



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Julie Edmonds-Mares

SUBJECT: SEE BELOW

DATE: May 29, 2012

Approved

Date

6/5/12

COUNCIL DISTRICT: 3, Citywide

**SUBJECT: APPROVAL OF AN OPERATIONS AND MAINTENANCE AGREEMENT
WITH SAN JOSE EARTHQUAKES MANAGEMENT, LLC**

RECOMMENDATION

Adopt a resolution authorizing the City Manager to execute an Operations and Maintenance Agreement (Agreement) between the City of San José and San Jose Earthquakes Management, LLC (Contractor) commencing on completion of construction of the Coleman Avenue Soccer Fields (Soccer Facility) for a term of five years, and including an option for the City to extend the term for up to two, five year term extensions. The Contractor will receive an annual fixed fee of \$332,803 (Management Fee) and potential revenue performance based fees not to exceed \$332,803 annually (Performance Increase) for a maximum total of \$665,606 annually, adjustable by the Consumer Price Index (CPI).

OUTCOME

This Council action will allow for the operations of a City of San José community soccer facility on the Airport West site at 1125 Coleman Avenue to be constructed with 2000 Measure P Park Bond funding. The community soccer facility will be constructed on the City acreage adjacent to the existing City-owned practice soccer field which is currently being leased to Earthquakes Soccer, LLC.

BACKGROUND

In 2000, the voters of San José passed Measure P, the 2000 Parks Bond Measure. The ballot language authorized the City to issue general obligation bonds for the construction or renovation of various park, community center, and recreational improvements including "new recreational

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sports facilities.” To date, 94 of the 96 projects initially planned to be funded by Measure P have been completed. The only two exceptions are a soccer and softball complex. This memorandum addresses staff’s recommendation regarding the operations of the soccer complex. Staff will bring forward a recommendation for the scope of the softball complex project at a later date.

The soccer complex is proposed to be located at the Airport West site on Coleman Avenue. Staff identified the Airport West site as suitable for the soccer fields for which funding was authorized in the Parks Bond Measure P and has proceeded to design the Soccer Facility. The details of the City’s acquisition of the land for development of the soccer fields are specified in a separate memorandum on this same City Council agenda. The City Council’s consideration of approval of the operations and maintenance agreement is contingent upon City Council’s approval of the various actions related to the sale of a portion of the Airport West site that the City Council will consider as a separate agenda item. These separate actions related to the Airport West site are required prior to the approval of this Agreement as it affects the boundaries of the premises subject to the proposed Operations and Maintenance Agreement with the Earthquakes.

The Department of Public Works has received bids on a design-build package in order to identify a firm for the Soccer Facility development and a recommendation for proceeding with award of the design-build contract for the project is included as part of a separate memorandum. Construction is anticipated to begin mid 2012 and to be completed in fall 2013. The Soccer Facility will serve the community primarily for recreational and competitive soccer tournaments, clinics, leagues, and practices.

ANALYSIS

Staff issued a Request for Proposal (RFP) to hire a qualified company to provide operation and maintenance services including management, marketing, operation, security, parking, labor, equipment, signage, building and grounds maintenance, full scheduling of training and tournaments, and concession/retail sales. The RFP for soccer field operations and maintenance services was posted on the City’s BidSync site from December 16, 2010 to February 4, 2011. In addition, known soccer entities that provide these services were notified of the opportunity in writing through direct mail. The RFP notified potential proposers of what they would need to include in their submittal package and also provided an exemplar agreement on which contract negotiations would be based. In addition, the RFP informed potential operators that the City would be required to enter into Qualified Management Agreement (QMA) for the project due to the tax-exempt bond funding which will be used to build the facility.

IRS regulations limit the amount of private use of the facilities financed with tax-exempt bonds. Since the federal government receives less income tax revenues when the interest on municipal bonds is tax exempt, IRS regulations require that facilities built with tax-exempt bond proceeds are used for a governmental purpose, and that such facilities are not used for “private activity.” In order to have a private party operate a facility financed with tax-exempt bonds, such as the proposed soccer fields, the City must follow IRS regulations for QMAs.

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The RFP generated only one proposal, from San Jose Earthquakes Management, LLC. The proposal was determined to be complete and responsive. The proposal was reviewed by staff and the proposer was interviewed on February 24, 2011. Based on qualifications, experience, past performance, and local and regional connections to existing soccer organizations, the San Jose Earthquakes Management, LLC demonstrated an ability to fully program, operate and maintain the Soccer Facility. On March 1, 2011, the Director of Parks, Recreation and Neighborhood Services (PRNS) directed staff to begin negotiations with San Jose Earthquakes Management, LLC.

The Contractor will be responsible for oversight and payment of the management, operations and maintenance costs of the Soccer Facility in accordance with the terms of the final Agreement. Key parameters of the agreement are as follows:

- Manage and operate the Soccer Facility including financial management, league and tournament programming, general daily maintenance and minor repair services, coordination with City and other stakeholder partners, and administrative services.
- Participate in collaborative event planning with the management team of the proposed San Jose Earthquakes Stadium to ensure coordination of traffic management plans and overflow parking strategies.
- Establish cash flow management and control and financial reporting systems for the Soccer Facility in conjunction with the City's representatives and an independent auditor selected by the Contractor subject to City approval.
- Collect revenues from the Soccer Facility and deposit such revenues in the City's account as provided for in the Agreement.
- Contractor shall be responsible for payment of all operational expenses of the Soccer Facility from its management fee. Contractor shall make necessary disbursements to carry out the operation of the Soccer Facility.
- Grant access to oversight agency representatives and parties responsible for maintenance of the mitigation and monitoring wells located on the Soccer Facility.
- Participate in an advisory team during the design-build phase of the Soccer Facility to provide program input during mutually agreed upon times and dates.
- Advertise and conduct public relations programs related to the Soccer Facility.
- Organize and manage admissions, merchandising, security and parking facilities at the Soccer Facility.
- Prepare and submit an annual Operations Plan including budgets, policies, fees and hours of operation of the Soccer Facility.
- Employ and manage all Soccer Facility personnel in accordance with City employment standards and policies.
- Procure all necessary supplies, materials and retail inventory required for the operation of the Soccer Facility.
- Procure and maintain insurance policies and an emergency management plan for the Soccer Facility.
- Appoint a representative to meet with a City representative on a regular basis or as needed to ensure successful operations.

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- Prepare and submit an annual report to the City that describes operations, maintenance, marketing and finance outcomes of the Soccer Facility.
- Collect fees for use of the facility in accordance with the City's schedule of fees for the facility.

Additionally, the Contractor will provide the City with up to \$78,000 in tickets to Earthquakes games each year in order to serve youth participants in PRNS programs. The term of the Agreement will be five years commencing upon completion of construction of the Soccer Facility, and includes options for the City Manager to extend the term for up to two, five year term extensions. The City and Contractor will establish a team to review the annual pro forma and budget, to ensure efficient operations, and to resolve any disputes that may arise.

The Contractor is responsible for the Soccer Facility 365 days a year. It is anticipated the Soccer Facility will be open seven days a week from 8:00 a.m. to 10:00 p.m. The Contractor will remit to the City all revenues from the operation of the facility. The City will use those revenues to pay the Contractor an annual fixed fee discussed in the Cost Implications section of this memo. The potential uses of any net General Fund revenues will be brought forward as part of the annual budget process. It is important to note that the City will need to plan appropriately for capital infrastructure maintenance, including replacement of the artificial turf in order to ensure that the facility continues to provide services and generate revenue far into the future.

Staff proposes that the City enter into the Agreement with the Contractor prior to the commencement of construction in order for the City to be able to benefit from best practices and lessons learned from the Contractor's existing facilities to improve on design. However, payment of the Contractor will not commence until the facility is operational. PRNS has a strong tradition of partnering with consultants and businesses to improve service delivery. As proposed, this Agreement will enable the City to move forward with the operations and maintenance of the Soccer Facility.

EVALUATION AND FOLLOW-UP

Staff will report on expenses and revenues related to the soccer facility as a part of the City's annual budget process.

POLICY ALTERNATIVES

Alternative: The City could choose not to move forward with the direction to locate and develop the community Soccer Facility and continue to market the property for development.

Pros: The City will avoid the risk that the Contractor will not generate sufficient revenue to pay the fixed fee. However, the City's maximum annual liability, assuming the facility generated

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zero revenue, would be only half of the fixed management fee because the City has the ability to terminate the agreement upon no less than 14 calendar days if gross revenues from the facility have not at least equaled the management fee due to contractor over any 180 day period.

Cons: The City does not proceed with the development of a soccer complex as authorized by Measure P and the City does not increase sports fields to address the citywide inventory shortage.

Reason for Not Recommending: The City has a significant need for additional sports fields to serve the needs of the residents and placing four lighted artificial turf soccer fields in one location will provide a significant increase in availability of fields for the public.

PUBLIC OUTREACH/INTEREST

- ✓ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: Email and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criteria 1 and will be posted on the City's website for the June 19, 2012 Council agenda.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office, the City Attorney's Office, the Finance Department, Department of Public Works, the Office of Economic Development, and the Department of Planning, Building and Code Enforcement.

FISCAL/POLICY ALIGNMENT

This project is consistent with Council-approved 2010-2011 Budget Balancing Strategy principles because it protects vital core city services and considers alternative service delivery mechanisms to reduce costs of delivering needed services to the community.

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COST SUMMARY/IMPLICATIONS

The operations and maintenance of this project is projected to have a net positive benefit to the General Fund with a Management Fee of \$332,803 to be paid to the Contractor and anticipated net City revenues in excess of \$500,000 annually after payment of this Management Fee. In addition, the Contractor does have the ability to achieve a Performance Increase of up to an additional \$332,803 if certain triggers are achieved. There are four separate levels for the Performance Increase – 25%, 50%, 75% and 100%. For example, if the Contractor achieves a 25% increase in projected gross revenue, i.e. gross revenues are \$1,432,451.25 they will receive 25% of the Performance Increase, i.e. the Contractor's fee of \$332,803 plus \$83,250 (25% of a possible \$332,803). If they achieve a 50% increase in projected gross revenue they will receive 50% of the Performance Increase, and so on. As noted above, the maximum amount the Contractor is eligible for as a Performance Increase is an additional 100% of the annual Management Fee. An annual increase will be applied to the Management Fee and the Performance Increase calculation will begin on July 1 of each year. The annual increase will be based on the San Jose-San Francisco-Oakland average annual CPI percentage change for all urban consumers, but in no event shall exceed 3%.

The Contractor is required to pay for all facility operating and maintenance costs out of their Management Fee. In addition, initial City funding of \$167,000 will be required in Fiscal Year 2013-2014, starting on July 1, 2013, to fund the first six months of the management fee until revenues are sufficient to cover this cost. It is anticipated that this initial investment will be recovered by the end of the 2013-2014 Fiscal Year.

Under the Operating Agreement, if the gross revenues from the Facility do not at least equal the Management Fee due to the Contractor over any six month period, the City may exercise an option of early termination with no less than 14 days notice to the Contractor. This will allow the City to limit any potential liability associated with ongoing payment of the fixed management fee if revenues from the site are not meeting expectations.

As discussed in a separate memorandum on this agenda, this facility is proposed to be built on the Airport West property, which has significant outstanding debt. Currently, Coleman Airport Partners, LLC and FWSH Partners, LLC have an option to purchase the majority of this property, including a small portion of the land proposed for the Coleman Avenue Soccer Fields. To construct this facility, the option agreement is proposed to be modified as discussed in the separate memorandum. The approval of this agreement is contingent upon prior approval of the amendment of the option agreement relating to the sale of the Airport West property.

CEQA

CEQA: Mitigated Negative Declaration, PP 10-155, November 2011

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/s/

JULIE EDMONDS-MARES

Acting Director of Parks, Recreation and
Neighborhood Services

For questions please contact Matt Cano, Deputy Director, at 408-535-3580.