

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

DEPT: Parks and Recreation

BOARD AGENDA #: *B-12

AGENDA DATE: March 28, 2017

SUBJECT:

Approval to Enter Into a License Use Agreement with the Yahi Bowman Archery Club for the Purpose of Using and Maintaining the Field Archery Range at Modesto Reservoir

BOARD ACTION AS FOLLOWS:

No. 2017-135

On motion of Supervisor Withrow, Seconded by Supervisor Olsen
and approved by the following vote,

Ayes: Supervisors: Olsen, Withrow, Monteith, DeMartini, and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

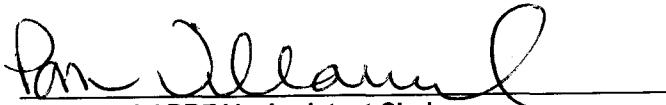
1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST: 
PAM VILLARREAL, Assistant Clerk

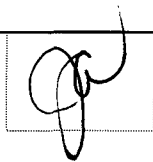
File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT Parks and Recreation
Urgent Routine

BOARD AGENDA #: *B-12

AGENDA DATE: March 28, 2017



CEO
CONCURRENCE: *phot*

4/5 Vote Required: Yes No

SUBJECT:

Approval to Enter Into a License Use Agreement with the Yahi Bowman Archery Club for the Purpose of Using and Maintaining the Field Archery Range at Modesto Reservoir

STAFF RECOMMENDATIONS:

1. Approve the License Use Agreement (Agreement) with the Yahi Bowman Archery Club for the use and maintenance of the field archery range at Modesto Reservoir.
2. Authorize the Director of Parks and Recreation, or designee, to execute the License Use Agreement with the Yahi Bowman Archery Club for the use and maintenance of the field archery range at Modesto Reservoir, including exercising the option to renew the Agreement for one five-year extension from the term of this Agreement.
3. Authorize the Director of Parks and Recreation, or designee, to sign amendments with the Yahi Bowman Archery Club for the use and maintenance of the field archery range at Modesto Reservoir, including exercising the option to renew the Agreement for one five-year extension from the term of this Agreement.

DISCUSSION:

On June 5, 2007, the Board approved a License Use Agreement between the Department of Parks and Recreation and the Yahi Bowman Archery Club (Archery Club) authorizing the Archery Club to use and maintain the range at Modesto Reservoir. The Board also approved waiving the daily entrance fee to Modesto Reservoir for participants of up to at least two youth archery activity events, up to three public archery tournaments, and up to ten Saturday shoots conducted by the Archery Club. The term of that lease expired in May 31, 2012.

On February 28, 2012, the Board approved the second five-year Agreement with a termination date of May 31, 2017. On June 1, 2017, the third five-year Agreement shall commence, upon Board Approval, and terminate on May 31, 2022, unless terminated sooner as provided in this Agreement. A public procurement process is not required for this type of License Use Agreement because the County is not leasing the property to the Club, and no money is being exchanged between the parties. The Use Agreement signifies that the Club and the County have come to a mutually acceptable agreement for the Club to perform their club activities on the property. The property remains open to the general public for the general public to also enjoy the club activities. This Agreement will hold the same terms of waiving the daily entrance

Approval to Enter Into a License Use Agreement with the Yahi Bowman Archery Club for the Purpose of Using and Maintaining the Field Archery Range at Modesto Reservoir

fee for a maximum number of events. The Archery Club will coordinate the maintenance of the range with the Department of Parks and Recreation and seek continued certification by the National Field Archery Association. The requested waiver of fees is expected to support participation in Archery Club sponsored tournaments and help offset expenses incurred by the Department of Parks and Recreation for range targets, maintenance, and other items needed to keep the archery range open and of high quality. The County shall reinstate the daily entrance fee to Modesto Reservoir for participants of the annual public archery tournaments and Saturday shoots when the annual participant level exceeds 860 participants.

The Parks and Recreation Department will continue to evaluate the outcome of this arrangement on a yearly basis.

POLICY ISSUE:

The Board of Supervisors' approval is necessary to enter into a License Use Agreement of County-owned property, pursuant to the provisions of California Government Code Chapter 5 "County Property", Section 25536(a).

FISCAL IMPACT:

The proposed License Use Agreement is anticipated to support participation in archery tournaments and youth events. The County should continue to see a monetary benefit based on entrance fees to the park when the annual participant level exceeds 860 participants. The anticipated revenue from this partnership is approximately \$3,000 annually.

Cost of recommended action:		\$	3,000
Source(s) of Funding:			
Facility Entrance Fees	\$	3,000	
Funding Total:		\$	3,000
Net Cost to County General Fund		\$	-
Fiscal Year:	2017/2018		
Budget Adjustment/Appropriations needed:	No		

BOARD OF SUPERVISORS' PRIORITY:

The recommended actions support the Board's priorities of Effective Partnerships and the Efficient Delivery of Public Services by providing special interest recreational opportunities within the Stanislaus County park system.

STAFFING IMPACT:

Work associated with this Agreement will be accomplished through the use of existing Parks staff.

Approval to Enter Into a License Use Agreement with the Yahi Bowman Archery Club for the Purpose of Using and Maintaining the Field Archery Range at Modesto Reservoir

CONTACT PERSON:

Jami Aggers, Director of Parks and Recreation.

Telephone: 209-525-6770

ATTACHMENT(S):

1. Yahi Bowman Agreement

ATTACHMENT 1



DEPARTMENT OF PARKS AND RECREATION

3800 Cornucopia Way, Suite C,
Modesto, Ca 95358-9492
Phone: (209) 525-6700
Fax: (209) 525-6774

**ARCHERY RANGE
LICENSE (USE) AGREEMENT**

This License Agreement is entered into on June 1, 2017, by and between the County of Stanislaus, a political subdivision of the State of California ("County") and the Yahi Bowmen Archery Club, a non-profit association (the "Club").

RECITALS

WHEREAS, the County Department of Parks and Recreation proposes to operate and maintain a field archery range and facilities at Modesto Reservoir Regional Park (the "Park") that is open to the general public and for organized archery club events; and

WHEREAS, the Club is a National Field Archery Association ("NFAA") chartered club with approximately 30 members and is willing to assist the County in the maintenance of the archery range; and

WHEREAS, pursuant to California Government Code section 25536 (a), and in consideration for the promise of the Club to assist in the maintenance of the archery range, the County is willing to authorize the Club to use the archery range;

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

TERMS AND CONDITIONS

1. License

- 1.1. The County hereby permits the Club, and all its members in good standing, upon payment of all applicable fees and charges (special club, Annual Permit fees), unless specifically waived by the County in this Agreement or another agreement, to enter the Park and that portion of the Park established for use as an archery range (the "Premises"), for the purpose of operating and maintain a field archery range. This license is non-exclusive and is subject to and shall be subordinate to the use of the Park, including the archery range, by the County for any present and future purpose. The County shall have the right to enter upon the Premises at any time for the purpose of inspecting the condition of the Premises and for verifying compliance by the Club with the provisions of this Agreement and all applicable laws.
- 1.2. The County hereby waives the daily entrance fee to the Park for participants of youth archery activity events and up to three (3) annual public archery tournaments and up to 10 Saturday shoots conducted by the Club pursuant to paragraph 3.3 of the Agreement only. The waived daily entrance fee shall not apply to any other Club events, including but not limited to weekly or monthly club or public shoots.
- 1.3. The County shall reinstate the daily entrance fee to the Park for participants of the annual public archery tournaments and Saturday shoots when the annual participant level exceeds 860 participants.

- 1.4. The Club agrees to use its best efforts to promote its tournaments and events at the Park and to increase tournament and event participation.
- 1.5. It is understood that the property interest created by this Agreement may be subject to personal property taxation and that the Club will be subject to the payment of property taxes levied on such interest. The Club shall pay before delinquency of taxes, assessments or other charges levied or made as a result of the Club's possession or use of the Premises without contribution by the County, including the Club's personal property on the property.

2. Term.

- 2.1. The initial term of this license shall be for the period of five (5) years, commencing at 12:01 a.m. on **June 1, 2017**, and terminating at 11:59 p.m. on **May 31, 2022**, 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 the Club 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 the Club 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. Use of Archery Range

- 3.1. The Club agrees to establish use of the public archery range, and to obtain, and thereafter maintain, certification by the National Field Archery Association. The Club shall have the right, during the term of the agreement, to erect such structures and to provide such equipment upon the Premises as may be reasonable and necessary for the purpose of establishing and maintaining a field archery range. No structure may be erected or altered upon the Premises until the type of use, design and proposed location or alteration shall have been approved in writing by the County.
- 3.2. The Premises shall be open daily to the public except that on the second Sunday of every month the Premises shall be reserved for the exclusive use by the Club for its events.
- 3.3. The Club agrees to conduct up to at least two (2) youth archery activity events, up to three (3) public archery tournaments, and up to 10 Saturday shoots each year during the term of this Agreement.
- 3.4. The Club shall maintain the Premises in a clean and sanitary manner and shall comply with all laws, ordinances, rules, and regulations applicable to the Premises, enacted or promulgated by any public or governmental authority or agency having jurisdiction over the Premises or activities conducted on the Premises. The Club shall, at its own cost and expense, keep and maintain the Premises and the improvements on the Premises in good condition; provided however, the Club is not responsible for the cost of material needed to maintain the Premises. The County shall not be obligated to make any improvements, alterations, or repairs to the Premises or any portion thereof or improvements thereon, or to pay or reimburse the Club for any part of the cost thereof.
- 3.5. The Club shall coordinate with park staff on a monthly basis for assistance with the maintenance of the range as listed, but not limited to the following: mowing, weeding, trimming, tree trimming, painting, and general cleanup.

- 3.6. The Club 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, the Club shall protect against pollution of waters surrounding the Park and adjacent to the Premises, and neither the Club nor any member of the Club shall discharge waste or effluent onto the Premises in any manner that might contaminate water sources or otherwise constitute a nuisance.
- 3.7. The Club shall not remove or disturb or permit to be removed or disturbed, any historical archeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity located or found upon the Premises. In the event such items are discovered on the Premises, the Club shall immediately notify the County or an authorized representative of the County.
- 3.8. The Premises shall not be used, or permitted by the Club to be used, in violation of any law or ordinance or any unlawful purpose. The Club shall not allow or permit hunting or trapping on the Premises. The Club shall not sponsor, allow, or permit gambling on the Premises. The Club shall not sell, store, or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors unless specifically authorized in writing by the Director of the Department of Parks and Recreation. The Club shall not use the Premises or permit the Premises to be used by others for any illegal or immoral business or purpose, or for any activity that would constitute a nuisance. It is understood that overnight camping is not to be permitted on the Premises.

4. Improvements

- 4.1. All buildings, structures, installations, facilities, or other improvements and/or personal property placed or constructed on the Premises by the Club shall remain the personal property of the Club 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 consent of the Club. Unless otherwise agreed in writing, the County may require that any or all improvements be removed by the expiration or earlier termination of this Agreement, notwithstanding their installation may have been consented by the County. Any other improvement placed upon the Premises by the Club and not permanently affixed to the Premises, shall be removed by the Club 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. If the Club abandons, vacates, or surrenders the Premises, or is dispossessed by process of law, or otherwise, personal property belonging to the Club 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 the Club 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 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 the Club specifically waives any rights under said Chapter 5.

5. Insurance

Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit A."

6. Indemnification.

6.1. To the fullest extent permitted by law, the Club 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 the Club's occupation and use of the Premises.

7. Assignment.

7.1. The parties expressly agree that the Club 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 the Club, 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 the Club under this Agreement.

7.2. The County may accept performance of the Club's obligations from any person other than the Club 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, shall constitute a waiver nor estoppel of the County's right to exercise its remedies for the default or breach by the Club of any of the terms, covenants, or conditions of this Agreement.

7.3. The consent of the County to any assignment shall not constitute consent to any subsequent assignment by the Club 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 the Club or anyone else liable on this Agreement and without obtaining their consent, and such action shall not relieve such persons from liability under this Agreement.

8. Miscellaneous Provisions.

8.1. 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
Attn: Stephanie Musso
3800 Cornucopia Way, Suite C
Modesto, CA 95358

To the Club:
Yahi Bowmen Archery Club
Attn: Ed Andrade
P.O. Box 576742
Modesto, CA 95357

8.2. 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.


- 8.3. 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 the Club and by the Director of the County Department of Parks and Recreation.
- 8.4. 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 are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.
- 8.5. 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.
- 8.6. 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.
- 8.7. 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

YAH! BOWMEN ARCHERY CLUB

By: _____
Jami Aggers
Director

By:  _____
Curt Stevenot
President

"County"

"Club"

APPROVED AS TO FORM:
John P. Doering
County Counsel


By:  _____
Amanda DeHart
Deputy County Counsel

EXHIBIT A

Insurance Required for Most Contracts

(Not for Professional Services or Construction Contracts)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than One Million Dollars (\$1,000,000) per incident or occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under the Agreement Insurance Services Office (ISO) Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage and transportation related pollution liability.
3. **Workers' Compensation** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Application of Excess Liability Coverage: Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Reporting

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees, agents or volunteers.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.

Waiver of Subrogation

Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

Acceptability of Insurers

Insurance is to be placed with California admitted insurers (licensed to do business in California) with a current A.M. Best's rating of no less than A-VII, however, if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Approved Surplus Line Insurers (LASLI) maintained by the California Department of Insurance.

Claims Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

Verification of Coverage

Contractor shall furnish the County with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Insurance Limits

The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors. Contractor's obligation to defend, indemnify and hold the County and its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for Contractor to procure and maintain a policy of insurance.

[SIGNATURES SET FORTH ON THE FOLLOWING PAGE]

APPROVED AS TO INSURANCE CONTENT:

Stanislaus County

Chief Executive Office – Risk Management Division

By: *Kevin Watson*

Name: Kevin Watson

Title: Liability & Insurance Manager

Date: 01/27/2017

Vendor: Yahi Bowmen Club