9:00 am A
4/14/11

EXCLUSIVE NEGOTIATION AGREEMENT

This EXCLUSIVE NEGOTIATION AGREEMENT ("ENA") is dated, for reference purposes, as of the Effective Date (as defined in Section 16.8), and is entered between the CITY OF FRESNO, a municipal corporation ("City"), and BIG LEAGUE DREAMS CONSULTING, LLC., a California limited liability company (""BLD"), on the terms, and subject to the conditions, set forth below. The City and BLD are sometimes referred herein collectively as the "Parties," and either individually as a "Party."

RECITALS

A. The City is the owner of certain real property commonly known as the Regional Sports Complex and the Granite Park Ball Fields, referred to collectively as the "Sites" and more specifically described in the attached Exhibit A. The City desires to encourage and effectuate the improvement and operation of those facilities.

B. BLD proposes to improve and operate the Sites as baseball/softball complexes open to the public (the "Project").

C. The Parties intend to negotiate mutually acceptable terms and conditions in a Lease Agreement and such other ancillary agreements as may be necessary (collectively the "Site Agreements"), that will define the Parties' (and affiliates of BLD's) rights, obligations and participation in the improvement and operation of the Sites.

EXCLUSIVE NEGOTIATION AGREEMENT

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, and subject to the terms and conditions and provisions hereof, the Parties agree as follows:

1. **Exclusive Good Faith Negotiations.** The Parties, during the Negotiation Period defined in Section 3 below, and only for so long as BLD timely meets its obligations under this ENA, shall negotiate exclusively and in good faith regarding the proposed improvement and operation of the Site and the terms of the Site Agreements. Good faith negotiations shall include, without limitation, attending scheduled meetings, directing staff and consultants to cooperate with the other Party to the extent reasonably practicable and necessary to negotiations, providing information reasonably available to the Party and necessary to negotiations, and promptly reviewing and returning any comments on correspondence, reports, agreements or other documents received from the other Party.

2. **Project Concept/Scope.** The negotiations under this ENA will be based on a project concept including components described in Recital "B" above.

3. **Negotiation Period.** The Parties will negotiate for 45 days from the date that the City executes this ENA (the "Negotiation Period"), unless negotiations are terminated sooner as provided herein. When the Negotiation Period expires, this ENA shall automatically terminate unless, before expiration of the Negotiation Period, BLD prepares and delivers a status report to the Council of the City (the "Council") demonstrating to the City's satisfaction that BLD is then in material compliance with this ENA, and that BLD has made and is then making good faith efforts to timely complete all its obligations hereunder, and explaining why BLD has been unable to complete its obligations hereunder, despite such good faith efforts; and the City Council approves the extension of this ENA and BLD and the City execute an amendment to this ENA to implement extending the Negotiation Period.

If, on expiration of the Negotiation Period, including any extensions, the Council has not made the requisite findings and approved one or more of the Site Agreements that the Parties timely execute, then this ENA shall automatically terminate unless the Council has approved, and BLD and the City have entered, a written extension of the term of this ENA. On termination of this ENA, the City thereafter may deal with the Sites and negotiate with others concerning the Sites as the City in its sole and absolute discretion may determine.

Notwithstanding the foregoing, any Party may terminate this ENA for cause in the event the other Party is in default of this ENA for failure to negotiate in good faith. Any substantive breach of this ENA shall constitute a failure to negotiate in good faith. No Party shall terminate this ENA unless the Party seeking to terminate has first provided written notice of its intent to terminate the ENA to the other Party, specifying the cause, and the non-performing party(ies) fail(s) to cure the default or other cause within ten (10) days after receipt of such notice. In the event this ENA is terminated, in accordance with this paragraph, no Party shall have any further rights, obligations, or liability to the other Party as the result of this ENA.

4. **Meetings.** Within five days after the Effective Date, the Parties shall jointly prepare a meeting schedule that anticipates accomplishing the timely performance of those activities and tasks contemplated hereunder. BLD and City staff, as needed, shall meet or hold a conference call on average every week to discuss the status of the activities and tasks, the accomplishment of such activities and tasks and other matters related to the negotiations and the Project.

5. **Proposed Terms and Conditions for Site Agreements**. During the Negotiation Period, including any extensions, the Parties shall negotiate the proposed terms for the Site Agreements. The Site Agreements will detail the Parties' (and affiliates of BLD's) respective rights and obligations for improving and operating the Project on the Sites.

6. **BLD's Principals and Legal Status.** BLD shall disclose such information to the City regarding its principals, legal status and project experience as the City may

reasonably request. At a minimum, BLD shall disclose the following: (a) its principals, shareholders, members and/or partners, (b) its directors, officers, and key employees, (c) its parent company, subsidiaries and affiliates, if any, and (d) all other pertinent information concerning BLD and its legal structure.

Without limiting the generality of the preceding paragraph, BLD represents the following concerning BLD as of the Effective Date:

6.1 BLD is a California limited liability company.

6.2 The principal office of BLD is:

16639 Fairfield Ranch Road
Chino Hills, CA 91709

6.3 The principal members of BLD are:

Richard Odekirk, Member and Manager
Jeff Odekirk, Member, Manager and COO
Scott LeTellier, Manager and CEO
Big League Dream USA, LLC, Member and Parent Company

BLD will give the City at least five days' prior notice of any change in the above information during the term of this ENA. Any change in the principals, members or managers of BLD during the Negotiating Period of this ENA will be subject to the written approval of the City.

7. **Financial and Other Information.** BLD shall promptly provide the City with financial and other information, data, and commitments that the City may reasonably request to ascertain BLD's or its partners' performance capabilities to expeditiously complete the Project on the Sites. In any event, no later than 15 days before end of the Negotiation Period, including any extension thereof, BLD shall submit to the City, in reasonable detail, BLD's proposed plan to finance the construction costs for agreed improvements to be made to the Project.

BLD will specifically identify any such information that is proprietary. To the extent permitted by law, the City will use best efforts to maintain the confidentiality of such BLD-identified information consistent with controlling law and order(s) of court(s) of competent jurisdiction, but will have no liability if, despite its best efforts, any BLD-identified information is disclosed. Notwithstanding the preceding sentence, the City may disclose (with reasonable conditions designed to preserve confidentiality as BLD shall furnish to the City) such BLD-identified information to City attorneys and certified public accountants, consultants whose principals, employees, subcontractors or affiliates are not engaged in the operation of recreational sports parks, employees and officers in connection with the Project, and the City shall disclose such information as any court or other authoritative body may direct or order.

8. **Assignment Prohibited.** BLD may not assign or otherwise transfer any of its rights or obligations under this ENA without the express written consent of the City. The City may give or deny consent in its sole and absolute discretion.

9. **Additional BLD Responsibilities.** Without limiting any other provision of this ENA, BLD shall, during the Negotiation Period, including any extension thereof, do the following at its sole cost and expense in furtherance of the negotiation process:

9.1. **Meetings.** BLD shall meet with City representatives to review and understand the terms of the Site Agreements governing the improvement and operation of the Sites.

9.2. **Reports.** Normally but not more frequently than monthly, but at any time requested by the City Council, BLD shall make oral and summary form written progress reports advising the City and/or its staff on all progress being made on tasks and other activities undertaken by BLD pursuant to this ENA.

9.3. **Rights of Entry.** Before entering upon any property within the Site, whether for site assessment or other due diligence, BLD shall first obtain a right of entry from the City and any tenant or occupant. BLD may ask the City to use best efforts to help BLD obtain a right of entry upon private property. The right of entry shall be in form and content reasonably acceptable to the City (including any required insurance/indemnity provisions) and any private property owner.

10. **City Responsibilities.** During the Negotiation Period, including any extension thereof, in furtherance of the negotiation process the City will cooperate and assist BLD, as needed, in fulfilling BLD's obligations hereunder.

11. **Compliance with Laws/CEQA.** If the negotiations result in one or more proposed Site Agreements, City Council approval thereof may occur only after compliance, as may be required, with all applicable laws and ordinances including, without limitation, CEQA. An objective during the Negotiation Period, is to establish a Project scope and description sufficient to include in any NEPA and CEQA review determined to be required. Any Site Agreement shall become effective only if and after the Site Agreement has been considered and approved by the City Council at a public hearing called for such purpose.

Responsibility for the cost of CEQA compliance for the Project, as determined necessary, shall be negotiated by the Parties in connection with the negotiation of the Site Agreements. BLD shall cooperate with the City in preparation of the environmental documents by, among other things, timely supplying necessary technical data and other related information and/or plans concerning the Project in accordance with the terms of the Site Agreements.

12. **Entire Agreement; Attorneys' Fees; Time is of the Essence; Counterparts.** This ENA is the entire agreement as understand by the Parties with respect to the

matters set forth herein. This ENA may be amended only in a writing signed by all Parties, and approved by the City Council. If a Party brings an action or files a proceeding in connection with the enforcement of its respective rights or as a consequence of any breach by the other Party, then the prevailing Party(ies) in such action or proceeding shall be entitled to have its reasonable attorneys' fees and costs and other out-of-pocket expenditures paid by the losing Party. Time is of the essence in this ENA. This ENA is the product of negotiation and all Parties are equally responsible for authorship of this ENA. Section 1654 of the California Civil Code shall not apply to the interpretation of this ENA. Each individual executing this ENA represents and warrants they are duly authorized to execute and deliver this ENA on behalf of the Party named herein and this ENA is binding upon said party in accordance with its terms. This ENA may be executed in counterparts.

13. **Nondiscrimination.** BLD covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code (race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability or any other basis prohibited by California Civil Code § 51), as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall BLD or any person claiming under or through BLD establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees of the Sites.

14. **Notices.** All notices required or permitted hereunder shall be delivered in person or by facsimile, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to such Party at its address shown below, or to any other place designated in writing by such Party:

City:	City Manager City of Fresno 2600 Fresno St., Room 3070 Fresno, CA 93721-3605 FAX No.: _____
BLD:	Big League Dreams Consulting, LLC Attn: Scott LeTellier 16339 Fairfield Ranch Road Chino Hills, CA 91709 FAX No.: (310) 544-2443

Notice shall be deemed received on delivery, if delivered personally or by facsimile; one day after delivery to the courier if delivered by courier; or three days after deposit into the United States mail if delivered by registered or certified mail.

15. **Agreement Limitations.** The City is not, by entering this ENA, committing itself to or agreeing to undertake any other act or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof. This ENA is merely an agreement to enter exclusive negotiations with respect to the Sites according to the terms hereof, with all final discretion and approval remaining with the City Council as to any Site Agreements and all proceedings and decisions in connection therewith.

16. **Miscellaneous provisions.**

16.1. **Governing Law and Venue.** California law governs this ENA. The provisions of this ENA will be construed, and the rights and duties (procedural and substantive) of the Parties hereunder will be determined, according to California laws. Venue for filing any action to enforce or interpret this ENA will be Fresno, California.

16.2. **Headings.** The section headings in this ENA are for convenience only; they do not explain, modify or add to the meaning of this ENA.

16.3. **Severability.** The provisions of this ENA are severable. The invalidity or unenforceability of any provision in this ENA will not affect the other provisions.

16.4. **Interpretation.** This ENA is the result of the combined efforts of the Parties. If any provision is found ambiguous, the ambiguity will not be resolved by construing this ENA in favor of or against either Party, but by construing the terms according to their generally accepted meaning.

16.5. **Precedence of Documents.** If the body of this ENA and any Exhibit or attachment conflict, the terms in the body of this ENA will control. Any term or condition in any Exhibit or attachment that purports to modify the allocation of risk between the Parties is void.

16.6. **Successors and Assigns.** Subject to the limitation on assignment in Section 8, this ENA is binding on and will inure to the benefit of the Parties and their respective successors and assigns.

16.7. **Duplicate Originals.** The Parties may sign this ENA in duplicate originals, each of which when signed and delivered will be deemed an original, and all of which together will constitute one instrument.

16.8. **Effective Date.** The Effective Date of this ENA shall be the date that the City executes this ENA, following City Council approval.

16.9. **Independent Capacity.** The City shall not become or be deemed a partner or joint venturer with BLD or associate in any such relations with BLD by reason of the provisions of this ENA. BLD shall not for any purpose be considered an agent, officer or employee of the City.

16.10. **Conflict of Interest**. No officer or employee of the City shall hold any interest in this ENA (California Government Code Section 1090.)

Each Party acknowledges that this ENA has been executed by its duly authorized representative(s) on the dates shown below.

CITY:
CITY OF FRESNO
A California Municipal Corporation

Mark Scott

Mark Scott, City Manager

Dated: 4-25-11, 2011

BLD:

Big League Dreams Consulting, LLC,
a California limited liability company

Scott Parks LeTellier, its Manager and CEO

Dated: April 18, 2011

ATTEST:
REBECCA KLISCH
City Clerk

By: Sherrie L. Badertscher
Deputy 4/26/11

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____
Deputy

Attachments:

Exhibit A: Description of Sites

City of FRESNO REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. 9:00am A
COUNCIL MEETING 4/14/2011
APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER Mark Scott

April 14, 2011

FROM: MARK SCOTT, City Manager

BRUCE A. RUDD, Assistant City Manager

SUBJECT: APPROVE AN EXCLUSIVE NEGOTIATION AGREEMENT WITH BIG LEAGUE DREAMS CONSULTING, LLC, PERTAINING TO A LEASE AGREEMENT FOR THE GRANITE PARK AND REGIONAL SPORTS COMPLEX FACILITIES

Presented to City Council
Date 4/14/11
Disposition Rec. approved

RECOMMENDATION

Staff recommends approval of the Exclusive Negotiation Agreement (ENA) between the City of Fresno and Big League Dreams, LLC (BLD).

EXECUTIVE SUMMARY

The City of Fresno holds title to the recreational facilities known as Granite Park, at Ashlan and the 168 Freeway in District 4, and the Regional Sports Complex, on Jensen Avenue in District 3. BLD has expressed interest in leasing and operating sports programs at both facilities. The City does not need to competitively bid lease opportunities and, therefore, staff is recommending that the Council approve an ENA between the City and BLD, which will allow the parties 30-45 days in which to negotiate and attempt to reach agreement on terms governing the lease of both facilities.

BACKGROUND

Since late 2009, the City has been in discussions with BLD about rehabilitating the Granite Park ballfields and reopening them for play under BLD's management. In October, 2010, City staff brought a proposed strategy forward to Council that called for BLD to lease the facility. At that time, the City Council determined that more conversation was necessary. While it was implied that others may have been interested, the City has not been provided with any credible proposals. Not seeing any other interested party with the capacity and experience of managing such a facility, the City Manager's Office requested that BLD submit a revised proposal for managing the Granite Park facility. The proposal received included an innovative approach of managing both the Granite Park fields and the Regional Sports Complex fields. A preliminary proforma demonstrated that the Granite Park fields would generate sufficient revenue to pay for the BLD management, operating, and licensing fees, but will probably not generate profit for the City. However, the proforma did demonstrate that the Regional Sports Complex may generate profit to the City through a profit-sharing arrangement with BLD. In addition, BLD has proposed funding various capital improvements at both facilities.

The City Manager's Office is requesting that the City Council approve an ENA with BLD to further explore the possibility of a lease between the parties. The ENA sets parameters under which both parties agree to negotiate, and use of an ENA eliminates the need to spend time and resources putting out a Request For Proposals. The ENA states that the City and BLD will negotiate Lease terms for 30 to 45 days. At the end of that time period, if there is no agreement, both parties may walk away with no penalties.

The City Manager's Office intends to include a small Council committee, comprised of the Council President Brand, and Council Members Baines and Westerlund, in whose Districts the two facilities reside, with Lease negotiations. These three Council Members have been apprised of this, and have met with the City Manager's Office and Big League Dreams to walk through a preliminary proposal to determine the probability of success in Lease negotiations.

If Lease negotiations result in a mutually acceptable set of terms, staff will return to Council with the Lease for approval in June.

FISCAL IMPACT

Approval of the ENA has no fiscal impact to the City. If the City and BLD reach an agreement within the 45-day timeframe, any terms of the Lease and the related fiscal impacts will be clearly stated in the staff report to Council for approval of a Lease. There is no fiscal impact related to this ENA if the City and BLD are unable to reach agreement of Lease terms.

Attachment: Exclusive Negotiation Agreement between the City of Fresno and Big League Dreams, LLC