

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Parks and Recreation

BOARD AGENDA # *B-3

Urgent

Routine

AGENDA DATE February 25, 2014

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Authorize the Director of Parks and Recreation to Enter into and Sign an Agreement with Salida Little League for the Use of the Concession and Restroom Facility Located at Salida Park

STAFF RECOMMENDATIONS:

1. Authorize the Director of Parks and Recreation, or designee, to enter into and sign an agreement with Salida Little League for the use of the concession and restroom facility located at Salida Park.
2. Waive the Exclusive Use Fee for the concession and restroom in exchange for routine maintenance, cleaning and repairs being performed to the concession and restrooms by the Salida Little League.
3. Authorize the Director of Parks and Recreation, or designee, to sign any amendments associated with the Agreement.

FISCAL IMPACT:

By waiving the Exclusive Use Fee of \$100 for each day of use, the Salida Little League has agreed to perform routine maintenance and repairs on the concession and restroom facility. This will result in a reduction of staff time at Salida Park on Broadway.

BOARD ACTION AS FOLLOWS:

No. 2014-70

On motion of Supervisor Withrow, Seconded by Supervisor O'Brien
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST:

CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Director of Parks and Recreation to Enter into and Sign an Agreement with Salida Little League for the Use of the Concession and Restroom Facility Located at Salida Park

DISCUSSION:

The Department of Parks and Recreation seeks approval to enter into a new five-year agreement with the Salida Little League for the use of the concession and restroom facility, which is contained in one building, at Salida Park, located on Broadway Street in the unincorporated community of Salida. The agreement will allow Salida Little League priority to reserve the concession stand during the 2014-2019 baseball seasons.

Salida Little League is the only chartered Little League between Manteca and Turlock and provides the youth of Stanislaus County an opportunity to participate in organized sporting events while offering a positive athletic experience.

In March of 2004, the Department of Parks and Recreation entered into a five-year agreement with the Salida Little League for the use of the concession and restroom facility at Salida Park for the 2004-2009 baseball seasons. As a part of that agreement, the Salida Little League made improvements to the concession and restroom facility. The improvements included installing new tile, new plumbing fixtures, and ensuring that the restroom aligned with the requirements of the Americans with Disabilities Act. The agreement was extended in March 2009 for an additional five years and is set to expire in March of 2014.

Under this new agreement (Attachment A), Salida Little League will perform routine cleaning and maintenance of the concession and restroom facility during its 2014-2019 baseball seasons. This would include, but is not limited to, cleaning the restrooms and concession facility after each event, and trash removal and litter clean up in the surrounding areas. The baseball season begins in March and runs through June of each year. Any repairs or structural issues needed for the concession and restroom facility must be approved in advance by the Department of Parks and Recreation, before the Salida Little League can perform the repair.

POLICY ISSUE:

The recommended action supports the Board's priorities of Effective Partnerships and A Healthy Community by continuing a partnership with an organization who shares common community goals and providing recreational facilities for a healthier community.

STAFFING IMPACTS:

By waiving the Exclusive Use Fee of \$100 for each day of use, the Department will be saving approximately 4 hours of staff time per week, which equates to 52 hours of staff time annually.

CONTACT PERSON:

Jami Aggers, Director of Parks and Recreation

Telephone: 209-525-6770



DEPARTMENT OF PARKS AND RECREATION

3800 Cornucopia Way, Suite C,

Modesto, Ca 95358-9492

Phone: (209) 525-6700

Fax: (209) 525-6774

AGREEMENT

This Agreement is entered into on March 3, 2014, by and between the County of Stanislaus, a political subdivision of the State of California ("County") and Salida Little League, a non-profit organization.

RECITALS

WHEREAS, the County owns the downtown Salida Park on Broadway Street, Salida, California (the "Park") and the Park is maintained by the Stanislaus County Parks and Recreation Department, and

WHEREAS, the Park has a concession stand and restrooms for use during Park events; and

WHEREAS, Salida Little League, affiliated with Little League Incorporated, conducts youth baseball events at the baseball field near the Park and desires to have priority scheduling for exclusive use of the concession stand and use of the restrooms during such baseball events; and

WHEREAS, pursuant to Government Code section 25536 (a), and in consideration for the promise of Salida Little League to assist in the cleaning, maintenance and repair of the concession stand and restrooms as set forth below, the County is willing to authorize Salida Little League priority scheduling and exclusive use of the concession stand and use of the restrooms during Salida Little League's baseball events;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereto agree as follow:

TERMS AND CONDITIONS

1 Priority Scheduling and Use of Concession Stand and Restrooms

1.1 The County hereby agrees to give Salida Little League, during the term of this Agreement, priority rights to schedule exclusive use of the concession stand and use of the restrooms at the downtown Salida Park on Broadway Street, Salida, California, for Salida Little League's baseball events. It is understood that the rights granted to Salida Little League are not exclusive of the County and shall be subordinate to the use of the Park by the County for any present and future purpose. Salida Little League agrees to present its schedule request to the County annually no later than January 10th. Requests by Salida Little League for use of the concession stand and restrooms, other than as presented in its annual schedule, shall be dealt with on a first come, first served basis.

2 Term

2.1 The initial term of this license shall be for the period of five (5) years, commencing at 12:00 a.m. on March 10, 2014, and terminating at 11:59 p.m. on March 9, 2019, unless terminated sooner as provided in this Agreement.

2.2 The parties may mutually agree to extend the term of this Agreement for an additional period of five (5) years, commencing on expiration of the original term specified in Section 2.1 of this Agreement, provided Salida Little League has fully and faithfully performed all the terms, covenants, and conditions of this Agreement for the initial term. Unless otherwise amended, the extended term of this Agreement shall be subject to the same terms and conditions as are contained in this Agreement.

2.3 This Agreement may be relinquished by Salida Little League at any time by giving at least 60 days prior written notice to the County. The County may revoke this Agreement at any time for cause and upon 90-day written notice without cause.

3 Maintenance of Concession Stand and Restrooms

3.1 In exchange for the right to priority scheduling of exclusive use of the concession stand and use of the restrooms during Salida Little League's baseball events, Salida Little League agrees to, at the sole cost of Salida Little League, perform routine cleaning and maintenance to the concession stand and restrooms at the Park. Any repairs or structural issues needed for the restrooms and/or the concession stand must be approved by Parks and Recreation prior to commencement of work.

4 Improvements and/or Personal Property

4.1 All improvements and/or personal property placed in the concession stand by Salida Little League shall remain the personal property of Salida Little League so long as this Agreement is in effect. Upon termination of this Agreement, either through expiration or earlier termination as herein provided, any and all such improvements affixed to the premises shall become and remain the property of the County free and clear of all costs to the County.

4.2 The County may require the removal at any time of all or any part of any improvements constructed, made or installed without the required prior consent of County. Unless otherwise agreed in writing, the County may require that any or all improvements be removed by the expiration or early termination of this Agreement, notwithstanding the installation may have been consented to by the County. Any other improvement placed upon the Premises by Salida Little League and not permanently affixed to the Premises, shall be removed by Salida Little League within 30 days after termination of this Agreement, but if not removed within that period, such improvements shall be treated as abandoned property as provided herein.

4.3 Upon termination of the Agreement, personal property belonging to Salida Little League and left on the premises, including any improvements, shall be kept for a reasonable time by the County, but in no event longer than 15 days after the County gives Salida Little League written notice to remove such property from the Premises, after which time, if not so removed, it may be treated by the County as abandoned property and may be disposed of by any means deemed appropriate by the County, including sale or disposal at a scrapper or landfill. Such procedure is in lieu of any process prescribed by law, including the provisions of Chapter 5 (commencing with Section 1980) of Title 5, Part 4, Division 3 of the California Civil Code, and Salida Little League specifically waives any rights under said Chapter 5.

5 Use and Furnishings of the Concession Stand

5.1 Any personal property, including cooking, drink and refreshment equipment, furnishings, and/or supplies that are placed in the concession stand by Salida Little League may, at the sole discretion of Salida Little League, be removed by Salida Little League after each use of the concession the stand.

5.2 It is specifically understood that the concession stand may be used by other members of the public, with approval of the Department of Parks and Recreation, when not used by Salida Little League for baseball events.

5.3 Any personal property, including cooking, drink and refreshment equipment, furnishings, and/or supplies left in the concession stand between Salida Little League baseball events may be used by other members of the public that are authorized by the Department of Parks and Recreation to use the concession stand. Salida Little League waives any claim against the County or its officers, employees of agents, and agrees to hold harmless the same for any loss of, or damage to, such personal property.

5.4 Salida Little League agrees to keep the concession stand in a clean and sanitary manner during authorized use and shall comply with all applicable laws, ordinances, rules, and regulations enacted or promulgated by any public or governmental authority or agency having jurisdiction over the premises or activities conducted on the premises.

5.5 Salida Little League shall not use the premises or permit the premises to be used by others in any manner that creates waste or nuisance, damages the premises or adjoining property, or unreasonably disturbs other Park users. Within the limits of its legal powers, Salida Little League shall protect against pollution of waters surrounding the Park and adjacent to the premises, and neither Salida Little League nor any of its officers, agents, representatives or volunteers shall discharge waste or effluent onto the premises in any manner that might contaminate water sources or otherwise constitute a nuisance.

5.6 The Premises shall not be used or permitted by Salida Little League to be used in violation of any law or ordinance or for any unlawful purpose.

6 Electricity

6.1 In exchange for the right to priority scheduling of exclusive use of the concession stand and restrooms during Salida Little League's baseball events, Salida Little League agrees to maintain the electrical supply service contract to the park in its name, and to pay for all electrical service to the park. The parties agree that the County shall have the right to use the electricity supplied to the park to operate the park's water irrigation system and that Salida Little League shall not shut off or cause to have shut off the electricity to the park, but shall allow the electrical meter to run throughout the year for this purpose.

7 Insurance and Indemnification

7.1 Salida Little League shall take out, and maintain during the term of this Agreement and any extended term of this Agreement, a comprehensive general liability insurance policy covering bodily injury, personal injury, and property damage with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Salida Little League under this Agreement, or the general aggregate limit shall be twice the required occurrence limit.

7.2 Salida Little League agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of Salida Little League's defense and indemnification obligations as set forth in this Agreement.

7.3 Salida Little League's insurance coverage shall be primary insurance regarding the acts and omissions of Salida Little League and its officers, agents, representatives and volunteers related to the acts contemplated by this Agreement. Any insurance or self-insurance maintained by the County or its officers and employees shall be excess of the Salida Little League's insurance and shall not contribute with Salida Little League's insurance.

7.4 At least 10 days prior to the date Salida Little League commences any activity contemplated by this Agreement, Salida Little League shall furnish County with certificates of insurance and applicable endorsements effecting coverage required by this Agreement. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

7.5 The limits of insurance described herein shall not limit the liability of Salida Little League.

7.6 To the fullest extent permitted by law, Salida Little League shall indemnify, hold harmless, and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with activities contemplated by this Agreement.

8 Assignment

8.1 The parties expressly agree that Salida Little League shall not assign, sublet, encumber or otherwise transfer its rights under this Agreement, or any right or interest in the premises, without prior written consent of the County, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of this Agreement or any interest therein without the County's written consent, either by voluntary or involuntary act of Salida Little League, or by operation of law or otherwise, shall, at the option of the County, terminate this Agreement. As a condition of assignment, the assignee shall execute an express written assumption of all the obligations of Salida Little League under this Agreement.

8.2 The County may accept performance of Salida Little League's obligations from any person other than Salida Little League pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment, nor the acceptance of any rent or performance of any obligation, shall constitute a waiver or estoppel of the County's right to exercise its remedies for the default or breach by Salida Little League of any of the terms, covenants, or conditions of this Agreement.

8.3 The consent of the County to any assignment shall not constitute a consent to any subsequent assignment by Salida Little League or to any subsequent or successive assignment by the assignee. However, the County may consent to subsequent assignments of this Agreement or any amendments or modifications thereto without notifying Salida Little League or anyone else liable under this Agreement and without obtaining their consent, and such action shall not relieve such persons from liability under this Agreement.

9 Miscellaneous Provisions

9.1 Notices. All notices permitted or required by this Agreement or by law to be served on or given to either party hereto by the other party, shall be in writing and shall be effective when personally delivered to the party to whom it is directed, or in lieu of personal service, when deposited in the United States mail addressed as follows, or any other address designated by the party:

To County:
Stanislaus County
Department of Parks and Recreation
3800 Cornucopia Way, Suite C
Modesto, CA 95358
Attn: Susan M. Garcia, C.P.M.

To Salida Little League:
Salida Little League
P.O. Box 513
Salida, CA 95368
Attn.: President

9.2 Waiver. Waiver of any default by either party to this Agreement shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provisions of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified or amended as provided herein.

9.3 Amendment. This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed by the President of Salida Little League and by the Director of the County Department of Parks and Recreation.

9.4 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

9.5 Advice of Attorney. Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

9.6 Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, and are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had, in fact, drafted this Agreement.


9.7 Governing Law and Venue. This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

COUNTY OF STANISLAUS
Department of Parks and Recreation

By: 
Jami Aggers
Director

SALIDA LITTLE LEAGUE

By: 
Brandt Evans
President

APPROVED AS TO FORM:
John P. Doering
County Counsel

By: 
Alice E. Mimms
Deputy County Counsel