



Council Meeting: February 26, 2013

SUBJECT: Award of Contract for Gymnastics Instruction Services and Camp Programs (F13-40)

BACKGROUND

Approval is requested to award a contract for gymnastics instruction services and camp programs offered to the public through the City's Community Services Program to California Sports Center for a two-year period with an option to renew for one additional one-year period.

DISCUSSION

It is typical to contract with private firms to teach Community Services Program classes/camps. The revenue generated by the programs is shared between the City and the contracting firm. On April 6, 2010, Council approved the award of a contract to California Sports Center (RTC10-091) for recreational gymnastics classes. This contract is due to expire on April 30, 2013 and therefore staff requests the award of a 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 program. This program averaged 390 participants per session in 2011/2012; it is expected that participation will increase, based on current average enrollment for 2012/2013 and on the overall quality of instruction offered by California Sports Center. In addition, California Sports Center will offer gymnastics camps, which is an added service from previous contracts.

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 will be paid 73% of the resident registration fee for all gymnastics classes and 80% for camp program participants, less refunds. The remaining 27% and 20% (and non-resident differential) will be retained by the City to offset administrative costs. It should be noted that the 27% retained for gymnastic classes is an increase of 2 percentage points from previous years. In 2011/2012, total fee revenue was \$291,032. Of this amount, \$220,082 went to California Sports Center and \$70,950 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. 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. The estimated contract value is \$275,000 per year.

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. Award a two year contract to California Sports Center to provide gymnastics instruction services, in substantially the same form as the attached draft services agreement; and
2. Delegate authority to the City Manager to renew the contract for an additional one-year period, provided pricing and service remain acceptable to the City.

Reviewed by:

Grace K. Leung, Director of Finance
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

Lisa Rosenblum
Director of Library and Community Services

Approved by:

Gary M. Luebbers
City Manager

Attachment

- A. Draft Services Agreement

ATTACHMENT A

DRAFT

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

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, 2013, and continuing through April 30, 2015, unless otherwise terminated. CONTRACTOR shall deliver the agreed upon services to CITY as specified in Exhibit "A". At the option of the CITY the Agreement may be renewed for an additional one year period provided services and pricing remain acceptable to the CITY.

3. Duties of CITY

CITY shall provide a facility where CONTRACTOR shall perform the required services, include a listing for each of CONTRACTOR's classes in each Sunnyvale Community 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) 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 Grove
Department of Library and 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

EXHIBIT "A"
SCOPE OF SERVICES

CONTRACTOR shall:

- Provide recreational gymnastics instruction services at City's Indoor Sports Center Mezzanine, Beam/Bar and Preschool Room, 550 East Remington Drive, as required by CITY.
- Comply with the requirements of CITY's Handbook for Independent Contract Instructors, dated 6/30/2011 and/or as amended, throughout the term of this Agreement.
- Use CITY's facilities only during allotted class time and for pre-approved staff training, meetings and classroom maintenance. Additional use of CITY's facilities, if any, shall be on a rental basis, according to CITY's current Facility Rental Rate Schedule.
- 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.
- Be compensated at the rate of 73% of the resident rate per registered student minus any refunds.
- Receive payment no later than end of the session.

CITY shall:

- Provide program listings in seasonal activity guides and City website.
- Provide opportunities to highlight gymnastics programs at least once a year in "Community Connect" online newsletter and other City social media sites.
- Submit facility work orders as reported to address repairs, safety issues, and janitorial needs.
- Provide on-going janitorial maintenance which will include:
 - Vacuuming the mezzanine, pre-school room and bar room once a week.
 - Vacuuming under mats every 3-6 months. CSC staff will be responsible for removing mats.
 - Carpet steam cleaning in bar room, mezzanine and pre-school room once annually during winter closure.

- Initiate payment after completion of the first two weeks of each session

Traditional Structured Camp Programs:

- CONTRACTOR may offer traditional structured camp programs and be compensated at the rate of 80%. Camp programs shall only be offered the 2nd week of Holiday Recess, Winter Recess (February Break) and Spring Recess pending no conflicts with facility closures. Payment shall be initiated after the completion of the camp.

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.