

AGENDA REPORT SUMMARY



TO: Honorable Mayor and Members of the City Council

FROM: James L. Bowersox, City Manager *JLB*

INITIATED BY: Robert A. Clark, Director of Community Services *RAC*

DATE: December 13, 2005

SUBJECT: Approval of Facility Use and Maintenance Agreement Between the City of Poway and the Poway Girls Softball League for Use of the Aubrey Park Softball Facilities

ABSTRACT

On May 11, 2004, the City Council approved a Conditional Use Permit (CUP 03-15), with the City of Poway and the Poway Girls Softball League (PGSL) as co-applicants, establishing a public park with softball fields, known as Aubrey Park, within the Old Poway Park Specific Plan. The CUP requires the development of a shared Facility Use and Maintenance Agreement between the City and PGSL in order to optimize the facility's use, provide for its maintenance, and organize scheduling of the softball facility

Staff and representatives of PGSL have cooperatively negotiated the terms of the agreement, which has an initial term of ten years, and request the City Council's approval.

ENVIRONMENTAL REVIEW

This item is not subject to CEQA review.

FISCAL IMPACT

The cost of general maintenance and utilities at Aubrey Park are allocated in the City's budget.

PUBLIC NOTIFICATION AND CORRESPONDENCE

Additional notification sent to Mike Snell, Roger Moyers, and Poway Girls Softball League.

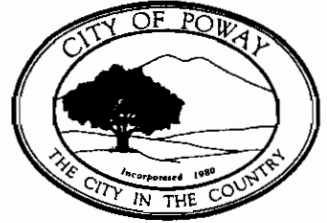
RECOMMENDATION

It is recommended that the City Council approve the attached Facility Use and Maintenance Agreement between the City of Poway and the Poway Girls Softball League for Use of the Aubrey Park Softball Facility.

ACTION


CITY OF POWAY


AGENDA REPORT



This report is included on the Consent Calendar. There will be no separate discussion of the report prior to approval by the City Council unless members of the Council, staff or public request it to be removed from the Consent Calendar and discussed separately. If you wish to have this report pulled for discussion, please fill out a slip indicating the report number and give it to the City Clerk prior to the beginning of the City Council meeting.

TO: Honorable Mayor and Members of the City Council

FROM: James L. Bowersox, City Manager 

INITIATED BY: Robert A. Clark, Director of Community Services
James D. Bentz, Community Services Manager 

DATE: December 13, 2005

SUBJECT: Approval of Facility Use and Maintenance Agreement Between the City of Poway and the Poway Girls Softball League for Use of the Aubrey Park Softball Facilities

BACKGROUND

On May 11, 2004, the City Council approved a Conditional Use Permit (CUP 03-15), establishing a public park with softball fields, known as Aubrey Park, near the northwest corner of Aubrey Street and Midland Road intersection within the Old Poway Park Specific Plan. The Poway Girls Softball League (PGSL) and the City of Poway are the CUP co-applicants for the use of the property. The CUP requires the development of a shared Facility Use and Maintenance Agreement between the City and PGSL in order to optimize the facility's use, provide for its maintenance, and organize scheduling of the softball facility.

FINDINGS

Staff and representatives of PGSL have cooperatively negotiated the terms of the agreement, which contains the following major provisions:

1. Limits the term of the agreement to 10 years from the date of execution with options for additional terms.
2. Designates the hours and seasons of use by PGSL as provided by the Aubrey Park CUP.
3. Outlines PGSL's specific maintenance responsibilities for the softball fields, backstops, player's seating areas, and batting cages. The agreement also includes PGSL's responsibility level for maintenance of the restrooms and parking lot.

4. Establishes 9:00 a.m. as the earliest time which games may start, and allows practices to begin at 8:00 a.m., with non-motorized field prep permitted at 7:30 a.m.
5. Specifies that PGSL must notify residents of certain adjoining streets by mail when large events are scheduled including opening day, closing ceremonies, and end of season tournament.

The agreement was found to be consistent with other Facility Use Agreements that the City maintains with nonprofit groups using City facilities.

ENVIRONMENTAL REVIEW

This item is not subject to CEQA review.

FISCAL IMPACT

The cost of general maintenance and utilities at Aubrey Park are allocated in the City's budget.

PUBLIC NOTIFICATION AND CORRESPONDENCE

Additional notification sent to Mike Snell, Roger Moyers, and Poway Girls Softball League.

RECOMMENDATION

It is recommended that the City Council approve the attached Facility Use and Maintenance Agreement between the City of Poway and the Poway Girls Softball League for Use of the Aubrey Park Softball Facility.

JLB:RAC:JDB

Attachment 1: Facility Use and Maintenance Agreement between the City of Poway and PGSL for use of Aubrey Park

**Facility Use Agreement Between the City of Poway
and the Poway Girls Softball League for
Use of the Aubrey Park Softball Facility**

This Agreement is made and entered into this 13th day of December, 2005, by and between the City of Poway (hereinafter referred to as "City"), and the Poway Girls Softball League (hereinafter referred to as "PGSL").

WITNESSETH

WHEREAS, the City and PGSL are mutually interested in and concerned with the provision of providing adequate facilities and services for community sports and recreation; and

WHEREAS, PGSL has contributed time and financial support to the City for the design and construction of the Aubrey Park Softball Facility; and

WHEREAS, within this facility, PGSL shall accept responsibility for providing activities, programs, and services to benefit girls softball play and the Poway community, and for the administration thereof; and

WHEREAS, PGSL and the City shall share use of the facility, with PGSL responsible for the supervision and general maintenance of the Aubrey Park Softball Facility as described herein; and

WHEREAS, the City has granted PGSL a Conditional Use Permit (CUP 30-15) for use of the Aubrey Park Softball Facility which requires the development of a shared operation plan between the City and PGSL to optimize the use and scheduling of the Aubrey Park Softball Facility, it follows that a Facility Use Agreement is needed.

NOW, THEREFORE, the City and PGSL agree as follows:

1. **Description**
The Aubrey Park Softball Facility (hereinafter referred to as "APSF"), located at 13544 Aubrey Street and within Aubrey Park, is a City of Poway park facility, which at the time of the signing of this Agreement includes softball fields & facilities, batting cages, and parking lot, restrooms.
2. **Administration**
This Agreement shall be administered on behalf of the PGSL Board of Directors by its President, (hereinafter referred to as "President"), and on behalf of the City of Poway by the City Manager or designee.

ATTACHMENT 1

3. **Term**

This Agreement shall become effective commencing on the date this document is fully executed by both Parties and shall be in force for a period of ten (10) years. If notification to rescind the Agreement is not given by either party in writing within ninety (90) days of the expiration of this term, it is renewed for a period of one (1) year for a maximum of five (5) one-year terms by written agreement of both Parties, or may be cancelled by either Party upon written notification of not less than ninety (90) days notice.

4. **Use**

A. The City of Poway agrees to grant without remuneration the nonexclusive use of the APSF to PGSL as specified in this Agreement. PGSL shall not enter into a joint use agreement with any organization for use of the facilities without pre-approval from the Director of Community Services nor shall these facilities be subleased by PGSL to any organization at any time. The use of these facilities by any successor to PGSL must have the prior approval of the City Council.

B. Use of the facility by PGSL is contingent upon compliance with all conditions contained in CUP 30-15 or its successor(s), this Agreement, and approved Facility Use Permits issued under conditions as described herein.

5. **Entry and Inspection**

City retains the right to enter or inspect all areas of Aubrey Park at any time.

6. **Facilities**

This Agreement includes the use of the following facilities located at Aubrey Park:

- A. Softball Fields, Backstops, Player-seating areas
- B. Batting Cages
- C. Snack Shack and Storage Room (once constructed)
- D. Restrooms (both portable and permanent)
- E. Parking Lot
- F. Other softball related equipment and facilities

7. **Possessory Interest**

This Agreement may result in a taxable possessory interest and be subject to the payment of property taxes. PGSL agrees to and shall pay before delinquency any and all taxes and assessments of any kind assessed or levied upon PGSL or the facilities listed herein by reason of this Agreement or of any buildings, machines, or other improvements of any nature whatsoever erected, installed or maintained by PGSL or by reason of the business or other activities of PGSL upon or in connection with the facilities.

8. **Times**

- A. The APSF will be available to PGSL to accommodate schedules as established in Section 9, which shall be in accordance with the proposed schedule contained in CUP 30-15 or its successor(s).
- B. PGSL will observe all established park hours and use rules. City will provide PGSL with a copy of all rules affecting PGSL's use of the APSF.
- C. PGSL participants and those associated with PGSL activities may not arrive prior to 7:30 a.m. nor remain after sunset on any given day. PGSL is responsible for coordinating the opening of gates by 7:30 a.m. with the Public Works Department for those dates which require 7:30 a.m. access.
- D. The City reserves the right to amend section 8.C to "8:00 a.m." City shall notify PGSL in writing no less than thirty (30) days prior to the change.
- E. Use of motorized equipment and player warm-ups are not permitted prior to 8:00 a.m. nor after sunset.
- F. PGSL practices, events (such as opening day or closing day ceremonies and tournaments), and games may not start earlier than 9:00 a.m. and shall end no later than thirty (30) minutes prior to sunset.
- G. City is responsible for opening and closing restrooms and gates at Aubrey Park.

9. **Schedules**

- A. Schedules for use shall be established by the City's Director of Community Services or designee and with input from the PGSL President on an annual basis. Prior to January 1 each year the City will provide PGSL's Executive Board with an updated Community Event Calendar, which PGSL shall use to develop their annual use schedule. Should any PGSL opening day, tournament, or closing day activities fall on the same dates as the City's Rendezvous in Poway, Earth/Arbor Day, or Community Band Festival events, PGSL is responsible for arranging and paying for shuttle service from a location determined by City. PGSL shall supply City's Community Services Manager with the annual schedule no later than January 31 each year as well as a Sports Field Use Permit application for activities discussed in this section. Requests for changes to the schedule by PGSL must be submitted 30 (thirty) days in advance of said request. Resolutions to scheduling conflicts shall be determined solely by City's Community Services Department staff.

- B. Upon submission of its schedule, PGSL is required to obtain an approved City of Poway Sports Use Permit from the City of Poway Community Services Department Administration office thirty (30) days prior to any activity that is anticipated to draw attendance levels that will impact traffic, parking, or noise levels of the surrounding residential area, such as opening day, closing day, and tournaments. PGSL shall deliver by first-class mail notices to residents on Sycamore Avenue and York Street north of Aubrey at least ten (10) days prior to these activities. City to provide a sample Public Notice to PGSL.
- C. PGSL shall post the permit and schedule on the public display board at the facility.

10. **Maintenance**

- A. PGSL is responsible for:
 - i. Landscape and irrigation maintenance of all sports fields
 - ii. Maintenance and repair of softball equipment, including chain link fencing and back stops (with the exclusion of the decorative metalwork on the backstops), benches, infields, bleachers, bases, mounds, home plate, scoreboards, outfield, and back stop netting, etc. including batting cages
 - iii. Notifying the Public Works department within twenty-four (24) hours of discovering graffiti at the APSF
 - iv. Removal of litter and trash to the dumpster on scheduled use days
 - v. Ensuring that restrooms are free of litter on scheduled use days
 - vi. Monthly powerwash of all concrete pads in the softball complex
- B. City is responsible for:
 - i. Landscape, irrigation and trash removal of all non-sports field facilities
 - ii. Playground maintenance
 - iii. Routine maintenance of all non-sports field related park equipment
 - iv. All major facility repairs and renovations except as assigned to PGSL in this section
 - v. Year-round daily cleaning of the park restrooms
 - vi. Year-round dumpster trash removal
 - vii. Maintenance and repair of the decorative metal work on the backstops
 - viii. Graffiti removal
- C. City's Public Works Department and PGSL shall each conduct monthly inspections of Aubrey Park facilities year round and identify repairs and

ATTACHMENT 1

maintenance required. The repairs shall be made within thirty (30) days unless otherwise agreed. The Party responsible for maintaining the item as specified in the above conditions shall be required to make and pay for repairs.

- D. City retains the right to close the facility without notice should City determine that an unsafe or hazardous condition exists, or conditions under which use could lead to potential damage to the facility, and keep the facility closed until such time that the condition has been repaired to City standards.
 - E. Requests by PGSL for new services or new facilities and equipment must be made in writing to the City's Directors of Public Works and Community Services by January 1 each year to be considered for funding by the City in the following fiscal year's budget.
 - F. Should PGSL require access to the facility prior to 7:30 a.m. for the purpose of allowing contractors to enter and perform work that has been approved by the City, PGSL shall notify the Public Works Department no less than three (3) business days in advance.
 - G. PGSL will submit all repair requests to the Public Works Department on a Public Works work order form. Urgent requests shall be reported by phone to the City's Maintenance Operations.
11. **Security**
- A. PGSL shall secure or remove all portable PGSL property on a daily basis when their activity is completed.
 - B. PGSL shall report all vandalism to the City of Poway Public Works Department.
12. **Alcohol**
At no time is alcohol consumption permitted at the APSF by league members or PGSL spectators during PGSL scheduled use.
13. **Utilities**
City is responsible for all water, sewer, gas, electrical utilities, and waste management costs at the APSF.
14. **Telephone**
A pay telephone shall be installed at APSF at City expense upon completion of Aubrey Park. City's Public Works Department will provide telephone services to the irrigation controller. PGSL shall be responsible for all installation and

ATTACHMENT 1

ongoing costs associated with any phones installed by PGSL at the APSF, and shall obtain authorization by the City's Director of Community Services or designee prior to installation.

15. **Supervision and Equipment**

- A. PGSL shall provide the sufficient staffing for supervision of the participants and volunteers of all PGSL activities and shall, at its expense, provide expendable equipment and supplies related to PGSL use. PGSL shall provide additional restroom supplies during times that an approved Sport Use Permit is on file at such quantity to accommodate the anticipated level of additional participants and spectators. City shall supply and stock restroom supplies at all other times. The buildings, grounds, and equipment, which are the property of the City of Poway, shall be cared for in a diligent manner by PGSL during scheduled use, with PGSL responsible for payment of any damages resulting from use by PGSL. Similarly, if equipment and/or supplies are damaged by anyone during periods when the City is responsible for the activities, the City shall pay for damages.
- B. PGSL shall provide adult supervision when PGSL member youth are present during scheduled activities. Unattended minors associated with PGSL activities are not permitted.
- C. All PGSL equipment must be removed from the APSF or placed in a locked storage facility on a daily basis. A temporary storage unit may be erected by PGSL in such place and manner as approved by the Director of Community Services.
- D. PGSL is responsible for the setup and storage of all equipment used for PGSL operations and programming.
- E. City is responsible for the setup and storage of all equipment used for City operations and programming.

16. **Facility Modification**

Requests by PGSL to provide additional facilities, equipment, or permanent improvements on the APSF grounds shall be submitted to the Director of Community Services and may occur only upon the approval of the City Council. It is further agreed that the City may provide additional facilities, equipment, and permanent improvements to the APSF upon notification to the Board of Directors of PGSL. In addition, it is agreed that the City and PGSL may jointly provide such items with the approval of their respective administrators, the City Council, and the PGSL Board of Directors.

17. **Policies and Procedures**

Policies and procedures for the purpose of administering changes in schedules, maintenance, security, use of equipment, coordination of events, parking, and other related matters of mutual interest to both parties will be developed jointly by the City and PGSL, with City use retaining priority.

18. **Parking**

A. At no time does PGSL have exclusive use of the Aubrey Park parking lot. The City and PGSL agree to cooperate in solving parking concerns that result from concurrent City/PGSL events, with City events retaining priority.

B. PGSL shall inform league participants that parking on local residential streets by PGSL participants is not permitted unless for an event for which an approved Sports Use Permit is on file and the affected households have been notified according to the provisions set forth in Section 9.

C. Parking of private vehicles is permitted in designated parking spaces only. Parking of turf-type vehicles or construction equipment is temporarily permitted in undesignated spaces insofar as its placement is directly related to PGSL activities.

19. **Access**

Access to Aubrey Park property, including the baseball fields and restroom/snack shack, is limited to the Park's main entrance on Aubrey Street or the pedestrian walkway off Midland Road. There will be no private vehicle or pedestrian access from Sycamore Avenue for the purpose of participating in PGSL activities.

20. **Limitation of Use at Other Facilities**

PGSL may not utilize Old Poway Park for league play. This includes player warm-up, practice and game play. Nothing in this section is intended to limit use of City Facilities by individual league members for non-league activities.

21. **Administrative Review and Amendment**

A. The Director of Community Services or designee and the President of the PGSL Board of Directors shall meet periodically to review and coordinate matters of mutual concern in the administration of the Agreement. The provisions of this Agreement may be amended or modified only by mutual consent and written agreement approved by the City Council and the PGSL Executive Board of Directors.

B. PGSL is required to provide detailed financial reports to City on an annual basis. Said reports shall be sent to the Director of Community Services

and include expenditures, revenues and projected cash flow, and be presented in a format that is satisfactory to the City. The reports shall be due on the 20th of the month that follows PGSL's budget cycle. PGSL shall allow the City to inspect its financial reports, upon the City's request, including income and expense statements, bank records, audits, and a balance sheet including but not limited to any documentation the City deems necessary.

- C. An annual review to determine the impact of this Agreement to the City's budget shall take place prior to the City's budget review process to enable both parties to consider costs of operation and maintenance and to propose the necessary budget adjustments for the new fiscal year.

22. **Indemnification**

- A. PGSL shall hold harmless, defend, and indemnify City, members of the City Council, and its officers, employees, and agents from any and all losses, demands, damages (including costs and attorney's fees), or causes of action related to any injury to property or person or any other claim which is alleged to have arisen from PGSL use of the facilities subject to this Agreement.
- B. The City shall hold harmless, defend, and indemnify PGSL, members of its governing board, and its officers, employees, and agents from any and all losses, demands, damages (including costs and attorney's fees), or causes of action related to any injury to property or person or any other claim which is alleged to have arisen from City's use of the facilities subject to this Agreement.

23. **Insurance**

During the term of this Agreement, PGSL shall obtain and maintain in full force and effect the following insurance coverage:

- A. **Liability Insurance:** PGSL shall carry property damage and public liability insurance by an insurer acceptable to the City that covers the areas and activities set forth in this Agreement under their insurance program, which shall have limits of up to \$1,000,000 each occurrence with an annual limitation of \$2,000,000. PGSL shall add the City, its respective elected officials, officers, employees, agents and representatives as an additional insured to its policies and provide the City an endorsement to that effect.
- B. **Workers' Compensation Insurance:** In connection with the performance of this Agreement by PGSL, PGSL shall provide full workers' compensation insurance for its employees or contract employees as required by the

Workers' Compensation Act. The City shall have workers' compensation insurance for its employees or contract employees of the City.

- C. Certification of Insurance: PGSL shall deliver to the City certificates of insurance which shall provide that no cancellation, major change in coverage, or non-renewal will be made during the term of this Agreement, without thirty (30) days written notice to the City prior to the effective date of such cancellation, change in coverage, or non-renewal.

24. **Conditional Use Permit**

This Agreement supplements but does not supercede any Conditional Use Permit granted to PGSL by the City for use of the APSF.

25. **Partial Invalidity**

If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to person or circumstances other than those as to which is it invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent by law.

IN WITNESS WHEREOF, the parties hereto have set their hands on the date first set above written.

City of Poway

Poway Girls Softball League

James L. Bowersox, City Manager

Henry Ferriss, President

ATTEST:

L. Diane Shea, City Clerk

APPROVED AS TO FORM AND LEGALITY:

Tamara A. Smith, City Attorney

ATTACHMENT 1