

AGENDA ITEM NO. 1 E
COUNCIL MEETING 4/7/11
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 BULLARD CAL RIPKEN FOR THE USE
AND MAINTENANCE OF FIGARDEN LOOP PARK

RECOMMENDATION

Staff recommends that the City Council approve the attached one-year agreement with Bullard Cal Ripken, allowing priority access to the baseball fields at Figarden Loop Park for games and practices in exchange for maintenance services and improvements to Figarden Loop Park.

EXECUTIVE SUMMARY

Bullard Cal Ripken agrees to provide maintenance, landscaping and repair services for the Figarden Loop Park, in exchange for priority access to the baseball fields at the park. The Agreement is for one year, with the option of an up to (3) one-year extensions. Included in the Agreement are the following terms:

Bullard Cal Ripken will:

- Provide the landscaping and grass-cutting services for the baseball field at the Figarden Loop. They will also perform weekly mowing of the entire grass area in the Figarden Loop Park, outside of the baseball fields and surrounding the baseball fields (not to include the flood basin).
- Perform necessary minor repairs to fences and gates around the Figarden Loop baseball fields as needed, paying for the parts and labor.
- Provide and maintain the necessary equipment for baseball field operations, and replace the equipment as needed.
- Maintain the baseball field playing area in a clean and trash-free manner.
- Maintain insurance, naming the City of Fresno as an additional insured, and will maintain an additional property insurance covering items of property kept at the fields.
- Pay \$2,000.00 per year to the City into a reserve fund for Figarden Loop Park.

The City will:

- Provide Bullard Cal Ripken Baseball with priority registration for the use of the baseball field at Figarden Loop Park. The City of Fresno PARCS Department will coordinate through Bullard Cal Ripken with all other groups wishing to use the field during such times when there is no Bullard Cal Ripken baseball functions scheduled.
- Allow Bullard Cal Ripken to sell banners to hang around the outfield fences of the baseball fields in order to raise funds for its league.
- Allow Bullard Cal Ripken to operate the snack bar and concessions at Figarden Loop Park, and keep the profits for the same in order to defer its costs.

BACKGROUND

The Bullard Cal Ripken league was instrumental in overall planning of the Figarden Loop Park. They attended all of the community meetings, offered feedback and assisted with the ground breaking in November 2008 and grand opening of the park in January 2010.

Bullard Cal Ripken reserved the Figarden Loop baseball diamonds for their 2010 baseball season; and because they were able to hold their league play on new full-size baseball fields, their league was able to grow to 15 teams. During the past season while the PARCS Department suffered cutbacks in park mowing and field maintenance, the Bullard Cal Ripken League helped with the dragging and chalking of the fields. They also helped mow the infield grass, rebuild the pitching mound and bring in fresh dirt to the infield.

When the City of Fresno announced more cutbacks this past July 1, 2010, the Bullard Cal Ripken contacted the City about mowing and taking care of the baseball field in return for access for a reduced price for the ball diamond rental. Through negotiation, this maintenance agreement was reached exchanging field access for maintenance services in the entire 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. The estimated total expense paid by Bullard Cal Ripken for labor and materials to maintain and operate the Figarden Loop Park as specified in this Agreement is \$27,500 per year. A year-long reservation of the baseball field for the Bullard Cal Ripken would generate reservation fees for the City of approximately \$14,400. The City will be receiving a higher value of maintenance from Bullard Cal Ripken than the reservation dollars that are being given up. The neighborhoods surrounding Figarden Loop Park and the Bullard Cal Ripken league will benefit from the enhanced maintenance and improvements to the park.

Revised 3/29/2011

Attachment: License Agreement

LICENSE AGREEMENT
REGARDING Fig Garden Loop Park

This License Agreement ("Agreement") is entered into this 7th day of April 2011, by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its Parks, After-school, Recreation and Community Service Department ("City"), and Bullard Cal Ripken Baseball, a California nonprofit corporation ("Bullard Cal Ripken").

WITNESS

WHEREAS, Bullard Cal Ripken operates a youth baseball league at Fig Garden Loop Park located at 4265 W. Figarden Drive, Fresno, California; and

WHEREAS, the City owns and operates Fig Garden Loop Park (the "Park"), as depicted on Exhibit "A" hereto; and

WHEREAS, Bullard Cal Ripken desires to use the baseball field of the Park for games and practices throughout the year, from January 1 to December 31 of each year of this Agreement; and

WHEREAS, the City wishes to grant Bullard Cal Ripken permission to use the Park in exchange for certain maintenance and improvements to the Park, upon the terms and conditions set forth herein.

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
Parks, After School, Recreation and Community Services
Dickey Youth Development Center
1515 E. Divisadero Street
Fresno, CA 93721
Tel: (559) 621-2900

Bullard Cal Ripken: Anthony Demaria
Dennis Dieling
Bullard Cal Ripken
2017 W. Bullard Ave. #176
Fresno, CA 93711
Tel: (559) 289-8630

2. ROLES, CONTRIBUTIONS AND RESPONSIBILITIES

A. The City will:

(1) Give Bullard Cal Ripken priority reservations to the baseball field at Fig Garden Loop Park. The City of Fresno PARCS Department will coordinate through Bullard Cal Ripken 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 that there are no Bullard Cal Ripken baseball functions scheduled during that time that another group wishes to use the field. Bullard Cal Ripken will work with all groups wishing to use the field so that mutually available times can be scheduled for use by other groups when Bullard Cal Ripken baseball is not using the fields. Bullard Cal Ripken shall have access to play under the illuminated night lights during evening baseball functions.

(2) Allow Bullard Cal Ripken to sell banners to hang around the outfield fences of the baseball fields in order to fund raise for its league. Signs shall adhere to City Sign Ordinances. City reserves the right to approve the banners before they are placed at the park. Advertising shall be limited to commercial advertising involving offering of goods or services for sale, consistent with Constitutional and local law requirements and any and all policies, practices and guidelines promulgated by the City as amended from time to time.

(3) Allow Bullard Cal Ripken to have the right to operate the snack bar and concessions, and keep the profits for the same in order to defer its costs.

(4) At a minimum the Fig Garden Loop Baseball Field will be made available 20 weekend days to the public for reservations.

B. Bullard Cal Ripken will:

(1) Provide the landscaping and grass-cutting services for the entire baseball field at the Fig Garden Loop Park, including mowing, edging, weeding, and addressing any minor sprinkler issues. Bullard Cal Ripken will also perform the mowing of the entire grass area for the Fig Garden Loop Park, outside of the baseball fields and surrounding the baseball fields (not to include the flood basin). The landscaping and mowing will be done on a weekly basis and will include the removal of minor graffiti around the park to the extent they can do so, and the repair of above-ground landscaping issues, including sprinkler heads. Bullard Cal Ripken will pay the entire cost of the landscaping, which is initially valued at \$1,000 per month, or \$12,000 per year.

(2) Perform necessary minor repairs to fences and gates around the Fig Garden Loop Park baseball fields as needed, paying for the parts and labor itself. The estimated expense, based upon similar services provided at neighbor fields for Bullard Cal Ripken, is initially valued at \$3,000 per year.

(3) Provide and maintain the necessary equipment for baseball field operations and replace the equipment as needed. This will all be done at the expense of Bullard Cal Ripken. Such equipment includes L screens in both batting cages (which Bullard Cal Ripken has already purchased, built and installed), hoses for watering the field, rakes for the field, draggers for dirt preparation for the games, chalk for the lines, chalking machines, bases and base repairs, maintenance and upkeep of the mounds, pitching rubbers, and the always expensive playing dirt. This will include both the playing field and the bull pens/batting cages. Bullard Cal Ripken will also pay for the services for the workers who will have to spend time working on the repairs and upkeep, as needed. The estimated cost of this equipment and these services, based upon similar expenses made by Bullard Cal Ripken at the other neighboring fields, is initially valued at \$6,000 a year.

(4) Maintain the baseball field playing area in a clean and trash-free manner, including, as needed, providing trash cans, and sending workers to clean trash and debris around the field, at the expense of Bullard Cal Ripken. The estimated cost for the same, based upon similar expenses by Bullard Cal Ripken at its neighboring fields, is initially valued at \$1,000 per year.

Bullard Cal Ripken will maintain insurance, naming the City of Fresno as an additional insured, and maintain an additional property insurance covering items of property kept at the fields. The cost of the additional property premium is estimated at \$3,500 per year, based upon similar policies held by Bullard Cal Ripken for the other neighboring fields it maintains.

In addition, Bullard Cal Ripken will pay to the City of Fresno \$2,000.00, per year, cash, by January 31 of each year which is to be used for Fig Garden Loop Park repairs and maintenance.

The total expenses for Bullard Cal Ripken to maintain and operate the Figarden Loop baseball fields then, which is initially estimated at \$27,500 per year. The labor and materials provided by Bullard Cal Ripken for these services will not require any funds or labor from the City of Fresno.

3. TERM

This Agreement shall become effective when this Agreement has been completely executed by the parties' authorized agents. This Agreement shall remain in effect for an initial term running from the effective date through February 1, 2012. Thereafter, the parties may negotiate an extension of this Agreement for up to three (3) years.

4. DEFAULT, TERMINATION

Should Bullard Cal Ripken default in the performance of any of the terms and conditions of this Agreement and fail to commence a cure thereof within thirty (30) business days after Bullard Cal Ripken has been served with written notice of such default, the City may terminate this Agreement. Notwithstanding the foregoing, if the breach by Bullard Cal Ripken or any of its officers, directors, employees or agents is such that it threatens the health, welfare, or safety of any person or property, then City may, in its discretion, require that such breach be cured in less than thirty (30) business days or immediately.

City shall be in default under this Agreement if City fails to perform or fulfill any term, covenant or condition contained in this Agreement and City fails to commence a cure thereof within thirty (30) business days after City has been served with written notice of such default. Nothing herein shall be construed as excusing either party from diligently commencing and pursuing a cure within a lesser time if reasonably possible.

Upon any such termination, all rights and obligations of each party under this Agreement shall cease as of the date of termination, except for those specific obligations that shall survive termination as set forth herein. In addition to the right to terminate this Agreement upon Bullard Cal Ripken's default, the City shall have the right to terminate part or all of this Agreement upon thirty (30) days notice to Bullard Cal Ripken if the facilities that are the subject of this Agreement are required for public necessity or emergency use.

5. NON-EXCLUSIVE USE

Bullard Cal Ripken acknowledges that the baseball field is one component in Fig Garden Loop Park, a public park owned and operated by the City. City shall have the right to use or permit the use of any portion of Fig Garden Loop Park to any person, firm or other entity regardless of the nature of the use of such other space, in accordance with the terms of this Agreement. Bullard Cal Ripken agrees to take reasonable efforts to minimize any disturbance to the operation and/or other uses of the park by City and the public.

6. 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.

7. 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 Bullard Cal Ripken. 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 Bullard Cal Ripken will not for any purpose be considered employees or agents of the City. Bullard Cal Ripken 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 Bullard Cal Ripken 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 Bullard Cal Ripken. Bullard Cal Ripken 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.

8. INDEMNIFICATION AND INSURANCE

To the furthest extent allowed by law, Bullard Cal Ripken 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, Bullard Cal Ripken 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. Bullard Cal Ripken'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 Bullard Cal Ripken should subcontract all or any portion of the work to be performed under this Agreement, Bullard Cal Ripken 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, Bullard Cal Ripken 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) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily and property damage.

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

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

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

The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) calendar day written notice in favor of the City of policy cancellation of coverage, except for the Worker's Compensation policy which shall provide a ten (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, Bullard Cal Ripken shall provide a new certificate evidencing renewal of such policy not less than fifteen (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, Bullard Cal Ripken shall file with the City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies 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 Bullard Cal Ripken's insurance shall be primary and no contribution shall be required of City. Any Worker's Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Bullard Cal Ripken shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's

execution of this Agreement. Bullard Cal Ripken 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 Bullard Cal Ripken shall not be deemed to release or diminish the liability of Bullard Cal Ripken 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 Bullard Cal Ripken. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Bullard Cal Ripken.

If at any time during the life of the Agreement or any extension, Bullard Cal Ripken 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 Bullard Cal Ripken should subcontract all or any portion of the services to be performed under this Agreement, Bullard Cal Ripken 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 Bullard Cal Ripken and City prior to the commencement of any services by the subcontractor.

9. 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.

10. 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.

11. 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 Bullard Cal Ripken 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.

12. 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.

13. 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.

14. 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.

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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.
SIGNATURES APPEAR ON NEXT PAGE.

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

BULLARD CAL RIPKEN LEAGUE OF
FRESNO, INC., a California nonprofit corporation

Dated: _____

By: _____
Dennis Dieling

Its:

Dated: _____

By: _____
Anthony Demaria

Its:

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: _____
Katherine Doerr
Senior Deputy City Attorney

Exhibit A: Depiction of Fig Garden Park

KEB:sn [53846sn/keb] 8/17/



STADIUM SEAT COUNT	165
BLEACHER SEATS:	48
STADIUM SEATS:	213
TOTAL:	
PARKING COUNT	174
STANDARD STALLS:	7
ACCESSIBLE STALLS:	7
TOTAL:	181



FIGARDEN BASEBALL COMPLEX

CITY OF FRESNO
FRESNO, CALIFORNIA

SCHEMATIC DESIGN A

OCTOBER 2007

