagues and hire/staff the umpires.
- Mow the softball field weekly.
- Drag, chalk and water the softball field each day for games.
- Keep the softball field area clean and empty trash cans.
- Clean and maintain all sprinkler heads on the softball field.
- Maintain and paint the bleachers.
- Pay the City \$3,000 per year to the City into a reserve fund for Quigley Park.

The City will have the Quigley Park softball field reserved for use by Fresno Senior Softball League (FSSL) on a priority basis and will coordinate through FSSL with all other groups wishing to use the field. Other groups wishing to use the field must contact the PARCS Department to ensure that there are no FSSL league functions scheduled during that time that another group wishes to use the field. FSSL will work with all groups wishing to use the field so that mutually available times can be scheduled for use by other groups when FSSL is not using the fields.

**BACKGROUND**

The Fresno Senior Softball League has been in existence for over 20 years and has been a vital part of providing an active way for seniors in the Fresno community to participate in Softball Leagues year-round.

FSSL has historically participated in leagues at the Quigley Park Softball Diamond that were operated through the City of Fresno PARCS Department. While participating in the City Adult Softball Leagues, the FSSL received schedules, umpires, trophy package and field maintenance for the duration of their seasons. They have over 40 teams registered through the FSSL program annually, which is popular with Adults 50 years and older. All games are played Monday through Thursday between the hours of 6:00 p.m. and 10:00 p.m.

During the past season while the PARCS Department suffered cutbacks in park mowing and field maintenance, the FSSL helped with the dragging and chalking of the fields. When the City announced its Clean & Green program, the FSSL offered to assume the maintenance of the Quigley Park Softball Diamond in exchange for giving them the opportunity to operate their own leagues without being funneled through the Adult Sports Program. Through negotiation, this maintenance agreement was reached exchanging priority field access for maintenance services of the Softball Diamond at Quigley Park.

This Agreement was reviewed and approved by the City Attorney and Risk Management Offices.

**FISCAL IMPACT**

There is no adverse impact to the General Fund as a result of approving this Agreement, since league fees previously paid by FSSL to the City were used solely for umpires and field prep staff, a function that will now be handled by FSSL. A benefit to the City is that approximately \$5,000 of annual labor and materials not covered by the league fees to maintain and operate the softball diamond can be redeployed within the park system; and a \$3,000 payment from FSSL will go towards building a facility reserve fund for Quigley Park.

Attachment: License Agreement

**LICENSE AGREEMENT**

**FRESNO SENIOR SOFTBALL LEAGUE AND QUIGLEY PARK**

This License Agreement ("Agreement") is entered into this 31<sup>st</sup> day of March, 2011, by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its Parks, After School, Recreation and Community Service Department ("City"), and Fresno Senior Softball League (FSSL).

**WITNESS**

WHEREAS, FSSL operates Quigley Park Softball field located at 808 W. Dakota, Fresno, California; and

WHEREAS, the City owns and operates Quigley Park (the "Park"); and

WHEREAS, FSSL desires to use the softball diamond of the Park for league games and practices during the season, from January 1 to December 31 of each year of this Agreement; and

WHEREAS, the City wishes to grant FSSL permission to use the Park in exchange for certain maintenance and improvements to the Park.

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained and such other and further consideration as is hereby acknowledged, the parties agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

City Representative: Kyle Jeffcoach, Community Recreation Supervisor II  
1515 E. Divisadero Street  
Fresno, CA 93721  
Tel: (559) 621-2900

FSSL Representative: Bob Landucci, President  
Fresno Senior Softball League  
7862 N. Barton  
Fresno, CA 93720  
Tel: (559) 298-5722

2. ROLES, CONTRIBUTIONS AND RESPONSIBILITIES

The City will:

1. Have the Quigley Park softball fields reserved for its use on a full-time basis. The City of Fresno PARCS Department will coordinate through FSSL, with all

other groups wishing to use the field, but those other groups wishing to use the field must contact the PARCS Department to ensure there are no FSSL league functions scheduled during the time that another group wishes to use the field. FSSL will work with all groups wishing to use the field so that mutually available times can be scheduled for use by other groups when FSSL is not using the fields. FSSL shall have access to play under the illuminated night lights during evening softball functions.

2. Continue to maintain restrooms, irrigation, pay for utilities and all general repairs to the facility subject to available appropriations in any given year.

FSSL will:

1. Run and operate their senior softball leagues.
2. Hire and staff the umpires.
3. Maintain the field in presentable and playable condition, with FSSL deciding when to start mowing every week.
4. Drag, chalk and water the softball field each day for games.
5. Keep the softball field area clean and empty all trash cans.
6. Clean and maintain all sprinkler heads on the softball field.
7. Maintain and paint the bleachers.
8. Agree to pay the City of Fresno two (2) bi-annual payments of \$1,500 each, due March 31<sup>st</sup> and August 31<sup>st</sup>, for use of the field which is to be used for facility improvement at Quigley Park.

### 3. EFFECTIVENESS, DURATION AND TERMINATION

This Agreement shall be effective upon its complete execution by the parties' authorized agents and shall remain in effect for an initial term running through February 1, 2012. Thereafter, the parties may negotiate an extension of this Agreement for up to three (3) years. Either party may at any time terminate this Agreement with cause upon written notice to the other party following the other party's failure to reasonably cure an event of non-performance hereunder following thirty (30) days written notice thereof. Termination shall be effective as of the date specified in said notice of termination. Upon such termination, all rights and obligations of each party under this Agreement shall cease as of the effective date, except for those specific obligations that shall survive termination as set forth herein.

This Agreement may be terminated by either party at any time during the term for any reason, upon giving to the other party at least thirty (30) days written notice of termination. In the event such notice of termination is given, this Agreement shall be deemed terminated thirty (30) days after delivery of notice is given.

### 4. COMPLIANCE WITH GOVERNING LAW

Each party shall comply with all federal, state and local laws, rules and regulations in its pursuit hereof. No party in its performance of this Agreement shall employ discriminatory practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental

disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

5. CAPACITY OF THE PARTIES

Each party is acting in an independent capacity. Nothing in this Agreement and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship, jointly and severally.

In addition and without limitation, each party shall be solely responsible for all matters relating to payment of its employees, including, but not limited to, compliance with applicable social security withholding, worker's compensation insurance, benefits and all other regulations governing such matters. Personnel supplied by City will not for any purpose be considered employees or agents of FSSL. The City assumes full responsibility for the actions of such personnel while they are performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable. Conversely, personnel supplied by the FSSL will not for any purpose be considered employees or agents of the City. FSSL assumes full responsibility for the actions of such personnel while they are performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable.

The City and FSSL agree and acknowledge that their relationship is strictly and solely that of an independent contractor to each other. The City's employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by FSSL. FSSL agrees and acknowledges that its employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by the City.

The parties further agree and acknowledge that each party is solely responsible for determining the method and means by which it will fulfill its obligations hereunder. Each shall be solely responsible for payment of all sales, use, or other taxes assessed against or associated with the performance of each party's respective obligations or on the exercise of their rights under this Agreement, including without limitation income, payroll or employment-related taxes and payments.

Neither party shall engage any person or entity to serve in any capacity, or incur any expense or obligation on behalf of the other without the prior written consent of both parties.

6. INDEMNIFICATION AND INSURANCE

To the furthest extent allowed by law, FSSL shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and authorized volunteers from any and all

loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, FSSL or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the performance of this Agreement. FSSL's obligations under the preceding sentence shall apply to any negligence of City or any of its officers, officials, employees, agents or authorized volunteers, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of City or any of its officers, officials, employees agents or authorized volunteers.

If FSSL should subcontract all or any portion of the work to be performed under this Agreement, FSSL shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

The two preceding paragraphs shall survive termination or expiration of this Agreement.

Throughout the life of this Agreement, FSSL shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VI" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$2,000,000 aggregate for products and completed operations.

(ii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iii) EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

FSSL shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and the FSSL shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of the City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such

cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, FSSL shall provide a new certificate evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, FSSL shall file with the City a new certificate and all applicable endorsements for such policy(ies).

The General Liability insurance policy shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so FSSL's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. FSSL shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of this Agreement. FSSL shall furnish City with copies of the actual policies upon the request of City's Risk Manager and this requirement shall survive termination or expiration of this Agreement.

The fact that insurance is obtained by FSSL shall not be deemed to release or diminish the liability of FSSL or its subcontractors, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officials, officers, employees, agents and authorized volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by FSSL. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of FSSL.

If at any time during the life of the Agreement or any extension, FSSL fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

If FSSL should subcontract all or any portion of the services to be performed under this Agreement, FSSL shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with FSSL and City prior to the commencement of any services by the subcontractor.

#### 7. ATTORNEY'S FEES

If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its/their reasonable attorney's fees and legal expenses.

8. PRECEDENCE OF DOCUMENTS

In the event of any conflict between the body of this Agreement and any exhibit/attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within the exhibit/attachment. Furthermore, any terms or conditions contained within any exhibit/attachment hereto which purport to modify the allocation of responsibility or liability between the parties, provided for within the body of this Agreement, shall be null and void.

9. NOTICES

Any notice required or intended to be given to a party under the terms of this Agreement shall be in writing and shall be deemed to be duly delivered the earlier of (a) actual receipt by personal delivery to the representative (as defined herein), as the case may be, or in lieu of such personal service, by way of *Federal Express* or other similar courier addressed to such party at the appropriate address set forth herein, (b) the date of receipt by facsimile to the City Representative or the FSSL Representative, or (c) three (3) business days after the date of mailing (postage pre-paid, return receipt requested). Either party may change its address for the purpose of this Paragraph by giving written notice of such change to the other.

10. BINDING

Once this Agreement is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

11. ASSIGNMENT

There shall be no assignment by any party of its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

12. WAIVER

The waiver by any party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and approved by and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

No action or omission by either party shall constitute a breach of this Agreement unless the injured party first notifies the other party of the purported breach in writing setting forth the alleged breach or default and said party does not cure the same within a reasonable period of time. The payment of any fee or compensation or performance of any obligation hereunder by

either party shall not constitute a waiver of any breach by the other party or of any of the rights and remedies which either party may have as a result of such breach. No waiver by either party of breach of the Agreement shall be implied from any failure by the other party to take action on account of such breach if such breach persists or is repeated. Waivers by either party of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

13. GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno, California.

14. HEADINGS

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

15. SEVERABILITY

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

16. INTERPRETATION

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

17. ENTIRE AGREEMENT

It is mutually understood and agreed that the foregoing along with the attached Exhibits constitutes the entire Agreement between the parties. Any modifications or amendments to this Agreement must be in writing signed by an authorized agent of each party.

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SIGNATURES APPEAR ON NEXT PAGE.

IN WITNESS THEREOF, the parties have caused their authorized agents to execute this MOU:

FRESNO SENIOR SOFTBALL LEAGUE

Dated: 3/15/2011

By: [Signature]  
Bob Landucci, FSSL President

Dated: 3-15-11

By: [Signature]  
Don Westbrook, FSSL Vice President

CITY OF FRESNO,  
a municipal corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bruce A. Rudd, Assistant City Manager/  
Interim PARCS Director

ATTEST:

REBECCA E. KLISCH  
City Clerk

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

By: [Signature]  
Katherine Doerr, Deputy

KEE:sn [53846sn/keb] 8/17/10  
3/8/11