



CITY OF MARTINEZ

TO: Parks, Recreation, Marina, Cultural Commission
FROM: Mitch Austin, Contract Recreation Manager
SUBJECT: Revised Agreement for the Martinez Bocce Federation Use of Bocce Complex
DATE: August 16, 2012

RECOMMENDATION:

Review attached use agreement between the Martinez Bocce Federation and the City and recommend approval to the City Council.

BACKGROUND

The Martinez Bocce Federation (MBF) made a request to revise the agreement they had with the City for use of the Bocce complex at Waterfront Park. The current agreement was in its second 10 year term. The request was made due to issues the group encountered regarding the enforcement of the scheduled court use they were granted in the agreement. On a couple occasions people refused to leave before scheduled games. The agreement was not worded in a manner it could be enforced by Police. The City agreed to revise the agreement and worked with the Park Subcommittee to review the current agreement and bring it up to date.

The attached agreement has been thoroughly vetted by MBF and the Parks Subcommittee. The MBF Board voted unanimously to support the changes contained in the agreement which included:

- Restructuring the use fee and going to a per player calculation versus a flat \$2,000 fee
- A per player fee of \$3.00 per player stepped up over three years, which will triple the amount paid to the City
- An escalator that after year three is tied to the increases in the Youth Group Per Player fee
- Scheduling protocols with the City
- Updated insurance amount of \$2,000,000
- Requires the group to remain in good standing as a non-profit with regulating agencies
- Opt out without cause, as the City does not own the land and the group is a sub lessee
- A ten year term with an option to renew for ten years
- Process and protocols for gaining approvals to alter the facility or add new amenities

Staff recommends that the PRMCC review the attached agreement and recommend approval to the City Council.

**CITY OF MARTINEZ AND
MARTINEZ BOCCE FEDERATION**

FACILITY USE AGREEMENT FOR BOCCE COURT COMPLEX AT WATERFRONT PARK

This Agreement of _____ 2012, is entered into between the City of Martinez, a Municipal Corporation, hereinafter known as the "City", and the Martinez Bocce Federation, hereinafter known as "Federation".

- A. The City leases property from the East Bay Regional Park District to provide a City operated park known as Waterfront Park which is contained within the lands held in trust from the State of California by the East Bay Regional Park District known as Shoreline Regional Park.
- B. The City wishes to sublease a portion of Waterfront Park known as the Bocce Court Complex shown in Exhibit 1 to the Federation.
- C. The Federation has contributed over \$250,000 in construction, maintenance and improvements to the Bocce Court Complex.
- D. The Federation has leased this area from the City since 1985 and has made substantial improvements over the years to the facilities.
- E. The Federation which has been in existence since its inception in 1974; has provided recreation and enjoyment of the Bocce Courts for thousands of people in Martinez and the region.
- F. In February 2012, the Federation requested a revision of the use agreement executed with the City in January 1998 which had an initial term of (10) years and a renewal clause for an additional (10) years.
- G. The City agreed to work on a revised agreement to bring the document up to date and provide an improved and more comprehensive lease agreement for both parties.
- H. The City owns fifteen bocce courts in an area called the Bocce Court Complex located within Waterfront Park which exists for the purpose of promoting the social and physical development and interaction through recreational play.

- I. City desires to promote recreational opportunity for the health and welfare of its citizens and, therefore, City agrees to allow the Federation to utilize the Bocce Court Complex, and Federation agrees to use said complex under the following conditions and considerations:

1.0 Term: The term of this agreement is ten (10) years from the date specified above, and the Federation shall have the option of renewing this agreement for an additional ten (10) years under the same terms and conditions. To exercise the (10) year renewal, the Federation must send a letter to the City from the Federation Commissioner requesting renewal of the agreement 6 months prior to the expiration of the agreement.

2.0 Federation's Duties: Federation agrees:

2.1 To promote, organize, and conduct bocce tournaments, leagues, and bocce related social activities for any person who wishes to engage in such activities as long as such persons are willing to abide by the reasonable rules of the Federation.

2.2 To adhere to the City's policies regarding discrimination. Which include and are not limited to:

Do not discriminate against any person on the basis of race, religion, national origin, or sex in its performance of the obligations or its exercise of the privileges provided herein.

2.3 To maintain the Bocce Court Complex at the level of City standards for park areas and coordinate maintenance activities with the Public Works Department.

A. Note: The City shall provide maintenance of the Bocce Court Complex commensurate with the maintenance practices of Waterfront Park.

2.4 If Federation employs any persons in connection with the performance of this contract, such persons shall be fully insured as required by the provisions of the Labor Code of the State of California relating to Workers' Compensation Insurance, and the Federation shall hold the City free and harmless from all liability from any cause that may arise by reason of the injuries to any employee of the Federation who are injured while performing any work of labor necessary to carry out the provisions of this Contract.

2.5 The City recognizes that the Federation is unique in the area of

community based recreational activities. City acknowledges that contributions of over \$250,000.00 for the construction, maintenance and improvement of the Bocce Complex, all to the benefit of Shoreline Park, and has produced a significant degree of good will for the City. In acknowledgment of this contribution and the continued care of the facility including addressing vandalism, justifies a reduced fee for use of the City facility as follows:

A. The Federation agrees to pay the City an annual fee of \$3 per player- which may be adjusted over the course of the agreement for the use of the Waterfront Park Bocce Court Facility area and for the cost of services the City currently provides (restrooms, electricity, water and garbage collection) and any additional services they may provide in the future.

i. The change in fee from a stipend to a per player rate will begin will be incremental as follows:

2013 season - \$1.50 per player

2014 season \$2.25 per player

2015 season - \$3.00 per player

Each subsequent season after 2015, changes in rate will be adjusted with the percent change in the Youth Group Athletic Field User Fee. If there is no change in the Youth Group Athletic Field User Fee, then the rate remains the same as the previous year's per player rate.

B. If during the life of this agreement the City's financial situation should significantly improve and the Youth Group Athletic Field User Fee is decreased or eliminated for a fiscal year the MBF will be reduced the percentage the fee goes down and if the fee is suspended then the MBF's fee will also be suspended for the fiscal year(s) the Youth Group Athletic Field User Fee is suspended.

2.6 Maintain 501(C) status in "good standing" with the State and Federal government.

3.0 Scheduling and Use of Bocce Complex: The Federation will have "priority use" of the Bocce Complex as described in 3.1. The Federation will coordinate the scheduled use of the Bocce Complex for use by the public. "Priority Use" is defined as follows: The only authorized user; no use by the public of the courts shall be permitted during said days and times. This use

is enforceable per the municipal code 8.24.120.

3.1 Federation activities take place/are scheduled April 1st through October 31st of each year. The Martinez Bocce Federation has reserved use of all the bocce courts during this time as follows:

Hours of league play will be as follows:

- Sunday: 2:00pm - 9:00pm
- Monday - Friday: 5:00pm - 11:00pm
- Thursday: 9:00am - 1:00pm
- Saturday: Will be used for make-up games, tournaments, play-offs and scheduled special events, the hours and dates of use for these activities will be posted at the Bocce Court Complex. MBF will not unreasonably hold reservation for court time; all unused courts will be made available to the public for public casual or scheduled use.
- A schedule will be provided to the Recreation Division for issuance of a City Use permit that the MBF will post in a visible location at the complex; changes to such posts will be included in the monthly scheduling update by the first of the month, the City will be notified directly of any changes that occur in that month after the posted schedule for that month.

Public use must cease one (1) hour prior to the start of league play. Public play will not be allowed on the courts that are designated with an orange cone. These courts have been newly groomed for league play. This use is enforceable per the municipal code 8.24.120.

3.2 Reserved use by the public will be coordinated by the Federation who will maintain a master calendar of organized use of the courts by the Federation and the public. The Federation will submit to the City user information to gain final approval for reserved use by groups other than the Federation or individuals for reserved use of the courts. This may include the submission of a Special Event Permit to the City if the use triggers the criterion for a Special Events Permit as deemed by the City.

3.3 The Federation will disclose to the public that they can use the courts at no cost and will be placed on the Federation calendar of use for any organized events. They can also give the option of renting equipment to the public to support the use of the Bocce Complex. The Federation may charge a fee for use of the Federation owned equipment, but not for the reserved use of the courts themselves.

3.4 To schedule programs and activities with the Leisure Services Department so as to avoid conflicts with other City programs or park use. Schedules of basic activity will be

presented at the City's Leisure Services Department no later than April 10th of each year.

4.0 Alterations and Improvements: Any improvements or modifications by the Federation to the Bocce Complex must be approved by the East Bay Regional Parks and City before installation of the improvement(s). The Federation must use the steps listed below for gaining approvals to make modifications to the Bocce Complex.

- A. First meet with City staff to determine project feasibility and adherence to City construction standards.
- B. Gain approval from the East Bay Regional Park District, Board of Directors
- C. Project reviewed by the Parks, Recreation, Marina and Cultural Commission (PRMCC) for comment and recommendation to the City Council.
- D. City Council review and approval

5.0 Insurance, Indemnification and Hold Harmless:

5.1 To indemnify, defend and save harmless City, its officers, agents and employees from and against any and all claims, demands, losses, defense costs, attorney's fees or liability of any kind or nature which City, its officer, agents and employees may sustain or incur or which may be assessed by any person, including Federation, for injury to or death of persons or damage to property, however arising, connected with actions, obligations, etc. of Federation, its agents and employees, under the terms of this contract excepting only liability arising out of the sole negligence or willful misconduct of City.

5.2 To assume all responsibility for damages to property or injuries to persons directly or indirectly caused by services or equipment provided by the Federation furnished under the contract or the condition of the Bocce Court Complex. Federation shall take out and maintain, during the life of the contract, such public liability and property damage insurance in the amount of \$2,000,000 satisfactory in form to the City and with the City added as an additional named insured, as shall protect Federation and City from claims and damages or personal injury, including accidental death, as well as claims for property damage which may arise from or out of this contract, whether by Federation, its subcontractors or anyone directly or indirectly employed by Federation.

A. Each such policy of insurance shall be endorsed to provide; "It is agreed that any insurance maintained by the City of Martinez shall apply in excess and not

contribute with insurance provided by this policy.” It is further agreed that the coverage afforded shall apply as if separate policies were issued to each (cross liability).

B. “All rights or subrogation are hereby waived against the City of Martinez and members of its City Council and elective or appointive officers or employees, when acting within the scope of their employment or appointment.

C. “This insurance shall not be canceled, limited or non-renewed until after thirty (30) days written notice has been given to the City of Martinez.

a) A Certificate of Insurance is to be submitted to the City of Martinez annually. The Certificate must be signed by the insurance companies named and properly notarized and be on file with City prior to any formal competition.

b) A properly executed endorsement for the additional coverage and conditions is required and must be signed by the insurance companies named.

6.0 Reporting: The Federation agrees to make an annual report to the Park, Recreation, Marina, and Cultural Commission by April 10th of each year. For the purpose of providing a comprehensive league status report, the Federation will meet with the Community Services Director or his/her designee to discuss the form and content of the report to be presented. The report shall address, but not be limited to:

- Participation summary; number of players, teams, league games and tournaments
- Number of reserved uses by the public and other user groups and number of people served
- Budget summary showing operational expenses, all revenue sources and repairs and vandalism expenses

7.0 Authority: Federation represents that it has, by properly and duly adopted resolution, authorized the signing of this contract and authorized the person named below to sign on its behalf.

8.0 Termination: Either party may terminate this Agreement by giving the other party written notice of termination thirty (30) days in advance of the date of the desired termination.

9.0 Notices: All notices which may be proper or necessary for the parties hereto to serve on each other, in the case of the City, may be served effectually upon the City by

delivering the same in writing to the Community Services Director, City Hall, 525 Henrietta Street, Martinez, CA 94553 and in the case of Federation, may be served effectually upon the Federation by the United States Postal Service to Martinez Bocce Federation, P.O. Box 642, MARTINEZ, CA 94553.

10.0 Assignments: This agreement may not be assigned by Federation without the prior written consent of City.

11.0 Attorney's Fees: In the event litigation is initiated to enforce or interpret the Agreement, the prevailing party shall be entitled to recover its attorney fees and costs, including witness and expert fees.

12.0 Entire Agreement: This agreement contains the sole and only agreement of the parties. Any prior agreements, promises, negotiations, or representations not expressly set forth in this agreement are of no force or effect.

13.0 Amendment: This agreement may be opened for amendment by either party by providing a written request and with consent to amend by both parties.. Amendments will be reviewed by the Parks, Recreation, Marina, Cultural Commission (PRMCC) and approval or denial of amendments given by the City Council.

CITY OF MARTINEZ

MARTINEZ BOCCE FEDERATION

By: _____ / _____ / _____ By: _____ / _____ / _____

City Manager

Federation Commissioner

Attachment: Exhibit 1, Map of Bocce Court Complex