City of FRESNO **REPORT TO THE CITYCOUNCIL**

AGENDA ITEM NO.	1 J
COUNCIL MEETING	7/29/08
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

July 29, 2008

FROM: RANDALL L. COOPER, Director
Parks, After-School, Recreation and Community Services Department

BY: JERRY HAYNES, Assistant Director
PAUL MELIKIAN, Administrative Manager
Parks, After-School, Recreation and Community Services Department

SUBJECT: 1) APPROVE SECOND AMENDMENT TO ROTARY AMPHITHEATER AGREEMENT BETWEEN THE CITY OF FRESNO AND THE ROTARY CLUB OF FRESNO

2) APPROVE THE 472nd AMENDMENT TO MASTER FEE SCHEDULE RESOLUTION NO. 80-420 REVISING THE IMPROVEMENT FEE FOR THE WOODWARD ROTARY AMPHITHEATER

KEY RESULT AREA Customer Satisfaction

Presented to City Council
Date 7/29/08
Disposition Res. 2008-188

RECOMMENDATIONS

Staff recommends that the City Council approve the 1) Second amendment to Rotary Amphitheater Agreement between the City of Fresno (City) and Fresno Rotary Club (Rotary) and 2) the 472nd Amendment to Master Fee Resolution No. 80-420 revising the restoration fee for the Woodward Rotary Amphitheater; and that the new fees become effective August 9, 2008.

EXECUTIVE SUMMARY

The Parks, After School, Recreation and Community Services Department (PARCS) is currently investing $1,500,000 into improvements at the Woodward Rotary Amphitheater, made possible through Park Bond proceeds. These improvements have already begun to reposition the venue into a viable choice for concerts and other events. On August 25, 1992, the City and Rotary entered into a 50-year agreement for the construction of the Amphitheater. On January 16, 1996 the agreement was amended in order to complete the construction of the project. The high demand and more frequent use of the facility require an amendment to the current agreement. The purpose of the Second amendment is to terminate the provision regarding the Rotary's exclusive right to concessions. Under the proposed second amendment, all rights to concessions will vest exclusively in the City, including the right to retain all profits.

In consideration of Rotary's termination of its concession rights, the City agrees to the following:

- Invest $1,000,000 for Amphitheater improvements consistent with constitutional and local law requirements. This has already taken place through the Park Bond proceeds.

- Assume the responsibility of promoting the Amphitheater's use.
- Complete the east section of the second tier seating including the construction of the east stairway at the earliest possible time.

Rotary agrees to the following:

- Contribute a minimum of $50,000 for a mutually agreed upon capital improvement project(s) for the Amphitheater.
- The Rotary seat option purchase for the Amphitheater shall expire December 31, 2016. All seat options sold by Rotary shall be honored for a period of 10 years for a minimum of 10 events in any calendar year.
- Seat options for free events will not be considered as part of the 10 events previously mentioned.
- The Amphitheater per ticket improvement fee amount shall be phased in at $1.00/ticket after January 1, 2008, $2.00/ticket after January 1, 2009 and $3.00/ticket after January 1, 2010.

Concession Revenue

In addition to the above contractual provisions, a new section has been added to the agreement which identifies the allocation of gross event concession revenue between the City and Rotary. According to this section, all non-party event permittees, licensees, promoters and/or other users shall pay the City 10% of gross event concession revenues net only of sales/excise taxes, and pay the Rotary 10% of gross event concession revenues net only of sales/excise taxes.

On the other hand, in the event Rotary acts as a permittee, licensee, promoter and/or other user the Rotary shall pay the City 10% of the amount determined by gross event concession revenues net only of sales/excise taxes. The City shall direct all proceeds received to support the continued operation and improvements to the amphitheater.

In the event the City acts as a permittee, licensee, promoter and/or other user, the City shall pay the Rotary 10% of the amount determined by gross event concession revenues net only of sales/excise taxes. The term "gross event concession revenues," refers to all revenues generated by and/or arising from concession activities.

Per Ticket Improvement Fee

The attached amendments to the contract and Master Fee Schedule revises the per ticket improvement fee. The original agreement with Rotary had established a $2.00 per ticket improvement fee, however due to certain attributes of the facility before recent improvements; the demand for the amphitheater was fairly low. As a result, the current published fee of $2.00/ticket has never been charged. Recent and continued improvements to the Amphitheater have allowed PARCS to begin charging a reduced $1.00/ticket fee, with a three-year phased plan to reach a $3.00 per ticket. Identical to proceeds received from gross event concession revenues, the ticket fee revenue will be used for the operating and capital improvement needs of the facility.

KEY OBJECTIVE BALANCE

The amendment to the Rotary contract will provide more amenities for Fresno's citizens to enjoy when visiting Woodward Park, which will undoubtedly generate positive experiences for citizens. City employees will also have another great option in leisure activities. PARCS is leveraging City funds by partnering with Rotary for continued improvements to the Woodward Amphitheater.

BACKGROUND

On August 25, 1992, the City and Rotary entered into a 50-year agreement (with an option to extend beyond the 50 years) for the construction of the Amphitheater. Rotary agreed to provide an engineering firm to develop plans and specifications for the project. On January 16, 1996 the agreement was amended in order to complete the construction of the project. Section 1, Grant of License for Construction was amended to include an expiration date for final acceptance of project by City. A joint effort between City and Rotary has resulted in the current structure. The Second amendment to the Rotary agreement can only result in a better facility for the community at large to enjoy. Thus far, the community and City employees have had opportunities to enjoy the shade structures recently developed in the Amphitheater. The joint effort of the City and Rotary on this project is certainly a benefit to the community.

FISCAL IMPACT

Coupled with revised facility rental fees, the per ticket improvement fee will allow the City to generate sufficient revenue to operate the Amphitheater and set aside funds for capital improvements. The three-year 'phased in' approach for the fee will allow customers to witness improvements to the venue over the next several years and see the 'value' in the fees charged. Based on a conservative estimate of 32 events per year with an average of 1,500 attendees each, the ticket fee will generate $48,000 annually, which will be used to offset facility operation costs and contribute towards capital improvements. The 10% of gross event concession revenue (City's portion) is somewhat more difficult to forecast as every event will offer varying levels of concessions and be affected by attendance levels. At this point, the Department estimates the revenue from 10% of gross event concession revenue to be $10,000 annually.

The Department plans to return to Council in the next 60 days to revise the rental rates for the Amphitheater. The aggregate effect of the 10% of gross event concession revenue, 'phased-in' per ticket fee, and revised rental rates will be that the Amphitheater will begin to operate as an enterprise; generating sufficient revenue to cover all operational costs, fund further capital improvements, and place funds into a reserve to repair and replace aging assets.

Attachments: Amendment to Rotary Amphitheater Agreement
Master Fee Schedule Amendment

SECOND AMENDMENT TO ROTARY AMPHITHEATER AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT ("Amendment") made and entered into as of this 1st day of February, 2008, amends the Agreement heretofore entered into between the CITY OF FRESNO, a municipal corporation, hereinafter referred to as "CITY", and the ROTARY CLUB OF FRESNO, a California nonprofit corporation, hereinafter referred to as "ROTARY".

RECITALS

WHEREAS, CITY and ROTARY entered into an Agreement, dated August 25, 1992 for the design and construction of an amphitheater, as once amended, hereinafter collectively referred to as "Agreement;" and

WHEREAS, CITY and ROTARY desire to modify the Agreement in certain regards, upon the terms and conditions herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, the parties agree that the aforesaid Agreement be amended as follows:

1. For purposes of this Agreement the term "CITY" shall include as designee thereof, in the discretion of the City's Director of Parks and Recreation, Fresno United Neighborhood, (FUN) a California nonprofit corporation, subject to/consistent with approval by FUN. The foregoing shall not however, relieve CITY of its obligations under this Agreement.

2. All rights granted to ROTARY to operate Amphitheater concession(s) are hereby terminated as to ROTARY and concurrently vested exclusively in the CITY including the right to retain all profits, subject to the remaining terms hereof. For purposes of this section the term "concession(s)" means without limitation any and all sales by any person or entity of food, beverages, and merchandise of every kind and nature occurring on the Amphitheater premises, or adjacent thereto if sold to Amphitheater event attendees.

3. In consideration of ROTARY'S termination of its concession right as provided for herein, CITY as lead and awarding agency agrees to invest $1,000,000 of allocated and available Parks funds, consistent with constitutional and local law requirements, on Amphitheater improvements to be commenced on or about January 1, 2008, and to responsibly promote its use. CITY agrees to proceed with the completion of the east section of the second tier seating including the construction of the east stairway at the earliest possible time. ROTARY will contribute a minimum of $50,000 for

a mutually agreed upon capital improvement project(s).

4. All rights granted to ROTARY to establish and sell seat options for events at the Amphitheater shall expire on December 31, 2016. It is understood and agreed that all seat options sold by Rotary shall be honored for a period of ten (10) years commencing with the year that the seat option holders may exercise the option to purchase tickets for their specific seats for a minimum of ten (10) events in any calendar year. CITY will require user's of the Amphitheater for free concerts or similar events to notify seat option holders of such events, but such events will not constitute one of the minimum ten (10) events.

5. Concurrent with the effective date of this Second Amendment, the Amphitheater Ticket Surcharge amount referenced in Section 7 of the Agreement shall be $1/Ticket after January 1, 2008, $2/Ticket after January 1, 2009, and $3/Ticket after January 2010.

6. The following is added to the Agreement as new Section 17:

"17. Allocation of Revenue and Expenses. Unless otherwise expressly provided herein:

A. All non-party event permittees, licensees, promoters and/or other users shall (i) pay the CITY ten percent (10%) of the amount determined by gross event revenues net only of sales/excise taxes, and (ii) pay the ROTARY ten percent (10%) of the amount determined by gross event revenues net only of sales/excise taxes. In the event ROTARY acts as a permittee, licensee, promoter and/or other user the ROTARY shall pay the CITY ten percent (10%) of the amount determined by gross event revenues net only of sales/excise taxes. In the event the CITY acts as a permittee, licensee, promoter and/or other user (other than as to concession(s) activities as defined herein) the CITY shall pay the ROTARY ten percent (10%) of the amount determined by gross event revenues net only of sales/excise taxes. For purposes of this section the term "gross event revenues" means all revenues generated by and/or arising from concession(s) activities.

B. All such remittance to the CITY and/or ROTARY shall be made not later than the end of the next business day following the earlier of invoice for payment or the day in which such revenues are realized and shall be accompanied by an appropriate accounting to CITY and ROTARY, such accounting shall be sufficient under generally accepted accounting principles.

C. Unless otherwise expressly agreed in writing by the parties hereto and any/all such event permittees, licensees, promoters and/or other users, all costs and expenses arising out of or related to such

event(s) shall be borne solely by the event permittees, licensees, promoters and/or other users."

7. All capitalized terms used in the Amendment, unless otherwise defined herein, shall have the meanings assigned to such terms in the Agreement.

8. Except as otherwise provided herein, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment at Fresno, California, the day and year first above written.

CITY OF FRESNO
a municipal corporation

By Randall L. Cooper
Title Director

ROTARY CLUB OF FRESNO,
a California nonprofit corporation

By Don Eskes
Title President

ATTEST:
REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____ 6-18-08
Deputy Coyle

CITY OF FRESNO
City Clerk's Office (Original)

1 J
7/29/08

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By Don Eskes
Title President

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Edna Sommerville
Deputy (9/22/08)

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: R 6-18-08
Deputy Cayle