

**FACILITY USE AND MANAGEMENT AGREEMENT
FOR THE ALBERT PARK BOCCE BALL COMPLEX**

This agreement is made and entered into this _____ day of _____, 2011, by and between the City of San Rafael, herein referred to as “City”, and the Marin Bocce Federation, a private, non-profit corporation herein referred to as “Federation”.

RECITALS

WHEREAS, the City, after significant community input, prepared a renovation plan for Albert Park in 1993, and

WHEREAS, as part of that renovation project, the Federation agreed to build six bocce ball courts at Albert Park; the construction of said courts, costing \$450,000.00, with little City expenditure, was completed in 1994 ; and

WHEREAS, on December 5, 1994, Federation, a non-profit organization promoting public participation in the play of bocce ball and the City, entered into a Facility Use and Management Agreement for the Use and Management of the Complex located in Albert Park; and

WHEREAS, two additional bocce courts were approved and installed in 1998, at a cost of \$200,000.00 borne by the Federation; and

WHEREAS, the City granted permission and the Federation received the appropriate permits to allow for beer and wine to be served on site in 1998; and

WHEREAS, improvements to the Complex were proposed by the Federation and approved by the City for, a restroom (1996), wrought iron fencing (1999), court repair (1990) landscape (2002), installed and paid for by the Federation between 1994 and 2005.

WHEREAS, following public hearing conducted in November and December 2004, the City’s Park and Recreation Commission recommended, and the City council approved, amendments to the Albert Park Master Plan to allow for the Federations reuse of the now vacant city property at 525 B Street and the City building located at 535 B Street; and

WHEREAS, on April 4, 2005, the City and the Federation entered into an Amended Facility Use and management Agreement for the Albert Park Bocce complex located at Albert Park, to enhance the recreation activities for the City’s citizens and to promote health, safety and welfare by encouraging greater public use of the Complex; and

WHEREAS, the building at 525 B Street, deemed unsafe and condemned by the City, was demolished in February of 2005; the Federation renovated the building at 535 B Street with two indoor Bocce Courts in 2007, and again with improvements to the interior, addition of office, seating, meeting and storage space in 2010; and

WHEREAS, the Federation has funded and installed over \$1.1 million in improvements to the Complex since 1993; and

WHEREAS, the City and the Federation desire to renew and extend the Agreement for the Use and Management of the Albert Park Bocce Complex, so as to continue to enhance the recreational activities for its citizens and to promote the general health, safety and welfare by encouraging the public use of the Complex.

NOW, THEREFORE, the City and Federation hereby agree as follows:

AGREEMENT

Section 1: The Complex.

This Agreement shall apply to the enclosed area in Albert Park containing eight bocce ball courts, one building, one building site with a formal rose garden and gazebo, two arbors, patio, restroom facilities, fountain, interior and exterior landscaping irrigation, fence and gates as is more specifically designated in Exhibit "A" attached hereto and incorporated herein (Complex). This definition of "Complex" may only be changed upon the parties' written amendment to this Agreement.

Section 2: Duties and Responsibilities of Federation.

2.1: Federation shall, during the term of this Agreement, maintain its status as a private, non-profit corporation pursuant to IRS Section 501(c)(3), or any subsequent regulation. Proof of status is included in Exhibit "B", attached and incorporated herein.

2.2: Federation shall routinely and regularly, at its sole expense and resources, manage and maintain Complex, and all its related equipment and furnishings, in accordance with the specifications and requirements enumerated in Exhibit "C", Maintenance and Repair Responsibilities for the Albert Park Bocce Court Complex, attached hereto and incorporated herein. Federation shall be responsible for property damage due to normal wear and tear, minor vandalism and graffiti. FEDERATION shall be responsible for the payment of all electric, natural gas (PG&E), garbage (MSS) and water (MMWD) utility charges generated by operation of the Complex.

2.3: Federation shall establish, organize, promote, conduct and supervise bocce ball leagues, lessons, tournaments, casual play for any member of the public who wishes to engage in such organized bocce ball activities. Federation shall not prevent

any member of the public from participating in any or all Federation activities, according to Federation policies for registration.

2.4: Federation shall develop reasonable rules and procedures for persons using Complex, subject to the review and approval of the Park and Recreation Commission and the Director of Community Services (Director). Such rules shall be in conformity with and shall not conflict with any other rules and regulations governing the use of the City's parks and facilities.

2.5: Federation shall, on February 1st of each year, provide the Director with a complete schedule of all Federation organized activities (leagues, lessons, and tournaments), which will require Federation's organized use of the Complex. Director shall coordinate City's programs and activities to avoid conflicts with Federation's activities. Changes to the submitted schedule of events shall be upon written notification and agreement of the parties.

2.6: Federation shall establish a reasonable fee schedule for persons participating in its organized activities (leagues, lessons, and tournaments), rental uses of the facilities, and fees for use of equipment, subject to the review and approval of the Director. This fee schedule shall be uniformly applied to all persons participating in Federation's organized activities. Federation shall not discriminate between Federation members and the public generally.

2.7: Federation shall be responsible for collection and disbursement of program and rental fees generated by Federation and its organized activities. The fees collected shall be used exclusively for Federation administration, programs, maintenance costs, and capital improvements. The City reserves the right to conduct City-organized bocce programs that compliment the Federation activities and schedule, at no cost to the City.

2.8: Federation shall provide monitors, attendants or other supervisory personnel for its programs and organized activities. Federation shall not be required to provide monitors, attendants, or other supervisory personnel for City-organized or non-Federation bocce programs.

2.9: The City permits the Federation and persons registered to participate in the Federation leagues and organized activities, to possess and consume beer and wine on the Complex. This permit is granted by the Director of Community Services as authorized by) section 8.18.030B of the San Rafael Municipal Code, This permit shall be in place for the term of this Agreement, subject to termination or suspension by the Director for violation of the terms and conditions of the permit.:

A. This permit shall expire with this Agreement

B. Possession and consumption of beer and wine shall only occur during Federation sponsored, organized and supervised activities, between the

hours of 10:00 a.m. and 10:30 p.m. and only within the Bocce Complex at Albert Park.

C. The Federation shall be responsible for compliance with any and all other federal, state, and local regulations regarding the possession and use of alcohol.

D. The Federation shall not sell or furnish alcoholic beverages, nor allow or permit participants to sell or furnish alcoholic beverages to any person at any time outside the Complex.

E. The Federation understands, acknowledges and agrees that this permit is revocable by the City at any time without cause, upon forty-eight (48) hour notice. This permit may be immediately and automatically revoked upon violation of any of the terms and conditions of this permit or upon any violation of law by the Federation or its participants.

F. Federation shall have a supervisor or manager or other responsible organization official at the Complex when the alcohol permitted under this permit is being possessed or consumed. Said official shall be responsible to monitoring conduct and shall immediately notify law enforcement should dangerous or unlawful conduct occur.

G. Federation shall notify in writing all registered participants in its organized activities as to the terms and conditions of this permit. Such writings shall include, but not be limited to notices posted at the Complex, and a statement of these terms and conditions shall be included in the Federation's Rules and Regulations.

2.10: Federation shall notify the Community Services Department at least 60 days in advance, of Federation events, programs or organized activities, involving more than 100 participants. In such cases, Federation shall, at its sole expense, prepare a parking plan for the Complex, Albert Park, and San Rafael Community Center for the dates affected. Said plan shall be provided to the City for review and approval. Federation shall at its sole expense, implement said plan.

2.11 The scheduling of competitive events at the Complex, where attendance is expected to exceed 300 persons per day, four hours per day, for a period of two or more consecutive days will require an events management plan approved by the City that addresses parking, traffic, and noise controls, security, impacts on the neighborhood, community and City functions , The primary purpose of this Agreement is to serve the citizens of San Rafael with recreational opportunities at the Complex. Functions at or uses of the Complex that serve players and organizations outside of San Rafael are considered a secondary priority.

2.12 City retains the right to approve or deny the use of the San Rafael Community Center Parking Lot for Federation programs, based on use schedule

2.13: Federation shall make the following improvements to the Complex:

A. Phase 1: Wrought iron fencing and landscaping of the style, type and materials consistent with those used throughout the Complex was installed and shall be maintained on the perimeter of the site to visually screen the area from the street. The area previously occupied by the 525 building may be used as a garden, social or picnic area. Structural improvements to the former 525B Street building site area or use of the area for other purposes will require the approval of the Parks and Recreation Commission and any applicable environmental and design review permits and building permits. The former 525 B Street building area shall be developed according to the conceptual plan approved by the Park and Recreation Commission July 19, 2007. Phase 1 was completed in 2006.

B. Phase 2: 535 B Street was renovated with seismic upgrades, new roofing and improvements that include two indoor bocce courts, Federation offices, conference room, restroom, and eating area pursuant to the design approved by the Parks and Recreation Commission, dated _____. Any additional modifications, renovations or additions must be approved by the Park and Recreation Commission and are subject to required environmental design, review permits and building permits.

C. Phase 3: Within the term of this agreement, the Federation shall conduct the planning process for possible future expansion of 535 B Street. The process shall include a site plan detailing improvements with a building program, financing strategy, and timeframe for construction. Such plans will be subject to all City reviews and requirements and approval of the Park and Recreation Commission, Design Review Board, Planning Commission and City Council.

D. Phase 4: Within the term of this Agreement, the Federation shall renovate and/or reconstruct the ten existing bocce courts as determined necessary by the Federation for continued public and private use, with such environmental and design review permits and building permits as may be required

E. Phase 5: Within the term of the Agreement, the Federation shall conduct the planning process for possible installation of solar power equipment in the Complex and complete a site plan detailing such improvements, and may request City approval of the installation of such improvements at Federation's sole expense, subject to Park and Recreation Commission review, and such environmental and design review and building permits as may be required,.

2.14: Any improvements to Complex are subject to review by the Park and Recreation Commission, Design Review Board, Planning Commission and approval of the City Council. Any improvements will be required to comply with the California Building Code Title 24, and Title III of the ADA.

Section 3. Duties and Responsibilities of City.

3.1: City shall permit the Federation use of the Complex for its organized activities pursuant to the submitted schedules and subject to the provisions outlined in this Agreement.

3.2: City shall cooperate with Federation in the promotion and supervision of its organized activities.

3.3: Subject to the City's limitations of budget and other resources, City shall rebuild and/or repair Complex in the event it is damaged by acts of God, vandalism or intentional or negligent acts of third parties in excess of \$25,000. Federation shall rebuild and/or repair Complex in the event it is damaged by acts of God, vandalism or intentional or negligent acts of third parties up to \$25,000. Both parties understand, acknowledge and agree that because of fiscal constraints of the City agreed repairs are contingent upon the City having funds available for this purpose.

Section 4. Compensation.

4: In recognition of the Federation's a) contribution of \$1.1 million worth of park improvements, b) its ongoing maintenance of Complex at a cost of approximately \$25,000 per year, and c) the improvements to the building at 535 B Street, and payment for utilities, City shall waive facility use fees for Complex for the term of this Agreement. Upon any renewal of this Agreement, the parties shall re-negotiate the terms of compensation.

Section 5. Repayment of City Loans

5: As of the execution of this Agreement, all outstanding loans by the City to the Federation were previously excused in recognition of the substantial contribution to the improvement of the building, 535 B Street.

Section 6. Reports and Audits.

6.1: No later than February 1st of each year, Federation shall provide to the Park and Recreation Commission a report containing the following:

A. A comprehensive status report describing all organized activities conducted and supervised during the previous year;

B. A detailed proposal of site improvements, including the estimated costs, time for completion and funding sources;

C. Recommendations regarding the operation of the Complex.

6.2: Federation shall maintain books, statements, ledgers, accounts and all other documents related to its management and use of complex under this Agreement.

6.3: City shall have the right, upon reasonable notice, to obtain access to, review, and to audit Federation's books, statements, ledgers, accounts, and all other documents relating to its management and use of Complex under this Agreement.

6.4: Federation shall provide to the Director a copy of its annual financial statement as regularly prepared.

Section 7. Term.

The term of this Agreement shall be from December 1, 2011 until November 30, 2030, inclusive, subject to earlier termination pursuant to Section 8. Upon expiration, the term of this Agreement may be renewed for five (15) additional years if:

A. Federation has complied with all the terms and conditions of this Agreement.

B. Federation and City Manager have agreed, prior to expiration, to the Federation's compensation, if any, to City for the additional term.

C. There are no other changes to the terms and conditions of the Agreement.

Section 8. Termination of Agreement.

8.1: If, upon sixty days (60) written notice of deficiency in performance, the party so notified fails to correct the deficiency, the party giving notice may terminate this Agreement. Deficiency in performance shall be defined as any of the following:

A. Failure of a party to perform or comply with all of the terms and conditions of this Agreement.

B. The financial insolvency of the Federation as evidenced by
i. any filing for reorganization under the bankruptcy statutes or otherwise being named as a debtor in such proceeding, which is not set aside within thirty days of filing, or

ii. any audit

C. The dissolution of the Federation.

Section 9. Indemnity.

Federation shall defend, indemnify and hold harmless City, its officers, employees, agents and volunteers from and against any and all claims, demands, losses, or liability which may be alleged by any person, or by Federation, for injury to, or death of persons or damage to property, however arising, from the obligations and actions of Federation, its officers, employees, agents or volunteers under the terms of this Agreement, excepting only the sole gross negligence or willful misconduct of City. Federation assumes all responsibility for damages to property or for injuries to persons a) directly or indirectly caused by services or equipment provided by Federation under the terms of this Agreement, b) occurring in or on any portion of the Complex during any and all Federation-sponsored events, or c) caused by the condition of the Complex.

Section 10. Insurance.

10.1: Federation at its sole cost and expense, shall obtain and maintain, during the life of this agreement, a commercial general liability policy in the amount of \$1,000,000, per occurrence and \$3,000,000 aggregate, satisfactory in form to the City, and with the City, its officers, employees, agents and volunteers added as additional named insured, as shall protect Federation and City its officers, employees, agents and volunteers from claims for damages or personal injury, including accidental death as well as for claims for property damage with may arise from or out of this Agreement, whether by Federation, its officers, agents, employees, volunteers or subcontractors.

10.2: Each such policy of insurance described in Section 10.1 shall be endorsed to provide as follows:

- A. It is agreed that the coverages afforded shall be primary insurance and that any insurance or self-insurance maintained by the City
- B. It is further agreed that the coverages afforded shall apply as if separate policies were issued to each (gross liability).
- C. All rights or subrogation are hereby waived against the City of San Rafael and the members of its City Council and elective or appointive officers or employees, when acting within the scope of their employment or appointment.
- D. This insurance shall not be canceled, limited or non-renewed until after thirty (30) days written notice has been given to the City.

10.3: A duly executed Certificate of Liability Insurance, evidencing all of the coverages required herein, shall be submitted in a form approved by the City Attorney to the City Clerk, with a copy to the Director.

10.4: The required endorsements of the insurance policies shall be submitted in a form approved by the City attorney to the City Clerk, with a copy to the Director.

Section 11. Independent Contractor.

It is understood and agreed that the Federation, in its performance of the duties and obligations under this Agreement, shall act as and shall be an independent contractor and not an agent or employee of the City. As such, Federation, its employees, agents and volunteers shall obtain no rights or benefits, which accrue, to City employees. Federation expressly waives any claims it, its employees, agents or volunteers may have to any such rights or benefits.

Section 12. Assignability: No Third Party Beneficiaries.

12.1: Federation shall not assign or transfer any interest in this Agreement, nor its duties and obligations under this Agreement, without the prior written consent of the City, and any attempt by Federation to so assign this Agreement, or any rights, duties, or obligations arising hereunder, shall be void and of no effect.

12.2: Neither party shall assign or transfer its rights to enforce any part of this Agreement. The obligation of the City and the obligations of the Federation stated in this Agreement are not intended to, and do not, create any rights to any other person or entity which such person or entity would not otherwise have in the absence of this Agreement.

Section 13. Compliance With All Laws; Non-discrimination.

Federation shall comply with all applicable laws, ordinances, codes, and regulations of the State, Federal and local governments. Federation shall not discriminate, in any way, against any person, on the basis of age, sex, race, color, creed, or national origin in connection with or related to the performance of this Agreement.

Section 14. Authority.

Each party represents that it has duly approved the signing of this Agreement and has duly authorized the person named below to sign this Agreement on its behalf in accordance with applicable law. Each such named person personally warrants that he/she has such approval and authority.

Section 15. Waiver.

Federation understands and agrees that waiver by the City of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by the City of the performance of any duty or obligation by Federation shall not be deemed to be a waiver of any term or condition of this Agreement.

Section 16. Notices.

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid addressed to the responsive parties as follows:

To City: City of San Rafael Attn: Director, Community Services
P.O Box 151560
San Rafael, California 94915-1560

To Federation: Marin Bocce Federation
550 B Street
San Rafael, California 94901

Notice shall be deemed effective on the date personally delivered or, if mailed, upon deposit in the mail.

Section 17. Whole Agreement.

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written representation or understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment executed by the parties to this Agreement. However, upon their mutual agreement, the President of the Federation and the City's Community Services Director may make minor, non-substantive operational changes, such as programming schedules, rules and regulations for league or individual participation, repairs to existing equipment and facilities, infrastructure to the Amended Agreement without formal approval by the Council. Said Amendments shall be in writing.

Section 17. Attorney's Fees.

In the event litigation is initiated to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its attorney fees and costs, including witness and expert fees.

City of San Rafael

Marin Bocce Federation

By _____
Nancy Mackle, City Manager

Tom Miller, President
Marin Bocce Federation

Attest:

Approved as to Form:

Esther C. Beirne, City Clerk

Rob Epstein, City Attorney

Attached: Exhibit "A" Complex
Exhibit "B" Marin Bocce Federation Maintenance and Repair Responsibilities
for the Albert Park Bocce Court Complex
Exhibit "C" Proof of Non- Profit 501C3 Status
Exhibit "D" Permit for the Possession and Consumption of Beer and Wine
Exhibit "E" Proof of Insurance