

14-1286e

MEMORANDUM OF UNDERSTANDING
BERNAL COMMUNITY PARK, PHASE II, LIGHTED MULTIPURPOSE SPORTS FIELDS

This MEMORANDUM OF UNDERSTANDING (MOU), is made and entered into as of this 2nd day of December, 2014 by and among the Ballistic United Soccer Club, Pleasanton RAGE Girls Soccer Club, Pleasanton Adult Sunday Soccer, Pleasanton American Little League, Pleasanton Foothill Little League, Pleasanton National Little League, Pleasanton Girls Softball League, Pleasanton Junior Football League, Pleasanton Lacrosse Club and Pleasanton Pride Girls Lacrosse Club (collectively referred to as "Sports Groups") and the City of Pleasanton (City).

RECITALS

The City anticipates constructing the 16-acre Bernal Community Park, Phase II, Multi-purpose Lighted Sports Fields (Bernal Park Phase II) that will include three lighted multi-purpose sports fields with synthetic turf, parking, children's play area, equipment storage, and a restroom available for year round play as part of the City's Bernal Community Park.

Due to the complexity, size and cost of Bernal Park Phase II, the City and the Sports Groups have agreed to work collaboratively toward obtaining private funds to assure that Bernal Park Phase II is constructed in a timely manner for overall benefit of the community.

The collaboration between the City and the Sports Groups has resulted in the Sports Groups agreeing to conduct a fundraising campaign for the purpose of raising private funds to be applied to offset the construction cost of the Bernal Park Phase II. Further, in the event the Sports Groups are unable to raise the agreed to amount of funds, the Sports Groups agree to make annual payments to the City for a period of up to ten years as detailed in this MOU.

The City and the Sports Groups agree that the fundraising campaign is an integral component of the Bernal Community Park Phase II financing plan and that the commitment by the Sports Groups to coordinate the campaign to raise private funds is enabling the City to accelerate project design, construction and funding. Without a fundraising commitment from the Sports Groups, the City would be forced to delay construction of Bernal Park Phase II.

Concurrent with the Bernal Park Phase II, the City is developing the Oak Woodland, which will be a 38-acre natural open space area with trails and natural features located immediately adjacent to the Bernal Park Phase II.

NOW THEREFORE, the Sports Groups and the City hereby agree that the aforementioned recitals are true and correct and further agree as follows:

I. Fundraising Campaign and City Assistance

1. The City will actively pursue the development of Bernal Community Park, Phase II and the Oak Woodland
 - A. The City's current schedule anticipates circulating a request for construction bids in fall 2014, commencement of construction in spring 2015, and park opening in fall 2016. While proceeds from fundraising are necessary component of project funding, the City is prepared to award the construction contract utilizing internal loans from various City financial resources. The loan will be repaid from funds generated from by the Sports Groups fundraising effort and, if necessary, from user fees as detailed later in this MOU.
2. The City Will assist the Sports Groups in facilitation of the Fundraising Campaign as specified herein.
3. The purpose of the fundraising campaign is to raise an estimated \$1.88 million in private funds to be donated to the City to offset costs related to developing Bernal Community Park, Phase II. The \$1,880,000 is based upon the difference, or gap, between the City's commitment to allocate \$10,675,000 toward the development of the Bernal Community Park, Phase II and the estimated project cost of \$12,559,000. (Including the Oak Woodland, total project cost is estimated at \$16,500,000) Because the project cost is based on the project architect's estimate, the final construction bids may impact the actual cost of the project resulting in a gap that is more or less than the estimated \$1.88 million. If the project cost is more or less than the estimated \$12,559,000, the City will adjust the fundraising goal accordingly. Notwithstanding final project cost, the total fundraising commitment from the Sports Groups will not exceed \$2 million.
4. The scope and terms of the fundraising campaign, including terms and conditions for donor name recognition and sponsorship (including naming policies containing guidelines) shall be as specified herein.
5. Gifts to the City are considered charitable contributions and are tax deductible so long as the gift is entirely for public purposes. As such, the City will provide the Sports Groups, for delivery to qualified donors, the appropriate documentation specifying that its tax exempt status.
6. The fund raising campaign will include donations and major sponsorships that allow for various forms of name recognition. Donations provide name recognition that would include a size appropriate display of the donor's name and if requested, the words "in memory of" for the life of a specific item such as a bench, table, bleacher, play equipment, etc. Major sponsorship recognition is anticipated for larger contributions and will include name recognition for a specific period of time on highly visible items such as the score board, field entrances, field names, etc.

II. Fundraising Campaign Sponsorship/Donor Policies

1. Major sponsorship and/or donations shall not confer on any person any direct or implied control, authority or preference concerning Bernal Community Park programming, use or policy which shall reside solely with the City of Pleasanton unless otherwise authorized in writing by the City.
2. Major sponsorship and/or donations do not suggest endorsement of the sponsors/donor's goods or services.
3. The placement of any sponsor/donor recognition shall be an appropriate color and size and shall not detract from or interfere with a facility's aesthetics, detract from a visitors' experience or expectations, or in the event of a sports field, hinder its playability. The City Manager will have final approval on all naming including wording on plaques, press releases, and all matters related to program naming.
4. Major sponsorship name recognition will be limited to the shortest name possible.
5. Naming recognition for major sponsorships from a Pleasanton based youth sports organizations is permitted but shall not include facility or field naming.
6. Major Sponsorships will be for a limited predetermined period of time memorialized by execution of a City Sponsorship agreement. The term shall range from one to ten years.
7. Donations, including name recognition, for specific pieces of park furnishings and equipment as detailed in Exhibit A, shall be for the lifetime of the product. At the time the City replaces the product, it may solicit additional donations.
8. Major Sponsorship and/or donations will be provided consistent with the City's approved fundraising campaign unless otherwise authorized in writing by the City. However, nothing limits the individual from making a donation to the Bernal Community Park, Phase II of any amount, without name recognition.
9. The City Council shall delegate to the City Manager the authority to consider and determine if specific donations of in-kind services or materials may be considered for naming recognition.
10. To avoid confusion regarding ownership of the Bernal Community Park, any public news release or advertising conducted by a major sponsor/donor for its contributions or events shall include the phrase "City of Pleasanton's Bernal Community Park." An example would be the "Corporation sponsors the "X" field at the City of Pleasanton's Bernal Community Park."
11. The City reserves the right to reject any donation if it determines the sponsor's intended purpose or business activity is inconsistent with City adopted values, mission, and/or intended use of the Bernal Community Park.

III. Sports Groups Fundraising

1. The Sports Groups will actively pursue a fundraising campaign for the Bernal Community Park and the City will support the campaign by supplying the Sports Groups with the forms and processes necessary to track and account for all funds raised. All donations collected by the Sports Groups for the Bernal Community Park shall be made payable directly to the City. At the time the Sports Groups provide the appropriate City forms and donations, the City will issue a letter to each donor thanking it for the donation and acknowledging the tax exempt status of the donation to use in filing their annual income tax returns. Etc.
2. In the event that within 90 days after the opening of the Bernal Community Park, Phase II the Sports Groups has not raised \$1.88 million (or other amount based on project construction bids), then each participating sports group will be allocated a portion of the outstanding fundraising balance to determine its share of the amount which is due prior to ten years after the date of the Park's opening (as determined starting from the date of the City Council action accepting the park improvements).
3. Allocation of the outstanding balance will be determined by calculating a per player amount and applying that amount to the number of players in each participating sports group. To complete the calculation, the Sports Groups will be required to provide the City with the number of current players participating in its group as of July 1 of every other year, no later than January 30 of every other year. The City will prepare the required calculation and send each sports group an invoice in March of each year. An example is as follows:

\$880,000 (Total outstanding balance 90 days after opening of the Bernal Community Park, Phase II) divided by 7,447 (Current number of Sports Groups players as of July 1, of the first year after the opening) equals an allocation of \$118 per player. Assuming a participating sports group has 800 players; its share of the outstanding balance to be paid off in full within ten years would be \$94,400 (800 players X \$118 per player). The Sports Groups will be required to make a minimum annual payment in an amount equal to the outstanding balance divided by the number of years remaining in the ten year payback period to the City annually on June 1. In this case that payment will be \$9,440 annually for ten years, or \$11.80 per player per year (\$94,440 / 800 players = \$118 / 10 years).

4. Funds for the annual payment will be obtained either from a field usage charge or a per player fee as agreed to mutually by the Sports Groups and the City or upon City approval, an additional fundraising campaign. Any money raised by the Sports Groups after the opening of Bernal Community Park Phase II, will be used to offset the total outstanding balance. In the event the fundraising campaign results in the receipt of private funds that are in excess of the total Sports Groups fundraising commitment, the funds will be applied to additional Bernal Community Park improvements. The City will consult with the Sports Groups to identify the improvements subject to approval by the City Council.

5. The Sports Groups shall at all times conduct the fundraising campaign consistent with the fund raising terms of this agreement and as may be modified in writing by the City.
6. All funds collected through the fundraising campaign will be delivered to the City. The City will require all donations to be made to the City of Pleasanton utilizing City provided forms.
7. All Bernal Community Park, Phase I and Phase II field assignments will be consistent with the City's current Field Allocation Policy.
8. To assist with overall fundraising coordination, the City and the Sports Groups will establish a Steering Committee that will meet as needed, or no less than quarterly, throughout the fundraising campaign to discuss progress. The Steering Committee will include a representative from each participating sports organization and two representatives from the City. The primary purpose of the Steering Committee will be to resolve matters related to donations, provide guidance regarding the fundraising campaign, approve modifications to donor requirements for name recognition, and to provide updates regarding project construction and the fundraising effort.
9. The fundraising campaign will begin concurrent with the awarding of the Bernal Park Phase II construction contract unless approved otherwise by the City.
10. In recognition of the Sports Groups involvement in the fundraising campaign, the City agrees that during the term of ten years after the Park's opening, it will not assess field usage fees for the Sports Groups, or for visiting teams participating in a tournament sponsored by a participating Sports Group. This non assessment does not include the current agreement related to the Pleasanton Unified School District supplemental field maintenance fee.
11. This MOU will not prevent an individual sport group from separate fundraising not related to the Bernal Park Phase II improvements or from using registration fees for the purpose of purchasing equipment or facilities (batting cage, pitching machine, etc.) that could be used at the Bernal Park or other City Parks. The City will work cooperatively with the Sports Groups to store and locate this equipment/ facilities.

IV. Miscellaneous

- 1. NO ASSIGNMENT.** Neither party shall assign this Agreement, or any of the benefits or obligations herein.
- 2. ENTIRE AGREEMENT; MODIFICATION.** This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to Any modification to this Agreement must be in writing and signed by all parties.


3. AMENDMENT. This Agreement may be amended in writing signed by all parties.
IN WITNESS THEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF PLEASANTON
By: 
Nelson Fialho, City Manager

APPROVED AS TO FORM

Jonathan Lowell, City Attorney of Pleasanton

SPORTS GROUPS


Ballistic United Soccer Club

Pleasanton RAGE Girls Soccer Club


Pleasanton American Little League


Pleasanton Foothill Little League


Pleasanton National Little League


Pleasanton Girls Softball League

Pleasanton Junior Football League

Pleasanton Lacrosse Club


Pleasanton Pride Girls Lacrosse Club

(Tentative Agreement Subject to City Council Approval)

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CITY OF PLEASANTON

By: _____
Nelson Fialho, City Manager

APPROVED AS TO FORM

Jonathan Lowell, City Attorney of Pleasanton

SPORTS GROUPS

Ballistic United Soccer Club

Pleasanton RAGE Girls Soccer Club

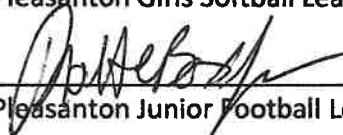
Pleasanton Adult Sunday Soccer

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