

AGENDA ITEM NO. 9:00am #2 A

COUNCIL MEETING 3/03/09

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

March 3, 2009

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

BY: PAUL MELIKIAN, Administrative Manager
WILLIAM BROOMFIELD, Special Events Manager
Parks, After-School, Recreation and Community Services Department

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

2) APPROVE THE 477th AMENDMENT TO MASTER FEE SCHEDULE RESOLUTION NO. 80-420 REVISING RESERVATION FEES FOR THE WOODWARD ROTARY AMPHITHEATER

RECOMMENDATIONS

Staff recommends that the City Council approve the attached third amendment to the agreement between the City and Rotary Club of Fresno and the 477th Amendment to Master Fee Resolution No. 80-420 revising the reservation fees for the Woodward Rotary Amphitheater; and that the new fees become effective March 16, 2009. The first phase of Amphitheater fee amendments was adopted on July 29, 2008, when Council approved the second amendment to the agreement with the Rotary Club of Fresno for the operation of the Amphitheater, in which all rights to concessions now vest exclusively with the City and the Improvement Fee (charged per attendee) was updated. The attached third amendment amends the agreement one additional time to reflect that since July, the City has worked with the Rotary club to amend the percentage charged on concession sales from the existing 20% to 35% to reflect concession agreements in place at comparable venues.

This report will communicate the final phase of fee amendments required to support the financial strategy required for the Woodward Park Rotary Amphitheater to become self-sustaining while ensuring professional, efficient operations and providing for continued capital investment. The management and operation of the Amphitheater currently rests with PARCS, however the Department will be working with the City Manager's Office going forward to investigate the possibility of outsourcing to a management company. The proposed fees are necessary in the interim to ensure the continued success of the venue based upon a balance of preserving public access, meeting cost recovery targets, and weighing competitive factors; all of which are detailed in this report.

EXECUTIVE SUMMARY

The recent improvements at the Woodward Park Rotary Amphitheater have transformed it into one of the premiere outdoor entertainment venues in the Central Valley. The Amphitheater has hosted 27 events in 2008 with an average attendance of over 1,900 per event. The primary driver of this increased usage is the Department's focus on promoting the Amphitheater and recent improvements to make it a more attractive and viable entertainment venue.

Presented to City Council

Date: 3/3/09

Disposition: Approved, Res.

2009-54 adoption

REPORT TO THE CITY COUNCIL

Woodward Rotary Amphitheater Third Amendment & Reservation Fee Amendment

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The first phase of Amphitheater improvements included \$1,740,000¹ for the shade structure over the entire venue, increasing the seating capacity from 3,000 to over 4,000, upgrading the landscaping, adding mister stations, electrical repairs, and upgraded power for sound & lighting. Future improvements to fully build out the Amphitheater will include: building a green room and dressing rooms, adding three restroom facilities, an additional concession building, creating two vendor pavilions, and adding additional parking and a new pedestrian entrance. The total cost of the remaining build-out is approximately \$2.5 million.

With these significant investments, the facility is expected to operate as an enterprise activity, generating 100% of [its own] revenue needed to support operations, fund new amenities, and provide for ongoing capital improvement funds to maintain the facility. For example, the fabric used for the new shade structure has an expected life of 10-12 years, and will require approximately \$150,000 for its eventual replacement. Without an ongoing dedicated funding stream for facility improvements, the Department will be unable to sustain the high level of amenities needed to attract events year after year. In addition to the required funding for ongoing improvements and repairs to sustain the Amphitheater, the increased usage and additional amenities translates to higher operating costs for event staff, utilities, maintenance, and equipment rentals.

The Department proposes to adjust reservation fees from the current flat rate rental structure to a variable 'percentage of gross ticket sales' formula (detailed beginning on page five) that ensures organizers pay their fair share of event proceeds while maintaining access for non-profit organizations. Reservation fees must also generate sufficient revenue to cover all operating costs and provide for capital improvements while remaining competitive within our local and regional markets.

Why Now

The timing of this fee amendment is crucial in that the Amphitheater has gone through one season with drastically improved usage, leading to increased name recognition, and has allowed event organizers and the public at-large to see the potential of further developing the venue. As a proactive measure, the Department has already been discussing amending reservation fees with all event organizers at the time of their particular event booking. Most of the organizers were surprised at how low the current fees are and fully expected to hear that rates would be increasing for the next season.

Beyond this, the timing for a fee amendment is important as many of the events were successful this year because the Department put everything together on a very limited budget (at times impacting operating funds for other programs) and extensive use of volunteer labor. The Amphitheater simply will not attain the status of a *professional entertainment venue* without a dedicated budget for staff, operations, and continued capital improvements; something that can be funded entirely from event revenue if managed proactively. Adopting a 'wait and see' approach to revising Amphitheater fees will result in another year of insufficient revenue to fund continued capital improvements, and the loss of momentum and public excitement that has built up this year.

Current Situation

As specified in the Master Fee Schedule, the Rotary Amphitheater is presently rented out at the same rate as other PARCS Amphitheaters and Group Activity Areas; specifically the Eaton Plaza Amphitheater and Group Activity Areas at Woodward, Roeding and the Regional Sports Complex. These venues do not have the same level of amenities and operating costs as the Rotary Amphitheater, requiring a differentiation of fees charged for its use. The first phase of this differentiation was completed on July 29, 2008, when City Council adopted the second amendment to the agreement with the Rotary Club of Fresno for the operation of the Amphitheater, in which all rights to concessions now vest exclusively with the City and the Improvement Fee (charged per attendee) was updated:

¹ \$1.5 million was allocated from the 2008 Park Bond with the remaining \$240,000 funded from the unallocated portion of the Park Impact Fee 'cash account' per the 40th AAR.

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- City will collect 20% (revised to 35% per the attached 3rd amendment) of the gross sales of all food and beverage from concessionaires, with 25% payable to the City and 10% to Rotary. (Rotary will then re-invest the proceeds into facility build-out)
- The improvement fee (charged per attendee) will be \$1.00 until January 1, 2009, when it will increase to \$2.00. The fee will increase one last time January 1, 2010 to \$3.00. The event organizer typically passes this on to the ticket purchaser in the ticket price.

The Department has conducted a comparison of the current rental fees to the fee levels necessary for the Amphitheater to be self-sustaining (i.e. achieve 100% cost recovery). An organization can currently reserve the Amphitheater for just a \$500 flat fee for any event expected to draw more than 500 people. Average attendance at the 26 events this year at the Amphitheater has been approximately 1,900 people, with an average 500 complimentary tickets offered per event. Under the current fee structure the Amphitheater cannot be self-sustaining and will continue to be under-priced relative to its peers, using the assumptions below for stabilized usage:

- 40 events per year with 80% of events being admission-charged resulting in the per attendee fee being paid. (32 'admission-charged'/8 non-admission-charged)
- 1,500 average paid tickets per admission-charged event
- \$1,000 average concession revenue per admission-charged event (20% of the gross sales of food & beverage).
- Assume a reduced \$500 average concession revenue for non-admission charged events.

These assumptions would result in forecasted annual revenue of \$153,200 in 2009 and \$201,200 in 2010 and beyond, which falls well short of the operating and capital requirements of the facility:

Budget Forecast - Current Fee Structure

| <u>Event Assumptions</u> | <u>2009</u> | <u>2010 (Ongoing)</u> |
|---|--------------------|-----------------------|
| 32 Admission-Charged Events x \$500 flat rental fee | \$ 16,000 | \$ 16,000 |
| 32 Admission-Charged x 1,500 paid tickets x \$2.00 (2009) / \$3.00 (2010) Improvement Fee | 96,000 | 144,000 |
| 32 Admission-Charged Events x \$1,000 avg Concession fee | 32,000 | 32,000 |
| 8 non-Admission Charged Events x \$500 flat rental fee | 4,000 | 4,000 |
| 8 non-Admission Charged x \$500 avg Concession fee | 4,000 | 4,000 |
| Anticipated Advertising Revenue | 1,200 | 1,200 |
| Total Annual Revenue | \$ 153,200 | \$ 201,200 |
| Average Revenue per Event | \$ 3,830 | \$ 5,030 |
| Annual Operating & Capital Requirements (see pg 3 for detail) | \$ 290,000 | \$ 343,200 |
| Required Average Revenue per Event | \$ 7,250 | \$ 8,580 |
| Net Annual Operations | \$(136,800) | \$(142,000) |
| Net Operations Per Event [40 events] | \$ (3,420) | \$ (3,550) |

As you will note, the primary driver of revenue is the [per attendee] Improvement Fee charged on admission-charged events. While the revenue generated from the Improvement Fee is significant, the current fee structure is not sufficient to make the Amphitheater a self-sustaining operation and complete the build-out of the facility.

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Woodward Rotary Amphitheater Third Amendment & Reservation Fee Amendment

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The Four Success Factors

The Department has completed an exhaustive review of the operating and capital needs of Amphitheater through the lens of the competitive environment that it operates in. The result was the identification of the following success factors:

1. Provide adequate staffing & resources to manage the facility in an efficient & professional manner
2. Establish a pricing schedule that ensures organizers pay their fair share of event proceeds while maintaining access for non-profit organizations.
3. Generate sufficient revenue to cover all operating costs and provide for capital improvements
4. Be competitive within our Local and Regional Markets

Success Factor # 1 – Provide adequate staffing & resources to manage the facility in an efficient & professional manner

In order to illustrate the need for a fee amendment, it is necessary to present the required operating and capital budget for the Amphitheater to be successfully operated as one of the premiere outdoor entertainment venues in the Valley. The historical operating expenses of the facility are not reflective of the future as current improvements have vastly improved the marketability, demand, and corresponding use of this venue. The additional amenities also pose an increased responsibility for the City to plan for their eventual repair and replacement.

Amphitheater Annual Operating & Capital Budget

| Operating Budget Detail | 2009 | 2010 (ongoing) |
|--|-------------------|-----------------------|
| Facility Manager (\$48k/yr + fringe) | \$ 58,000 | \$ 58,000 |
| Overhead (phone, PC, mileage, etc.) | 5,000 | 5,000 |
| Customer Support & Booking Fees | 25,000 | 25,000 |
| Event Staff (avg 8 people x 4 hrs x \$10.70) | 15,000 | 15,000 |
| Maintenance staff (1.00 FTE temp PMW I) | 30,200 | 30,200 |
| Venue Supplies & Custodial | 7,500 | 7,500 |
| Facility Repairs | 5,000 | 5,000 |
| Utilities | 10,000 | 10,000 |
| Venue Marketing & Promotion | 10,000 | 10,000 |
| Equipment Rentals | 25,000 | 25,000 |
| Equipment Service & Depreciation | 10,000 | 10,000 |
| <i>Total Est. Annual Operating Budget</i> | <i>\$ 200,700</i> | <i>\$ 200,700</i> |
| Capital Improvement Program Budget | | |
| Equipment Acquisition | \$ 0 | \$ 25,000 |
| Equipment Replacement (non-Fleet managed) | 0 | 2,500 |
| Shade Structure Depreciation | 15,000 | 15,000 |
| Annual Contribution to Facility Build-Out | 74,300 | 100,000 |
| <i>Total Annual Capital Program</i> | <i>\$ 89,300</i> | <i>\$ 142,500</i> |
| Total Annual Operating & Capital Requirements | \$ 290,000 | \$ 343,200 |
| Average # Annual Events | 40 | 40 |
| Required Average Revenue per Event | \$ 7,250 | \$ 8,580 |

The budget shown above is intended to capture the full-cost of the operating and capital improvement needs of the facility, including a full-time Facility Manager. (The Department events and outreach team will most likely use the Facility Manager to coordinate other events in the off-season months.) The 2009 budget shown above includes \$25,000 for equipment rentals, however due to the ongoing need for the equipment, it is more cost-

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effective to purchase than rent. The 2010 (ongoing) budget includes an allocation for equipment acquisition. The following table illustrates the necessary equipment and related acquisition costs:

| Description | Cost |
|--|------------------|
| Scissor Lift | \$ 15,000 |
| Portable Light Towers - Parking Lot Lighting | 36,000 |
| Crowd Control Barriers | 10,000 |
| Tables & Chairs | 5,000 |
| Misc. Small Equipment | 10,000 |
| Total | \$ 76,000 |

The acquisition cost for the equipment will be spread over roughly a three-year period. As the Department acquires more equipment, the corresponding rental expenses will decrease, and free up resources to either fund unforeseen equipment needs or accelerate the facility build-out.

Success Factor #2 – Establish a pricing schedule that ensures organizers pay their fair share of event proceeds while maintaining access for non-profit organizations.

In order for the Amphitheater to be self-sustaining (achieving 100% cost recovery), the average revenue per event would need to be \$8,580 - based upon the operating and capital budget presented above. Under the current fee structure, the forecasted per event revenue is \$3,830 in 2009 and \$5,030 in 2010 and beyond. So, even with the Improvement Fee at the highest level of \$3.00 in 2010 and beyond, the City is short \$3,550 per event for an ongoing annual deficit of \$142,000.

Assuming that no reductions are made to the above budget that would impact the level of service or capital improvements at the facility, the Department has identified three options to fund the \$142,000 annual deficit:

Option #1 - Allocate additional General Fund dollars to subsidize the facility. This option would result in less money for City-wide park maintenance. Given the specialized (niche) use and revenue generation potential of this facility, this option is not recommended.

Option #2 - Reallocate approximately 73% of the capital portion (\$1.00 of \$3.00) of Woodward Park gate fees to the Amphitheater budget. This option would result in a significant reduction in available capital improvement funds for Woodward Park and a deterioration of park amenities. This option is not recommended either as the scope of capital needs at regional parks exceed far beyond the Amphitheater.

Option #3 – (*Recommended*): Amend the current fee structure of the Amphitheater so that full cost recovery can be achieved and fees can be competitive within the venue's local and regional markets:

Proposed Fee Structure

- Increase Amphitheater use fees from a flat fee of \$500 to \$1,500 or 8% of the gross ticket sales, whichever is greater. This is the most important change to the Amphitheater fee structure. The percentage of gross ticket sales is a typical fee arrangement found at entertainment venues, and allows for proceeds to the City to be automatically adjusted for fluctuations in the market and provides assurance to event providers if ticket sales do not meet projections. Based on an average ticket price of \$20.00 and 1,500 paid tickets per event, it is anticipated that most events will be subject to the 8% of gross ticket sales. The 8% of gross ticket sales will be in effect for the first year (2009), with the percentage being increased to 10% for the 2010 season and beyond.

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Woodward Rotary Amphitheater Third Amendment & Reservation Fee Amendment

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- The Improvement fee will continue to be collected for all admission-charged events. The event organizer will have the ability to offer up to 200 complimentary tickets per event. The City will collect the Improvement fee from the organizer if more than 200 complimentary tickets are offered (per ticket/above 200)
- For non-profit organizations wishing to hold an admission-charged event, the City would offer the venue at the current fee of \$500 *without* the percentage of gross ticket sales option, plus collection of the Improvement Fee. It is important to note that the Improvement Fee is typically passed on to the ticket purchaser and would not adversely impact the non-profit organization.
- For non-profit organizations wishing to hold a non-admission charged event, a \$1,500 flat rental fee would apply, with no Improvement Fee being charged. It is important to remember that this facility is not the only venue available in our Park system to non-profit organizations. They will still have the ability to rent the Eaton Plaza Amphitheater and Group Activity Areas at all three regional parks at the previous flat rate.
- With the approval of the attached third amendment to the agreement with the Rotary Club, the City will receive 35% of the gross sales of all food and beverages from concessionaires.
- In addition to reservation, ticket, and concession revenue, events at the Amphitheater generate additional parking fees at Woodward Park. Ace Parking Management has begun tracking parking revenue for these events separately. The Department plans to allocate the parking revenue generated by Amphitheater events specifically to the operating and capital needs of the facility.
- Depending upon schedule availability, the Amphitheater will be available for rehearsals at \$350 per day.
- Standard event equipment such as tables/chairs, crowd control barriers, and scissor lift will be available for rental. The mobile stages will be also be available at the established rate of \$1,200 per day.
- Technical crews are scheduled for rehearsals and performances as needed, and paid for by the producer. Costs for crew members are billed at prevailing wage.

Success Factor #3 - Generate sufficient revenue to cover all operating costs and provide for capital improvements

As stated earlier, the Department expects the venue to become 100% self-sufficient, covering all operating costs and funding an ongoing capital improvement program. This section will demonstrate the effect of the revised fee structure using the same assumptions of facility activity (# of events) as before:

- 40 events per year with 80% of events being 'admission-charged' resulting in the per attendee fee being paid. (32 'admission-charged'/8 non-admission charged)
- 1,500 average paid tickets per admission-charged event at an average \$20.00 ticket price
- Assume 200 complimentary tickets per admission-charged event.
- \$1,000 average concession revenue per admission-charged event (35% of the gross sales of food & beverage).
- Reduced \$500 average concession revenue for non-admission charged events.
- Allocation of a portion Woodward parking revenue generated from Amphitheater events.

Financial Impact of Proposed Fees

| | 2009 Season | 2010 Season (Ongoing) |
|--|-------------------|--------------------------|
| 2009 Season: 32 Admission-Charged Events x \$2,400 rental fee Assumes 1,500 x \$20/ticket = \$30,000. (8% = \$2,400 and greater than \$1,500) | \$ 76,800 | |
| 2010 Season (Ongoing): 32 Admission-Charged Events x \$3,000 rental fee Assumes 1,500 x \$20/ticket = \$30,000. (10% = \$3,000 and greater than \$1,500) | | \$ 96,000 |
| 32 Admission-Charged Events x 1,500 paid tickets x \$2.00 (2009) / \$3.00 (2010) Improvement fee | 96,000 | 144,000 |
| 32 Admission-Charged Events x \$1,000 avg Concession fee | 32,000 | 32,000 |
| 8 non-Admission Charged Events x \$1,500 flat rental fee | 12,000 | 12,000 |
| 8 non- Admission Charged Events x \$500 avg Concession fee | 4,000 | 4,000 |
| Anticipated Advertising Revenue | 1,200 | 1,200 |
| Anticipated Event Parking Revenue (1,700 avg attendance/avg 3 persons per car x \$3.00 x 40 events) | 68,000 | 68,000 |
| Total Annual Revenue | \$ 290,000 | \$ 357,200 |
| Average Revenue per Event | \$ 7,250 | \$ 8,930 |
| Total Annual Operating & Capital Requirements | \$ 290,000 | \$ 343,200 |
| Required Average Revenue per Event | \$ 7,250 | \$ 8,580 |
| Net Annual Operations | \$ 0 | \$ 14,000 |
| Net Operations Per Event | \$ 0 | \$ 350 |

When the percentage of gross ticket sales goes to 10% and the Improvement Fee goes to \$3.00 in 2010, the average revenue per event of \$8,930 will then meet and exceed the operating and capital budget requirements of the facility. The expected net income of \$350 per event will be re-invested into the Amphitheater's capital improvement program, helping to accelerate the facility build-out. The Department projects that revenue targets will be met or exceeded over the next several years due to the following factors:

- As the population grows and name recognition increases, the facility will hold more than 40 events annually.
- Event attendance will increase
- Average ticket prices will exceed \$20
- Advertising opportunities will be actively pursued, including the possible naming of the venue.

Success Factor #4 – Be Competitive Within our Local and Regional Markets

The Department did not wish to bring fees forward based solely on cost recovery targets. Recognizing that the venue will be competing for business with other entertainment venues in the Central Valley, Staff surveyed comparable entertainment venues for their fee structures and found the use of the 'percent of gross ticket sales' approach to be very common. It should be noted that there were several privately-owned outdoor Amphitheatres in the State that Staff attempted to obtain fee information for, however those organizations would not share their fee structure. Although we do not have the official fee structures for those facilities, Staff believes that the 'percent of gross ticket sales' method is also used at those venues.

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Woodward Rotary Amphitheater Third Amendment & Reservation Fee Amendment

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Comparable Amphitheatres & Local Venues

| Venue | Location | Capacity | Facility Use Fee | Non-Admission Charged Event | Other Fees |
|-------------------------------------|-----------------|----------|--|---|---|
| Woodward Rotary Amphitheater | Fresno, CA | 4,000 | 8% (2009) / 10% (2010) of Gross Ticket Sales, or \$1,500 whichever is greater | \$1,500/day | \$2.00 per Attendee for Admission-Charged events - 20% Gross Concessions - \$350/day for Rehearsals |
| William Saroyan Theater | Fresno, CA | 2,353 | \$1,600 or 10% of Gross Ticket Sales, whichever is greater. | n/a | No staff included, charged out at hourly rates. |
| Greek Theater | Los Angeles, CA | 5,801 | 10% of Gross Ticket Sales, or \$2,000 whichever is greater | \$1,000/\$1,300 Depending on attendance | \$500 non-Refundable Reservation Fee \$350/day for Rehearsals |
| John Anson Ford Amphitheatre | Hollywood, CA | 1,250 | \$4,200 + \$1.00 per ticket or Negotiated % of Gross Tickets Non-Profit Rate: \$3,500 & waiver of \$1.00 per ticket fee | n/a | Rehearsal Rate: \$2,100/day Non-Profit Rehearsal Rate: \$1,750/day |
| Mesa Amphitheater | Mesa, AZ | 4,950 | 12% of Gross Ticket Sales, or \$1,200 whichever is greater | Flat Rates can be negotiated | \$3.00 per Attendee |
| Weber Point Events Center | Stockton, CA | Variable | \$5,301/day \$4,174/day | \$4,174/day \$3,046/day non-profit | 5%-25% of Concessions No staff included, charged out at hourly rates. |
| Sumtur Amphitheater at Walnut Creek | Papillon, NE | 1,350 | \$1,200 + 10% Gross Ticket Sales | \$1,200 | n/a |
| Knoxville Civic Amphitheater | Knoxville, TN | unknown | \$1,000 or 10% of Gross Ticket Sales whichever is greater | \$1,000/day \$750/day non-profit | No staff included, charged out hourly rates. |

As mentioned earlier, the 'percentage of gross ticket sales' method was a common fee arrangement found at other outdoor entertainment venues. This fee structure allows for the City to get its 'fair share' of event proceeds to cover operating and capital requirements, while not overburdening the event organizer with high fixed costs.

The timing of this fee amendment is crucial in that the Amphitheater has gone through one season with drastically increased usage, leading to name recognition, and allowed event organizers and the public at-large to see the potential of further developing the venue. The Amphitheater simply will not attain the status of a professional entertainment venue without a dedicated budget for staff, operations, and continued capital improvements, something that can be funded entirely from event revenue if managed proactively. Adopting a 'wait and see' approach to revising Amphitheater fees will result in another year of insufficient revenue to fund continued capital improvements, and the loss of momentum and public excitement that has built up this year.

- Attachments:
- Master Fee Schedule Amendment
 - 3rd Amendment to the Rotary Amphitheater Agreement with the Rotary Club of Fresno
 - July 29, 2008 Council Report re: 2nd Amendment to Rotary Club Agreement & Restoration Fee Revision

THIRD AMENDMENT TO ROTARY AMPHITHEATER AGREEMENT

THIS THIRD AMENDMENT TO AGREEMENT ("Amendment") made and entered into as of this ____ day of _____, 2009, 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. Paragraph 17, subsection A, shall be revised to read:
 - A. All non-party event permittees, licensees, promoters, and/or other users shall (i) pay the CITY twenty five percent (25%) 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 twenty five percent (25%) 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" includes only all revenues generated by and/or arising from concession(s) activities.
2. All capitalized terms used in the Amendment, unless otherwise defined herein, shall have the meanings assigned to such terms in the Agreement.
3. Except as otherwise provided herein, the Agreement remains in full force and effect.

3. 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

ROTARY CLUB OF FRESNO
A California nonprofit corporation

By: _____
Randall L. Cooper
Title: Director

By: 
Title: President

ATTEST:
REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: 
Deputy *Beard*

City of



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.

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

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.

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Second Amendment to Agreement between City and Rotary

July 29, 2008

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- 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

ROTARY CLUB OF FRESNO,
a California nonprofit corporation

By _____
Title Randall L. Cooper
Director

By _____
Title Don Eskes
President

ATTEST:
REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: R 6-18-08
Deputy Clyde



RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO
ADOPTING THE 472nd AMENDMENT TO THE MASTER FEE
SCHEDULE RESOLUTION NO. 80-420 INCREASING WOODWARD
PARK ROTARY AMPHITHEATER IMPROVEMENT FEE IN THE PARKS
SECTION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRESNO:

THAT the Master Fee Schedule Resolution No. 80-420 be and is hereby amended to
establish the Rotary Amphitheater Improvement Fee at Woodward Park in accordance with the
second amendment to the agreement between the City of Fresno and the Rotary Club of
Fresno. The revised pages of the Master Fee Schedule are attached and made a part of this
Resolution.

THAT fees shall become effective August 9, 2008.

CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)ss.
CITY OF FRESNO)

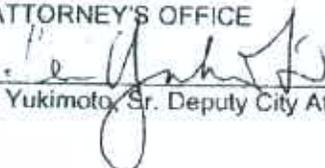
I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing
Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting
thereof, held on the ___ day of _____, 2008.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Approval: _____ 2008
Mayor Approval/No Return: _____ 2008
Mayor Veto: _____ 2008
Council Override Veto: _____ 2008

REBECCA E. KLISCH
City Clerk

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: 
Tei Yukimoto, Sr. Deputy City Attorney

**CITY OF FRESNO
 MASTER FEE SCHEDULE
 AMENDMENT SUMMARY**

PARKS, AFTER SCHOOL, RECREATION AND COMMUNITY SERVICES

For FY 2009 and 2010, the PARCS is proposing amending fees per agreement with Rotary Club of Fresno.

General Recreation Fees

| Fee Description | Current | New | Justification Pg# | Pg# |
|---|-------------------|-------------------|-------------------|-------|
| Woodward Park Rotary Amphitheater Improvement Fee | 2.00 per attendee | | Pg. 2 | Pg. 3 |
| As of 8/9/2008 | | 1.00 per attendee | | |
| As of 1/01/2009 | | 2.00 per attendee | | |
| As of 1/01/2010 | | 3.00 per attendee | | |

**CITY OF FRESNO
MASTER FEE SCHEDULE
AMENDMENT DETAIL**

PARKS, AFTER SCHOOL, RECREATION AND COMMUNITY SERVICES

WOODWARD PARK ROTARY AMPHITHEATER IMPROVEMENT FEE

The Department recommends the following Woodward Park Rotary Amphitheater Improvement Fee adjustment per the agreement with the Rotary Club of Fresno.

| Woodward Park Rotary Amphitheater Improvement Fee | |
|--|---------------------|
| As of 08/09/08 | \$1.00 per attendee |
| As of 01/01/09 | \$2.00 per attendee |
| As of 01/01/10 | \$3.00 per attendee |

**CITY OF FRESNO
MASTER FEE SCHEDULE**

GENERAL RECREATION FEES

| <u>Fee Description & Unit/Time</u> | <u>Current</u> | <u>Amnd</u> |
|--|-----------------|------------------------------|
| Amphitheaters and Regional Park Group Activity Areas (Eaton Plaza, Woodward Park Amphitheater *, Woodward, Roeding & Regional Sports Park Group Activity Areas) | | 464 effective 4/1/2008 |
| Private or non-City groups | | |
| Group size: | | |
| Up to 200 | 200.00 | |
| 201 to 500 | 350.00 | |
| Over 500 | 500.00 | |
| Local charitable non-profit groups | | |
| Group size: | | |
| Up to 200 | 100.00 | |
| 201 to 500 | 175.00 | |
| Over 500 | 250.00 | |
| City-sponsored or public government sponsored | | |
| Group size: | | |
| Up to 200 | -0- | |
| 201 to 500 | -0- | |
| Over 500 | -0- | |
| Performance Bond | 175.00 - 500.00 | |
| (100% refundable upon successful completion of the rental agreement in accordance with also agreed upon terms and conditions) | | |
| Cleaning Deposit | | |
| (Up to 80% refundable dependent on the condition of the facility after completion of the rental agreement) | | |
| Group size: | | |
| Up to 200 | 250.00 | |
| 201 to 500 | 500.00 | |
| Over 500 | 1,000.00 | |

Note: Cleaning Deposit is based upon the estimated number of attendees to any reserved venue.

In addition to the reservation fee, use of the Woodward Park amphitheater will require a 20% payment of gross event concession revenues and a per attendee charge.

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CITY OF FRESNO
MASTER FEE SCHEDULE

GENERAL RECREATION FEES

| <u>Fee Description & Unit/Time</u> | <u>Current</u> | <u>Amnd</u> |
|--|-------------------------------------|-------------|
| Woodward Park Entrance Fee*** Year round / per motor vehicle | 3.00 | 456 |
| Woodward Park Picnic Table Reservation Fee* Year round / per table: | | |
| Gazebo | <u>Full-Day**</u> <u>Half-Day**</u> | |
| Picnic shelters | 10.00 5.00 | |
| | 25.00 12.50 | |
| Woodward Park Equestrian Area Entrance Fee*** Year round / per Horse trailer | 1.00 | 456 |
| Woodward Park Rotary Amphitheater Improvement Fee | | |
| 2007-2008 | \$ 100.00 | |
| 2008-2009 | \$ 100.00 | |
| 2009-2010 | \$ 100.00 | |

Urban Growth Management (UGM) Park Fees

See Development Fees Department-UGM

- * Director is authorized to waive the user fee for special events which are determined to be beneficial to the City of Fresno. One security guard will be present for the duration of the event. Additional security may be required at the discretion of the Director of Parks, Recreation and Community Services. Fees for additional security are not included in rental fees and will be charged to all groups at the hourly rate listed in the Master Fee Schedule.
- ** Full-day (7 a.m. to 10 p.m.), half-day (7 a.m. to 2 p.m. or 3 p.m. to 10 p.m.). Park hours may vary during winter months.
- *** Director is authorized to waive the entrance fee for special events which he determines to be beneficial to the City of Fresno. Fees may be waived for participants only or for the duration of the event.
- *** Park entrance fee shall be waived for either vehicles displaying Disabled Person Placard/Decal or vehicle in which a senior citizen (age 62 or older) is a passenger/driver.

THIRD AMENDMENT TO ROTARY AMPHITHEATER AGREEMENT

THIS THIRD AMENDMENT TO AGREEMENT ("Amendment") made and entered into as of this 3rd day of March, 2009, 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. Paragraph 17, subsection A, shall be revised to read:
 - A. All non-party event permittees, licensees, promoters, and/or other users shall (i) pay the CITY twenty five percent (25%) 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 twenty five percent (25%) 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" includes only all revenues generated by and/or arising from concession(s) activities.
2. All capitalized terms used in the Amendment, unless otherwise defined herein, shall have the meanings assigned to such terms in the Agreement.
3. Except as otherwise provided herein, the Agreement remains in full force and effect.

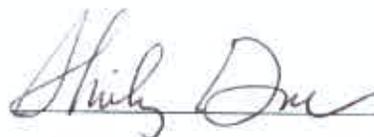
3. Except as otherwise provided herein, the Agreement remains in full force and effect.

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

ROTARY CLUB OF FRESNO
A California nonprofit corporation

By: 
Randall L. Cooper
Title: Director

By: 
Title: President

ATTEST:
REBECCA E. KLISCH
City Clerk

By: 
Deputy (3/18/09)

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: 
Deputy 

March 3, 2009

Council Adoption: 3/3/09

TO: MAYOR ASHLEY SWEARENGIN RECEIVED

Mayor Approval:

FROM: REBECCA E. KLISCH, CMC ^{REK} 2009 MAR 10 PM 2:45
City Clerk

Mayor Veto:

Override Request:

CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 3/03/09, Council took legislative action entitled **Appv 3rd amndmnt to Rotary Amphitheater agrmnt w/Rotary Club of Fresno**, Item No. **9:00 a.m. #A**, by the following vote:

| | | |
|---------|---|---|
| Ayes | : | Borgeas, Brand, Caprioglio, Dages, Perea, Xiong, Sterling |
| Noes | : | None |
| Absent | : | None |
| Abstain | : | None |

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before March 13, 2009. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)


Ashley Swearengin, Mayor

Date: _____

COUNCIL OVERRIDE ACTION:

Date: _____

| | |
|---------|---|
| Ayes | : |
| Noes | : |
| Absent | : |
| Abstain | : |

March 3, 2009

Council Adoption: 3/3/09