

**Council Meeting: April 9, 2013****SUBJECT: Award of Contract for Instructional Classes and Camps (F13-49)****BACKGROUND**

Approval is requested to award two contracts for instructional classes and camps offered to the public through the City's Community Services Division of the Library and Community Services Department to Kidz Love Soccer and Fun Tyme Sports Academy for a two-year period with an option to renew for one additional one-year period.

**DISCUSSION**

It is typical for the City to contract with private firms to teach classes and camps. The revenue generated by the programs is shared between the City and the contracting firm. On April 27, 2010, Council approved the award of contracts to Kidz Love Soccer and Fun Tyme Sports Academy (RTC No. 10-109) for these services. The contracts are due to expire on April 30, 2013, and therefore staff requests the award of new contracts.

The City has successfully contracted with Fun Tyme Sports Academy and Kidz Love Soccer for a number of years, with both providers having established solid followings. During this timeframe, these programs have averaged approximately 2,600 participants per year. Based on discussions with the vendors to add classes to the schedule, it is anticipated that registration numbers will increase during the next contract period.

Section 2.08.070(b) of the Sunnyvale Municipal Code allows exemptions from competitive bidding in certain circumstances, including professional or specialized services such as recreation instructors.

**FISCAL IMPACT**

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 for a two-year period is \$360,000 for Kidz Love Soccer and \$190,000 for Fun Tyme Sports.

Kidz Love Soccer and Fun Tyme Sports Academy will be paid 68% of the resident registration fee for all classes and camps per participant, less refunds.

The remaining 32% (and non-resident differential) will be retained by the City to offset administrative costs. It should be noted that the 32% retained by the City is an increase of 1 percentage point for Kidz Love Soccer and 2 percentage points for Fun Tyme Sports from previous years. In 2011/2012, total fee revenue was \$133,083 for Kidz Love Soccer and \$80,612 for Fun Tyme Sports, for a total of \$213,695. Of this amount, \$149,083 went to the contractors and \$64,612 was retained by the City to offset the cost of providing facilities and equipment, promoting programs, registering participants, contract management and responding to customer inquiries. 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. Award two-year contracts to Kidz Love Soccer and Fun Tyme Sports Academy to provide instructional classes and camps, in substantially the same form as the attached draft services agreements; and
2. Delegate authority to the City Manager to renew the contracts 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 Agreements

**ATTACHMENT A  
DRAFT**

**SERVICE AGREEMENT BETWEEN CITY OF SUNNYVALE  
AND FUN TYME SPORTS ACADEMY  
TO PROVIDE YOUTH SPORTS RECREATION CLASSES AND CAMPS**

THIS AGREEMENT, dated \_\_\_\_\_, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and MICHAEL ALLEN DBA FUN TYME SPORTS ACADEMY ("CONTRACTOR").

WHEREAS, the CITY is in need of services to provide youth sports recreation classes and camps;  
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". Agreement may be extended for an additional one-year period at the option of CITY.

3. Duties of CITY

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

CONTRACTOR shall provide a certificate to CITY showing that CONTRACTOR has been examined by a physician or other qualified medical provider and has been found to be free of communicable tuberculosis (Public Resources Code 5163).

8. Background Checks

CONTRACTOR shall not permit any employee to provide services to CITY under this Agreement until such employee has undergone criminal background screening through the California Department of Justice as provided in Penal Code 11105.3. No person who has been convicted to a violation or attempted violation of any offense specified in Penal Code 11105.3 or Public Resources Code 5164 shall be permitted to provide services to CITY under this Agreement. CONTRACTOR shall provide CITY, on an ongoing basis, a current list of all employees or other persons acting on CONTRACTOR's behalf.

9. 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.

10. 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.

11. 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."

12. CITY Representative

\_\_\_\_\_, 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.

13. CONTRACTOR Representative

Michael Allen 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.

14. 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 sent by commercial courier, addressed as follows:

To CITY:

\_\_\_\_\_  
Department of Library and Community Services  
CITY OF SUNNYVALE  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

To CONTRACTOR:

Michael Allen  
FUN TYME SPORTS ACADEMY  
PO Box 2826  
Sunnyvale, CA 94087

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone 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.

15. Assignment

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

16. 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.

17. 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.

18. 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:

FUN TYME SPORTS ACADEMY  
("CONTRACTOR")

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
\_\_\_\_\_  
Name and Title

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

CONTRACTOR shall:

- Provide youth sports recreation classes and camps at various CITY facilities.
- 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.
- Accept fee waivers for participation in contract activities. CITY shall reimburse fee waiver amounts, provided they are submitted within the designated time frame indicate on the fee waiver form.

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 68% of the resident rate per registered student minus any refunds. Payment will be made within three weeks of the end of each session or camp week.

**DRAFT**  
**SERVICE AGREEMENT BETWEEN CITY OF SUNNYVALE**  
**AND NORTH AMERICAN YOUTH ACTIVITIES, LLC dba KIDZ LOVE SOCCER**  
**TO PROVIDE YOUTH SOCCER CLASSES AND CAMPS**

THIS AGREEMENT, dated \_\_\_\_\_, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and NORTH AMERICAN YOUTH ACTIVITIES, LLC (NAYA) dba KIDZ LOVE SOCCER, a California corporation ("CONTRACTOR").

WHEREAS, the CITY is in need of services to provide youth soccer classes and camps; 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 one year, 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".

3. Duties of CITY

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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.

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CONTRACTOR shall provide a certificate to CITY showing that CONTRACTOR has been examined by a physician or other qualified medical provider and has been found to be free of communicable tuberculosis (Public Resources Code 5163).

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CONTRACTOR shall not permit any employee to provide services to CITY under this Agreement until such employee has undergone criminal background screening through the California Department of Justice as provided in Penal Code 11105.3. No person who has been convicted to a violation or attempted violation of any offense specified in Penal Code 11105.3 or Public Resources Code 5164 shall be permitted to provide services to CITY under this Agreement. CONTRACTOR shall provide CITY, on an ongoing basis, a current list of all employees or other persons acting on CONTRACTOR's behalf.

9. 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.

10. 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.

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13. CONTRACTOR Representative

Olly Bayliss 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.

14. Notices

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To CITY:

\_\_\_\_\_  
Department of Library and Community Services  
CITY OF SUNNYVALE  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

To CONTRACTOR: North American Youth Activities LLC (NAYA)  
dba KIDZ LOVE SOCCER, INC.  
580 E Weddell Drive Unit 2  
Sunnyvale, CA 94089

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone 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.

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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.

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IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

NAYA dba KIDZ LOVE SOCCER, INC.  
("CONTRACTOR")

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
\_\_\_\_\_  
Name and Title

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CONTRACTOR shall:

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- 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.
- Accept fee waivers for participation in contract activities. CITY shall reimburse fee waiver amounts, provided they are submitted within the designated time frame indicate on the fee waiver form.

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 68% of the resident rate per registered student minus any refunds. Payment will be made within three weeks of the end of each session or camp week.