

**Council Meeting: April 6, 2010****SUBJECT: Modify an Existing Contract and Approval of New Contract to Provide Recreational Gymnastics Instruction (F0903-85)****BACKGROUND**

For a number of years, the City has offered recreational gymnastics classes to the public through its Recreation Program. As is typical with Recreation Program classes, the City contracts with private firms to teach the classes, and revenue generated is shared between the City and these firms. Approval is requested to modify the existing contract with California Sports Center to increase the three-year not to exceed amount by \$34,000 and to establish a new two-year contract for this service, as more fully described below.

DISCUSSION

The current recreational gymnastics classes contract with California Sports Center was awarded by Council on April 10, 2007 (RTC No. 07-108), for a two year period with an option to renew for one additional one year period, for a not to exceed amount of \$200,000 per year (\$600,000 over the three-year period). Staff exercised the one year option to renew and therefore the current contract term will end April 30, 2010. Due to an increase in participant fees, and in turn an increase of shared fee revenue going to the contractor, the total revenue "payments" to California Sports Center under the existing contract will be \$634,000 for the three year period. Therefore, staff is requesting an increase to the not to exceed amount of \$34,000. Customarily, the City establishes not-to-exceed amounts for the purchase of goods and services. As this is a shared revenue contract with a goal of increasing instructional offerings, a not-to-exceed limit is unnecessary for the new contract.

Since contracting with California Sports Center, the City has seen a significant increase in gymnastics class enrollment with a corresponding increase in revenue generated by the gymnastics program. This program has averaged 430 participants per session; it is expected that participation will remain at this level or even increase, based on the overall quality of instruction offered by California Sports Center.

Section 2.08.070(b) of the Sunnyvale Municipal Code exempts professional services, including instructors, from the City's competitive bidding requirement.

FISCAL IMPACT

California Sports Center is paid 75% of the resident registration fee for all gymnastics class participants, less refunds. The remaining 25% (and non-resident differential) is retained by the City to offset the cost of handling class registration. In FY 2009/2010, total fee revenue was \$288,664. Of this amount, \$211,835 went to California Sports Center and \$76,830 was retained by the City to offset the cost of providing facilities and equipment, promoting programs, registering participants, contract management and responding to customer service comments. Net revenue received by the City covers all direct costs.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

It is recommended that Council:

1. Authorize modification of an existing contract to California Sports Center, in an amount not to exceed \$34,000.
2. Award a new contract for a two year period, to provide recreational gymnastics instruction through the City's Recreation Program.
3. Authorize the City Manager to extend the contract for one additional one year period, provided services and pricing are acceptable to the City.

Reviewed by:

Mary J. Bradley, Director of Finance
Prepared by: Pete Gonda, Senior Management Analyst, Finance

Reviewed by:

David A. Lewis
Director, Community Services

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Draft Purchase Order to Modify Existing Contract
- B. Draft Services Agreement for New Contract



ORDERED FROM 15661 - 001 California Sports Center 838 Malone Rd San Jose, CA 95125 (408) 269-5437	ORDER DATE	BILL TO: City of Sunnyvale Finance Department Accounts Payable PO Box 3707 Sunnyvale, CA 94088-3707
	EFFECTIVE DATE 5/1/2007	
	EXPIRATION DATE 4/30/2010	
	CONTRACT AMOUNT \$634,000.00	
REQUISITIONING DEPARTMENT (7006) DCS/Sports & Aquatics/Facilities	FOB	FREIGHT CHARGES
	PAYMENT TERMS BELOW	BID NO

ITEM	DESCRIPTION	UNIT	UNIT COST
1	<p>Blanket order to provide gymnastics instruction services for the City of Sunnyvale Recreation Program for a two year period 5/1/2007-4/30/2009.</p> <p>Contract may be renewed for one additional one-year period.</p> <p>Services shall be performed in accordance with the attached Service Agreement, dated 5/04/2007.</p> <p>California Sports Center shall be paid 75% of the resident registration fees collected by City for gymnastics classes minus any refunds.</p> <p>Total payments under this contract shall not exceed \$200,000 per year unless authorized in advance by Council.</p> <p>Payment Terms: Payment will be made within three weeks of the end of each session.</p> <p>Contract award by Council 4/10/2007 (RTC 07-108)</p> <p>Requisition Number: RQ001873</p> <p>Rev#1 Requisition Number: RQ004483 Rev#1: Extend purchase order for a one year period per Amendment to Service Agreement dated 3/20/2009, a copy of which is attached and incorporated herein by this reference.</p> <p>Rev#2: Increase not to exceed amount by \$34,000. Approved by Council 4/6/2010, RTC</p>	DLR	\$1.0000



AUTHORIZED DEPARTMENT(S)

NO	DEPT NAME	RELEASE AMT
7006	DCS/Sports & Aquatics/Facilities	\$45,000.00

BUYER:

Howard, Dreama

PHONE (408) 730-7396

FAX (408) 730-7710

ATTACHMENT B

**DRAFT
SERVICE AGREEMENT BETWEEN CITY OF SUNNYVALE
AND CALIFORNIA SPORTS CENTER
TO PROVIDE RECREATIONAL GYMNASTICS INSTRUCTION SERVICES**

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and CALIFORNIA SPORTS CENTER, a California corporation ("CONTRACTOR").

WHEREAS, the CITY is in need of recreational gymnastics instruction services; and

WHEREAS, CONTRACTOR has the skill and ability to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services

CONTRACTOR shall provide services in accordance with Exhibit "A" attached and incorporated by reference. CONTRACTOR shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be two years, commencing on May 1, 2010, and continuing through April 30, 2012, unless otherwise terminated. CONTRACTOR shall deliver the agreed upon services to CITY as specified in Exhibit "A". Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall provide a facility within which CONTRACTOR shall perform the required services, include a listing for each of CONTRACTOR's classes in each Sunnyvale Recreation Services Activity Guide published during the term of this Agreement, and provide class registration services.

4. Compensation

CITY agrees to pay CONTRACTOR as full compensation for the services rendered pursuant to this Agreement, the amounts set forth in Exhibit "A".

5. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR's obligations under this Agreement.

6. Compliance with Laws

- (a) CONTRACTOR shall not discriminate against any participant, student, employee or applicant for employment under this Agreement because of race, religion, creed, color, gender, age, disability, national origin or any other basis to the extent prohibited by federal, state or local law.
- (b) (b)CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

7. Independent Contractor

CONTRACTOR is acting as an independent contractor in performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR. CONTRACTOR is responsible for paying all required state and federal taxes.

8. Indemnity

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in Exhibit "A", caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

9. Insurance

CONTRACTOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "B" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "B."

10. CITY Representative

Nancy Grove, as City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

11. CONTRACTOR Representative

Dave Peterson shall represent CONTRACTOR in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of CONTRACTOR pertaining to the services to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

12. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY: Nancy Steward
Department of Community Services
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONTRACTOR: Dave Peterson
CALIFORNIA SPORTS CENTER
838 Malone Road
San Jose CA 95125

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone, email, or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered.

Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

13. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

14. Termination

If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days after written notification of failure to pay.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

15. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

16. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

CALIFORNIA SPORTS CENTER
("CONTRACTOR")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

EXHIBIT "A"

SCOPE OF SERVICES

CONTRACTOR shall:

- Provide recreational gymnastics instruction services at City's Indoor Sports Center Mezzanine and Beam/Bar Room, 550 East Remington Drive, and at the Raynor Gymnastics Facility, 1565 Quail Avenue, as required by CITY.
- Throughout the term of this Agreement, comply with the requirements of CITY's Handbook for Independent Contract Instructors, dated 12/1/04 and/or as amended.

CONTRACTOR shall use CITY's facilities only during allotted class time. Additional use of CITY's facilities, if any, shall be on a rental basis, according to CITY's current Facility Rental Rate Schedule.

CONTRACTOR shall not solicit business in class nor use the class roster or other information obtained in class to create a mailing list or for any other business purpose.

COMPENSATION

CONTRACTOR shall be compensated at the rate of 75% of the resident rate per registered student minus any refunds. Payment will be made no longer than three (3) weeks after the close of each session.

EXHIBIT "B"
INSURANCE REQUIREMENTS

CONTRACTOR shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

CONTRACTOR shall take out and maintain during the life of the contract **Workers' Compensation** insurance coverage to statutory limits as may be required by law.

CONTRACTOR shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect CONTRACTOR, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by CONTRACTOR, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from CONTRACTOR's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract. *Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.*
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.