

Project title: Award and Authorize the Mayor to Sign Contract for Request for Proposal #2020-061 Public Private Partnerships – Park Properties to Provide Recreational Softball League Services to USSSA Washington

Council Bill #**Agenda dates requested:**

February 17, 2021

Briefing

Proposed action

Consent

Action

Ordinance

Public hearing

Yes No **Budget amendment:**Yes No **PowerPoint presentation:**Yes No **Attachments:**

Contract

Department(s) involved:

Procurement & Parks

Contact person:

Theresa Bauccio-Teschlog

Phone number:

425-257-8901

Email:

tbauccio@everettwa.gov

Initialed by:*sh*

Department head

Administration

Council President

Consideration: Agreement**Project:** Request for Proposal 2020-061 Public Private Partnership - Park Properties**Partner/Supplier:** USSSA Washington**Location:** 8811 Airport Road, Everett, WA**Preceding action:** August 12, 2020**Fund:** Revenue**Fiscal summary statement:**

Expected revenue from this agreement is approximately \$24,160 annually.

Project summary statement:

The Request for Proposals (RFP) process provided an avenue for suggestions that could result in public private partnerships that will increase recreation opportunities for the public, repurpose or recondition park assets for community use, and generate revenue for the City of Everett Parks & Facilities department. It also provides an opportunity for non-profits, businesses, or private individuals to partner with the City to improve the community.

Request for Proposal #2019-061 was released on August 13, 2020, and was advertised in the Everett Herald and Daily Journal of Commerce as well as posted on the City's website. On October 20, 2020, the City received twelve (12) proposal responses. After completing an initial scoring, eight (8) companies were invited to interview. All proposals were re-scored following interviews.

USSSA Washington is the only firm that was interested in running the softball league at Kasch Park.

Staff is recommending awarding a contract to USSSA Washington, whose proposal scored 352 out of 500 points.

Recommendation (exact action requested of Council):

Award and Authorize the Mayor to Sign Contract in substantially the form provided for Request for Proposal #2020-061 Public Private Partnerships – Park Properties to Provide Recreational Softball League Services to USSSA Washington.



USSSA WASHINGTON

AGREEMENT

THIS AGREEMENT, entered into as of February, 2021, between the City of Everett, hereinafter called the “City,” and USSSA Washington, hereinafter called the “League” is as follows:

1. PURPOSE

The purpose of this Agreement is to establish an understanding and working relationship between the League and the City. Further, this Agreement is intended to memorialize a working understanding for the provision of facilities for use by League as it relates to, fees, scheduling, use of facilities and other issues associated with a recreational sports league in the City.

2. TERM

The term of this Agreement shall be from March 1, 2021 through October 31, 2021.

3. FACILITIES

- a) The City will provide facilities (the “Athletic Facilities”) on the dates and times listed in Exhibit A (SCHEDULE OF ATHLETIC FACILITY USE) for game use. Exhibit A may be revised from time to time, with written approval of the Director of Parks and Facilities or his or her designee, to add, remove, or change the dates and time listed for the League’s scheduled use of the Athletic Facilities. The League will abide by all rules and restrictions listed in Exhibit C (ATHLETIC FACILITY RULES AND REGULATIONS).
- b) The City will be responsible for securing the use of the Athletic Facilities for the times listed in Exhibit A (SCHEDULE OF ATHLETIC FACILITY USE). If the City is unable to secure an Athletic Facility for a scheduled time, it will notify the League at least 48 hours prior to the scheduled event. The League will be responsible for finding a suitable alternate location for the scheduled event. The City will cooperate with the League in securing the use of an alternate Athletic facility so long as there is no additional expense to the City.
- c) The League will provide referees and officials for each scheduled game at the sole cost to the League.
- d) The League will provide all equipment for all events and other uses of the Athletic Facilities under this Agreement, including, without limitation, game balls and other equipment for all games.

- e) The City may provide facilities, other than the Athletic Facilities, on a space available basis for League meetings, scheduling and other League related business upon request from a designated League representative. The League's use of such facilities shall be subject to the City's Facility Use Policies. There shall be no charge for the use of these facilities.
- f) The League shall not allow any other agency, association, group, or league to schedule or use an Athletic Facility when the League is scheduled to use that Athletic Facility without express written consent by the City of Everett Parks and Facilities Director or his or her designee.
- g) The League will designate one person to be the point of contact between the League and the City. Such contact person will disseminate any information provided by the City and educate the League, its employees, agents, contractors, teams, coaches and spectators of the League regarding such information.
- h) The City reserves the right to limit the amount of use, close or cancel any and all Athletic Facility use. No modifications are allowed to any Athletic Facility. If the League, or any of its employees, agents, contractors, teams, coaches, invitees, guests or spectators violate the rules, regulations, or limitations placed on the Athletic Facility use, the League, its employees, agents, contractors, teams, coaches, invitees, guests or spectators may be prohibited from using an Athletic Facility for the remainder of an event, the remainder of the season, the following season, or any other amount of time the City deems appropriate.

4. SCHEDULE

The City shall identify the amount of time available at each Athletic Facility in Exhibit A (SCHEDULE OF ATHLETIC FACILITY USE). The League shall be solely responsible for and shall perform all scheduling of games, tournaments and League related events and any service related to scheduling. The League shall provide the City with a complete schedule of events for the term of this Agreement one week prior to the first scheduled event. All schedule changes must be provided to the City in writing within 48 hours of the proposed change.

5. REVENUE AND FEES

- a) The League shall pay to the City fees established by, and in accordance with Exhibit B (PROGRAM FEES).

6. MAINTENANCE

The League shall be solely responsible for returning the Athletic Facilities to a substantially similar or better condition after each use of an Athletic Facility. Any damage or destruction to an Athletic Facility related to the League's use of such Athletic Facility under this Agreement shall be promptly repaired by the League to the same condition that existed prior to the damage or destruction. The League will be responsible for reporting any damage or destruction to facilities used immediately to the City contact.

7. CONDUCT

- a) The League is responsible for the conduct of employees, agents, contractors, teams, players, coaches, spectators, invitees and guests. The League shall provide copies of Exhibit C (ATHLETIC FACILITY RULES AND REGULATIONS) to all coaches and shall enforce all rules and regulations with respect to League employees, agents, contractors, teams, players, coaches, spectators, invitees and guests. The League shall suspend from one or more events, employees, agents, contractors, teams, players, coaches, spectators, invitees or guests who violate any rules and regulations in Exhibit C (ATHLETIC FACILITY RULES AND REGULATIONS). The League shall provide adequate adult supervision for any and all events, including but not limited to games, practices, tournaments and events as requested by the City.
- b) The League will provide a copy of the League's code of conduct to the City one week prior to the first scheduled event and shall enforce such code of conduct during all games and uses of the Athletic Facilities.
- c) The League will provide a copy of the League's disciplinary procedures to the City one week prior to the first scheduled event and shall enforce such disciplinary procedures during all games and uses of the Athletic Facilities.
- d) The League agrees to comply with the city of Everett's Community Athletics Programs Non-Discrimination (aka Gender Equity) Policy as listed in Exhibit F.

8. CITY STAFFING

The City will provide staffing to assist with facility use coordination for League games and events in accordance with Exhibit D (CITY STAFFING) of this Agreement.

9. MARKETING AND PROMOTION

The City will provide the League marketing and promotional services in accordance with Exhibit E (MARKETING AND PROMOTION) of this Agreement.

10. RISK MANAGEMENT

The League shall immediately or on or before the expiration of one working day record and report to the City all injuries and claims against it for bodily injury and property damage. The League shall immediately notify the City of any safety hazards that are apparent at any Athletic Facilities or on any courts or athletic fields that the League cannot immediately remedy.

11. INSURANCE

- a) The League shall procure and keep in force during the term of this Agreement, at the League's own cost and expense, the policies of insurance described herein with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than 7, by A. M. Best company and which are acceptable to the City.

- b) The League shall procure and maintain a Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to premises/operations (including off-site operations), blanket contractual liability and broad form property damage, all in a form acceptable to the City. The League agrees to provide at least thirty (30) days' notice prior to cancellation of any of the insurance requirements set forth above.
- c) The League shall procure and maintain fire and casualty insurance covering the League's contents of any storage facilities at the League's own cost. Proof of said insurance shall be promptly provided to the City Attorney. The League shall give the City at least thirty (30) days written notice of cancellation of the insurance referenced above.
- d) The policies shall provide that they shall not be canceled or materially changed without thirty (30) days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the League to furnish the required insurance during the terms of this Agreement.
- e) Upon written request by the City, the League will furnish, prior to any activity pursuant to this Agreement, a copy of any policy cited above, certified to be a true and complete copy of the original.
- f) Prior to any activity pursuant to this Agreement, the League shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the above-required insurance together with an Additional Insured Endorsement naming the City of Everett and their officers, employees and agents as additional insureds. Both the Certificate of Insurance and Additional Insured Endorsement will be on forms acceptable to the City. Receipt by the City of any certificate showing less coverage than required is not a waiver of the League's obligations to fulfill the requirements.
- g) The insurance policies identified in this Section 13 will be primary as to the City, any other insurance maintained by the City shall be excess and not contributing insurance with the League's insurance. The additional Insured Endorsement required under subsection f) of this Section 13 must include a statement that such insurance will apply as primary insurance on behalf such additional insureds (such additional insureds include the City of Everett and their officers, employees and agents).

12. INDEMNIFICATION

The League hereby agrees to save the City and their officers, employees and agents (each such person, an "Indemnitee") harmless and indemnify them from all loss, claims, or damage occasioned to an Indemnitee or to any third person or property by reason of any act or omission of the League, its officers, members, employees, subcontractors, third persons or agents which arises, directly or indirectly, as a result of or in connection with this Agreement, and shall, after reasonable notice thereof, defend and pay the expense of defending any claim or suit which may be commenced against an Indemnitee alleging injuries to person and/or damage to property by reason of such act or omission and will pay any judgment which may be obtained against an Indemnitee in such suit. Nothing herein shall

require the League to indemnify and hold harmless an Indemnitee from claims, demands, damages, expenses or suits caused solely by the negligence or willful misconduct of such Indemnitee.

13. BREACH

If either party to this Agreement believes that the other party (the "Breaching Party") has breached this Agreement, it shall give written notice of the breach to the Breaching Party, and the Breaching Party shall, except in the case of a failure to insure, have ten (10) days to cure such breach. If the Breaching Party does not cure the breach within such ten (10) days, the non-breaching party may terminate this Agreement on three (3) days written notice of such termination to the Breaching Party. Such termination shall be cumulative of and in addition to any and all other remedies a party may have at law or in equity.

14. TERMINATION OF CONTRACT

The City may terminate this Agreement, without any liability whatsoever to the League, at any time, and for any reason, upon not less than twenty (20) days written notice to the League. Notice shall be deemed effective upon either (a) the second day following deposit in the United States Mail to USSA Washington, PO Box 4897, Federal Way, WA 98063, postage prepaid, certified or registered mail, return receipt requested, or (b) delivery. This provision shall not prevent the City from seeking any legal remedies it may have for the violation or non-performance of any of the provisions of this agreement.

15. MISCELLANEOUS

- a) The League will provide documentation to the City of team and event registrations which will use or be held in an Athletic Facility within ten business days of the completion of such team or event registration.
- b) The League will provide the City copies of all team rosters scheduled to use an Athletic Facility prior to the first scheduled event under this Agreement.
- c) The City may refer customers to the League. The League will treat all City referred customers in a professional and courteous manner, such as returning phone calls or responding to inquiries within one business day of receiving such phone call or inquiry.
- d) The League will discuss all issues it believes may be affected by this Agreement with the City at such time as the issue arises.
- e) This Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement. This Agreement supersedes and replaces all other written or oral agreements thereto.
- f) The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.
- g) The parties shall bring any litigation arising out of or relating to this Agreement only before the Snohomish County Superior Court.

- h) No amendment to this Agreement will be effective unless it is in writing and signed by the parties.
- i) No waiver of satisfaction of any condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.
- j) If any provision of this Agreement is unenforceable to any extent, the remainder of this Agreement (or the application of that provision to any persons or circumstances other than those as to which it is held unenforceable) will not be affected by that unenforceability and will be enforceable to fullest extent permitted by law.
- k) For a notice under this Agreement to be valid, it must be in writing and the sending party must use one of the following methods of delivery: (A) personal delivery to the address stated below; (B) first class postage prepaid U.S. Mail to the address stated below; or (C) nationally recognized courier to the address stated below, with all fees prepaid. Either party may change its notice address or email effective on written notice to the other party of the change.

Notice to City	Notice to the League
Everett Parks and Facilities Jeremy Oshie 425-257-8293 802 E. Mukilteo Blvd Everett, WA 98203 joshie@everettwa.gov	USSSA Washington Dale McGregor PO Box 4897 Federal Way, WA 98063 dalecmgregor@gmail.com

- l) Neither party may assign or sublet this Agreement without the written consent of the other party, which consent may be withheld at that party's sole discretion.
- m) The rights and remedies provided in this Agreement are in addition to any other rights and remedies that may be provided by law.

CITY OF EVERETT

By

Cassie Franklin, Mayor

Strojan Kennison



Strojan Kennison, USSSA WA President

ATTEST:

Sharon Fuller, City Clerk

STANDARD AGREEMENT
APPROVED AS TO FORM
DAVID C. HALL
CITY ATTORNEY

Exhibit A

Schedule of Athletic Facility Use

The League has designated use of the following athletic facilities as listed in the Exhibit for League game use only. The City must approve any changes.

CITY FACILITY

Kasch Park Fields 1-4

Mon.- Fri.

6:00pm-11:00pm

League will schedule games in a manner to minimize the number of fields needed. I.E. if there are to be 8 games played during the night, the League will schedule 4 games each on 2 fields, rather than 2 games each on all 4 fields.

PROGRAM FEES

The League will pay the City \$40 per game for use of facilities as designated within the Agreement and as listed in Exhibit A (Schedule of Gym Facility Use).

The League will pay the City 100% of fees within 7 days of the start of each month prior to services provided or the League will provide a \$5,000 deposit. The deposit will reflect the anticipated monthly fee to be paid to the City by the League for the first League played.

The League will send a complete list of games played to the City at the time of payment.

Failure to pay the City may result in suspension of games and termination of the agreement.

ATHLETIC FACILITY RULES AND REGULATIONS

1. No alcohol or other drugs allowed on City of Everett property.
2. Clean up at end of the day/evening, including trash left in the dugouts. City will provide garbage cans throughout the facility.
3. Report any damage to City staff before leaving any athletic facility or call the Point of Contact to report damage immediately.
4. There are no dogs or pets allowed inside the Kasch Park Cloverleaf.
5. The League will inform the City via email of any complaints that could in any way involve the City.

Exhibit D

CITY STAFFING

The City will provide 1 (one) staff as a point of contact to facilitate field use.

City staff will not be responsible for handling any League issues such as scheduling conflicts, ejections, officials, score keeping, or any other issues directly associated with League events.

City staff shall be provided contact information for a League designated official for all league issues.

Exhibit E

MARKETING AND PROMOTION

The City will assist in the marketing and promotion of the League providing the League is in compliance with all City policies.

The City will provide the following:

- League promotion on the Parks and Facilities Department Website.

The League will provide the following:

- Complete summary of text for approval by the City.

The City reserves the right to approve all marketing and promotion associated with the League in the City.

Exhibit F

City of Everett

Community Athletics Programs Non-Discrimination (aka Gender Equity) Policy

Enclosed:

City of Everett Community Athletics Programs Non-Discrimination (aka Gender Equity) Policy