Meeting Date: 04/192011

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☐ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	■ Other Appointment Item

Prepared By: Alan Holmberg, City Attorney Agenda Item No. Q-1

Reviewed By: City Manager City Attorney Finance Other *(Specify)*

DATE: April 11, 2011

TO: City Council

FROM: Edmund F. Sotelo, City Manager
City Manager
Alan Holmberg, City Attorney
City Attorney

SUBJECT: College Park Improvements, Phase 2, Big League Dreams Memorandum of Agreement ("MOA") 3250 South Rose Avenue

RECOMMENDATION

That City Council:

1) Authorize the City Manager to continue discussions with the State Department of Parks and Recreation, Office of Grants and Local Services ("State") concerning acceptability of College Park improvements and acceptability of the Memorandum of Agreement with Big League Dreams Oxnard, LLP ("BLD");
2) Authorize the City Manager to execute a Ninth Amendment to the MOA to extend for up to twelve months the time for City determinations as to whether restrictions of grant funding agencies or financing obstacles prevent construction and use of a sports park as contemplated by the MOA;
3) In the alternative, instruct the City Manager to inform Big League Dreams that the City will not construct a Sports Park, as described in and contemplated by, the MOA, and authorize staff to pursue discussions of College Park improvements without a Big League Dreams component;

DISCUSSION

In order to complete phase 2 of College Park either under a City constructed, maintained and operated vision or the Big League Dreams concept, the City needs to obtain a confirmation from the National Park Service ("NPS") that the project does not violate the terms of Land and Water Conservation Fund (LWCF) grants used to purchase parts of the park property. The State of California Department of Parks and Recreation, Office of Grants and Local Services ("State") is the City's liaison with the National Parks Service.

As noted in the agenda report prepared for the City Council meeting of February 15, 2011, paragraph 4.1b of the MOA, as amended provides that:

> "If on or before seventy-five (75) months after the effective date, the City in good faith, despite diligent efforts the City shall undertake to do so determines that... (1) the City cannot secure financing on reasonable terms and conditions for the construction of the Sports Park Improvements, based upon current cost estimates and reasonably foreseeable increases in Sports Park construction costs or (2) the City cannot satisfy itself, BLD Oxnard, and at least one financing source that use restrictions imposed by the County of Ventura and agencies which provided funding for the property do not prevent construction and operation of the sports park, and therefore in good faith determines that it is unable to construct a sport park, the City will within forty-five (45) days of decision so notify BLD Oxnard."

The Agreement goes on to provide that if such determinations are made by the City, the City may inform BLD and obtain a refund of the $400,000 license fee which the City paid to BLD in connection with its approval of the MOA.

If the City Council approves recommendations 1 and 2 set forth above, staff will negotiate with the State and with BLD to address issues of concern with respect to the project and the MOA. If the City, after negotiating in good faith, cannot obtain assurances that the project can proceed as provided in the MOA, as presently existing or with modification to satisfy State concerns the City will so notify BLD and seek a refund of the $400,000 license fee. If the concerns are satisfied, City staff would continue negotiations, make efforts to obtain financing, and finalize the MOA. If the City did not do so, BLD would be entitled to return of the $400,000 license fee.

If the City Council does not choose at this time to authorize further negotiations with the State, or an extension of time with BLD, staff would notify BLD, and terminate all negotiations. In this case, the City would not receive a refund of the $400,000 license fee.

For a period of several years following execution of the MOA with BLD, City staff met periodically with the State concerning Big League Dreams' proposal and the build out of College Park, Phase 2. In June 2008, the State sent to the City Manager a letter (a copy of which is attached to this report) outlining a number of requirements for build out and a number of revisions which would be necessary to the MOA in order to satisfy the State's concern for the project. (In September 2008, the LWCF manual was revised to address restaurant type facilities on LWCF land. A process is in place to obtain approval for restaurant type facilities.) Since the City of Las Vegas was encountering issues similar to those described in the Office's letter to the City, City staff and BLD representatives determined to monitor the Las Vegas progress prior to engaging in further dialogue with the State.

In January 2010, the City of Las Vegas opened a Big League Dreams complex with six fields and two restaurants with the approval of the National Parks Service. The Las Vegas project was approved within the guidelines for the LWCF grant program. The Las Vegas BLD project is a much larger project than any proposed project for Oxnard whether it is a City or BLD Facility. The City would need the approval of both the State and NPS in order to build either a BLD or City facility.

Therefore, staff recommends submitting the project for State and federal approval in any event. If a lesser project is desired in the future, a project amendment can be submitted to the State at that time.

FINANCIAL IMPACT

There is no immediate fiscal impact associated with the recommendations numbers one and two. If the City Council adopts recommendation number three, the City will not obtain a refund of the $400,000 license fee discussed in the report.

#1 - Letter from California Department of Parks and Recreation
#2 - Ninth Amendment to Memorandum of Agreement

State of California • The Resources Agency
DEPARTMENT OF PARKS AND RECREATION • P.O. Box 942896 • Sacramento, CA 94296-0001
(916) 653-7423

Arnold Schwarzenegger, *Governor*
Ruth Coleman, *Director*

JUN 2 0 2008

Edmund Sotelo
City Manager, City of Oxnard
305 West Third Street
Oxnard, CA 93030

Dear Mr. Sotelo,

Re: Big League Dreams Proposal for College Park, Oxnard
Land & Water Conservation Fund (LWCF)
Projects 06-00066, 06-00955, 06-01007

On May 19, 2008, the Office of Grants and Local Services (State) received direction from Ray Murray, Chief, Partnership Program, National Parks Service (NPS) regarding the Big League Dreams Proposal for College Park, Oxnard submitted on February 23, 2008. The proposed Sports Park is to be constructed by the City of Oxnard and managed by Big League Dreams Oxnard, LLP (BLD). The following are key issues which are further detailed in the attachment that need to be addressed by the City prior to the State forwarding the Proposal to NPS:

A. Responses to the seven (7) guidelines for determination if the BLD restaurant meets the LWCF criteria, so as to not trigger a conversion of use pursuant to §6(f)(3) of the LWCF Act as amended and *36 CFR §59.3*

B. Identification of any indoor structures to be included in the final proposal, especially addressing the "sheltered soccer pavilion"

C. Revised Maintenance and Operations Agreement (MOA) with the required modifications given

D. Revised §6(f) boundary map to conform with the boundaries in previous §6(f) maps received

In addition, NPS requires the State and the City to closely coordinate the development of the entire public facility proposal to ensure the documents are complete for NPS review and approval.

The role of the Office of Grants and Local Services as State liaison for the LWCF program is to assist the City in preparing a complete public facility proposal. Upon receipt of this letter, we are happy to convene a meeting to address questions or clarify any items relating the contents of this letter.

If you do not need to meet, please provide the items requested above to Barbara Baker, State LWCF Supervisor for State review and recommendation to forward for NPS determination.

Sincerely,

Patti Keating, Chief
Office of Grants and Local Services

Enclosure

cc: Sedrick Mitchell, Deputy Director, External Affairs
Betty Ettinger, Assistant Chief, Office of Grants and Local Services
Barbara Baker, Supervisor, Office of Grants and Local Services
Jeanne Ekstrom, Project Officer, Office of Grants and Local Services
Michael Henderson, Parks & Facilities Superintendent
David Siegenthaler, Grants Program Manager, National Park Service

City of Oxnard Big League Dreams Proposal for College Park
Items requiring response

A. LWCF Criteria and guidelines for BLD Restaurant

NPS concluded that the proposed restaurant is intended to primarily serve users of the public sports complex and not the general public, and is designed to be an integral part of the entire BLD public outdoor recreational use facility. For these reasons, *the restaurant would not trigger a conversion if it meets the criteria for a LWCF indoor public facility as outlined in the LWCF Grants Manual Chapter 675.9.3.D.*

To meet the criteria, the food operation must meet the prerequisites and criteria found in the LWCF Grants Manual. The City of Oxnard must respond to each of the following seven guidelines, showing how the BLD Oxnard restaurant meets these requirements.

1. The building and activities associated with the food service must be compatible with and significantly supportive of the outdoor recreation resources of the site, whether existing or planned and result in a net outdoor recreation benefit.
2. The food service facility may contain other indoor amenities complementing the food service.
3. The food service facility may be operated by a project sponsor, under a concession contract, or leased out to a private party so long as the public agency does not relinquish any property rights through the agreement. The project sponsor must retain control over the operation and terminate the contract if the food operation ceases to serve public outdoor recreation use as an allowable public facility or violates the terms and conditions of the original grant(s), the LWCF Grant Manual and other relevant laws and regulations.
4. Its customers are park users and/or users of a previously NPS-approved public facility. Establishment is advertised as an amenity for the park or for the previously-approved public facility, and not a separate dining destination. Park users are the target of promotion and advertising for the food operation rather than to the public-at-large.
5. The food service facility normally operates within regular park or public facility hours.
6. The size of operation including associated activities (parking, etc.) must meet public facility criteria (i.e., public outdoor recreation use must continue to be greater than expected for any indoor use).
7. Menu items and other food operation amenities are not a §6(f) concern in regards to maintenance, sanitation and public safety.

B. Identification of Indoor Structures

Please address if the City plans to put the "sheltered soccer pavilion" or any other indoor structures in its final proposal. To ensure LWCF compliance, all indoor structures with square footage and function must be included in the proposal.

C. MOA Revisions

NPS thoroughly considered the information contained in the letter dated August 24, 2006 from Alan Holmberg, Assistant City Attorney, regarding the details of how the City proposes to modify the MOA for its consistency with compliance responsibilities set forth in 36 CFR Part 59 and the LWCF Grants Manual, including Chapter 640.1.9.A-E. NPS requires MOA modifications to ensure the following:

- Operation of the Sports Park by BLD does not compromise other program requirements including the perpetual public outdoor recreation use and accessibility of the sports park facility; and,
- The City retains adequate legal control of the property protected under LWCF Act §6(f) and all operations conducted on behalf of the City in order to provide reasonable assurance that a conversion under §6(f)(3) will not occur without its knowledge and NPS approval.
- The MOA needs to clearly describe how the City and BLD will promote the sports park as a public rather than private sports facility.

Specifically, several changes to the MOA are required as listed below:

1) A more detailed reference to the Land and Water Conservation Fund Act (LWCFA), the grant agreements, and Manual provisions is required in the definition of "Legal Requirements." This definition should read as follows:

   "Legal Requirements means all laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives, and requirements of all governments and governmental authorities, which now or hereafter may be applicable to BLD Oxnard, the Sports Park or the operation of the Sports Park. The parties acknowledge that the Property was acquired and developed with assistance provided under the LWCFA. Consequently, Legal Requirements includes the requirements of the LWCFA, the LWCFA grant agreements 06-00063, 06-00955, and 06-01107, the provisions of the LWCF Grant Manual, civil rights and accessibility legislation, regulations, and policies, including but not limited to Title VI of the 1964 Civil Rights Act, 43 C.F.R. Part 17, 36 C.F.R. § 59.4, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990. Applicable provisions of the LWCF Grant Manual include, but are not limited to, the provisions of Chapter 675.9 "Post-Completion Responsibilities," including provisions of that Chapter regarding Operation and Maintenance, Availability to Users, and the requirement that the Sports Park be retained and used for public outdoor recreation purposes, and 36 C.F.R. Part 59.3. The parties acknowledge that they have read

and are familiar with the above-referenced LWCFA grant agreements and the relevant provisions of the LWCF Grant Manual."

The project sponsor must have the ability to review performance and terminate the MOA if the provisions of the relevant grant agreements and the standards are not met. This must be clearly stated in the MOA.

2) For references to signage and advertising commercial products throughout the MOA, be advised that commercial signs are only allowable within Section 6(f) boundaries when the advertising is attached to allowable park structures such as benches, fencing, walls, and buildings, and in ways that are not inconsistent with the park setting and/or the building environment in which they are located (e.g., athletic fields). Signs may face either outside or inside the park. Commercial advertising in the form of a stand alone structure such as a billboard that creates a footprint in the park or commercial signage permanently affixed to a natural feature within the §6(f) area is a conversion regardless of which direction it faces.

3) Section 5 must stipulate that the City shall have the right to review BLD plans and proposals and intervene without notice if the public purposes of the LWCFA are not being met.

4) Under 9.3(c) it must be stated that federal, state, and city inspectors shall have the right to make spot check inspections without notice and at any time.

5) In order to ensure that BLD Oxnard is required to comply with the Legal Requirements in all of its activities related to the Sports Park, Chapter 5.1 of the MOA must be amended to include a new responsibility for BLD Oxnard which should read:

   "(-) comply with all applicable Legal Requirements while conducting all activities related to the Sports Park."

6) Paragraph 5.4(c) and 5.4(e) of the MOA currently provide for preferential reservation systems for leagues and teams <u>from Oxnard</u>. Consequently, the portions of these MOA Chapters providing for preferential reservation are in violation of Chapter 675.9.2.B of the Manual. To meet the requirements of the Manual, Paragraph 5.4(c) of the MOA must be deleted in its entirety, and the first two sentences of Paragraph 5.4(e) must be deleted. We believe that the remainder of Paragraph 5.4(e) can remain in the MOA because it is acceptable to charge residents lower fees under Chapter 675.9.2.B of the Manual. In addition, if the City would like to propose modifications to Paragraph 5.4(c) that would be acceptable under the Manual, we would be willing to discuss how Paragraph 5.4(c) might be modified.

7) The MOA must be amended to include language that refers to the signage requirements, and the offer made in the City's August 24, 2006 letter to add such language was appreciated by NPS. Since Paragraph 5.1(h) of the MOA addresses marketing and advertising, this change could be made by adding the following language to the end of Paragraph 5.1(h) of the MOA:

"All signs, literature and advertising must identify the Sports Park as owned by the City of Oxnard and operated by BLD as a public outdoor recreation facility. Permanent signs shall be posted at the Sports Park in accordance with LWCFA Manual Chapter 675.4, including but not limited to the requirement that there be permanent public acknowledgment of LWCFA assistance."

8) The MOA should require that all fees charged to the public must be competitive with similar private facilities. In Section 5.8(e) strike "all without limitation". The end of the Paragraph should add "Fees, charges and commissions are subject to review and approval by the City of Oxnard."

9) Paragraph 5.1 of the MOA must be amended to include a new responsibility for BLD Oxnard which should read

"(-) indicate compliance with all Legal Requirements regarding civil rights and accessibility legislation, regulations, and policies by signs posted in visible public areas, statements in public information brochures, and the like."

10) MOA section 26.6 says the MOA is to be construed and interpreted in accordance with, and shall be governed by, the laws of the State of California. This section should be revised to indicate that federal law applies as well because of LWCFA § 6(f).

D. LWCFA §6(f)(3) Boundary Map

The §6(f) boundary map dated March 13, 2008 included in the February 23, 2008 College Park Master Plan correctly includes the entire park except for the northwest corner bounded by Channel Islands Blvd. Please send a revised §6(f) boundary map with the boundary revised for the property's northwest corner to make it conform how it appeared in previous maps. Please note that acceptance of a §6(f) boundary map does not constitute approval of any conceptual site plans illustrated in the map.

NINTH AMENDMENT TO MAINTENANCE AND OPERATIONS AGREEMENT (BIG LEAGUE DREAMS OXNARD SPORTS PARK)

1. On July 26, 2005, the City Council of the City of Oxnard, a California municipal corporation (the "City") approved a Maintenance and Operations Agreement with Big League Dreams Oxnard, LLC, a California limited liability company ("BLD Oxnard"), (the "MOA"). This Ninth Amendment to Maintenance and Operations Agreement (Big League Dreams Oxnard Sports Park) (the "Ninth Amendment") is dated effective April 26, 2011.

2. Section 26.1 of the MOA provides "this MOA may be amended or modified only by a writing signed by both BLD Oxnard and the City Manager." This Ninth Amendment is executed by the City Manager and BLD Oxnard. Big League Dreams USA, LLC ("BLD USA") was a signatory to the MOA only to acknowledge certain obligations it undertook in Sections 4.1(a) and (b) of the MOA. BLD USA is also signatory to this Ninth Amendment to acknowledge certain amendments herein contained to such obligations of BLD USA.

3. City staff has endeavored to resolve and are continuing to endeavor to resolve certain use restrictions contained in grants received by the City to purchase the Property. City staff has on several past occasions requested that BLD Oxnard and BLD USA extend certain time periods in the MOA to enable City staff to continue to pursue the resolution of these use restrictions. BLD Oxnard and BLD USA have agreed to these extensions and have executed First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Amendments to Maintenance and Operations Agreement (Big League Dreams Oxnard Sports Park) confirming such extensions. The MOA as amended by the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Amendments thereto is referred to herein as the "Amended MOA."

4. Section 4.1 (b) of the Amended MOA presently provides as follows:

"Inability to Obtain Financing Termination Rights. If, on or before seventy-five (75) months after the Effective Date, the City, in good faith, despite diligent efforts the City shall undertake to do so, determines that (1) the City cannot secure financing on reasonable terms and conditions for the construction of the Sports Park Improvements, based upon current cost estimates and reasonably foreseeable increases in Sports Park construction costs or (2) the City cannot satisfy itself, BLD Oxnard, and at least one financing source that use restrictions imposed by the County of Ventura and agencies which provided funding for the Property do not prevent construction and operation of the Sports Park, and therefore in good faith determines that it is unable to construct the Sports Park, the City will within forty-five (45) days of such decision, so notify BLD Oxnard. If the City does so notify BLD Oxnard, this MOA, the License Agreement and the Consulting Agreement will terminate thirty (30) days after the date of such notice and the parties (or, as applicable, BLD USA or BLD Consulting) shall thereafter have no further obligation or liability one to the other. Further, if the City does

so notify BLD Oxnard within sixty-nine (69) months from the Effective Date, BLD USA shall be obligated to refund the license fee to the City in its entirety within sixty (60) days thereafter. If the City so notifies BLD Oxnard later than sixty-nine (69) months but on or prior to seventy-five (75) months after the Effective Date, BLD USA shall be obligated to refund one-half of the license fee to the City within sixty (60) days thereafter."

5. City staff has requested that BLD Oxnard and BLD USA extend again certain time frames in Section 4.1(b) of the Amended MOA as set forth herein below. BLD Oxnard and BLD USA agree to these extensions.

6. Section 4.1(b) of the Amended MOA is hereby further amended so that Section 4.1 (b) shall read as follows:

"Inability to Obtain Financing Termination Rights. If, on or before eighty-seven (87) months after the Effective Date, the City, in good faith, despite diligent efforts the City shall undertake to do so, determines that (1) the City cannot secure financing on reasonable terms and conditions for the construction of the Sports Park Improvements, based upon current cost estimates and reasonably foreseeable increases in Sports Park construction costs or (2) the City cannot satisfy itself, BLD Oxnard, and at least one financing source that use restrictions imposed by the County of Ventura and agencies which provided funding for the Property do not prevent construction and operation of the Sports Park, and therefore in good faith determines that it is unable to construct the Sports Park, the City will within forty-five (45) days of such decision, so notify BLD Oxnard. If the City does so notify BLD Oxnard, this MOA, the License Agreement and the Consulting Agreement will terminate thirty (30) days after the date of such notice and the parties (or, as applicable, BLD USA or BLD Consulting) shall thereafter have no further obligation or liability one to the other. Further, if the City does so notify BLD Oxnard within eighty-one (81) months from the Effective Date, BLD USA shall be obligated to refund the license fee to the City in its entirety within sixty (60) days thereafter. If the City so notifies BLD Oxnard later than eighty-one (81) months but on or prior to eighty-seven (87) months after the Effective Date, BLD USA shall be obligated to refund one-half of the license fee to the City within sixty (60) days thereafter."

6. This Ninth Amendment constitutes the complete agreement of the parties pertaining to the subject matter hereof.

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7. Except as amended by this Ninth Amendment, the Amended MOA is and shall remain in full force and effect.

CITY OF OXNARD

Edmund F. Sotelo,
City Manager

APPROVED AS TO FORM:

Alan Holmberg,
City Attorney

BIG LEAGUE DREAMS OXNARD, LLC

Scott Parks LeTellier,
Chief Executive Officer

BIG LEAGUE DREAMS USA, LLC.

Scott Parks LeTellier,
Chief Executive Officer