



Item No. 10 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: STEVE TYLER, PUBLIC WORKS SUPERINTENDENT

DATE: AUGUST 21, 2013

SUBJECT: APPROVAL OF AYSO CONTRACT FOR 2013 SEASON

RECOMMENDATION

Approve the 1st Amendment to Agreement between the Town of Atherton and AYSO and authorize the City Manager to execute the Agreement.

BACKGROUND

AYSO has an annual contract with the Town for field usage at Holbrook-Palmer Park. AYSO uses the field for practices during the season. The 2013 season begins in mid-August and ends in mid-November. AYSO uses the Park strictly for practices, Mondays-Fridays, from 4pm to dusk.

This particular contract services the AYSO boys and girls under 10 year old (U10) age group. All AYSO enrollees come from Atherton and Menlo Park. The percentage of Atherton enrollees is approximately 30%-40%.

This item has been reviewed and approved by the Park & Recreation Commission on August 7. A standard contract amendment has been drafted by the City Attorney.

The fee for field usage for the 2013 Season is set at \$3,500. This contract is reviewed for renewal annually.

FISCAL IMPACT

The \$3,500 fee collected is recorded as General Fund Revenue but attributed to the Parks Division as revenue to the Park. Funds received are used to defer costs of park maintenance and improvements.

ATTACHMENT(S)

Original Agreement
First Amendment

INSTRUCTOR/VENDOR SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the 18th day of June, 2012, by and between the TOWN OF ATHERTON, herein called "Town," and AYSO (American Youth Soccer Organization) **REGION 0109** herein called "Vendor."

RECITALS

WHEREAS, Town desires AYSO to develop and deliver quality youth soccer programs which promote a fun, family environment. AYSO's philosophies are living tenets that separate it from other sports organizations. They are Everyone Plays™, Balanced Teams, Open Registration, Positive Coaching, Good Sportsmanship and Player Development; and

WHEREAS, Vendor hereby warrants to Town that Vendor is skilled and able to provide such Services described in Section 4 of this Agreement; and

WHEREAS, Town desires to retain Vendor under the terms and conditions provided in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual covenants, the parties agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if fully set forth herein.
2. **Term.** This Agreement shall commence upon its execution and shall continue in full force and effect until June 30, 2013 unless terminated as provided herein.
3. **Standard of Quality.** Town relies upon the professional ability of Vendor as a material inducement to entering into this Agreement. All work performed by Vendor under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Vendor's field of expertise. City Manager may, at City Manager's sole discretion, give an annual evaluation of Vendor to review Vendor's performance under this Agreement. Vendor shall furnish City Manager, or his/her designee, with every reasonable opportunity for Town to ascertain that the Services of Vendor are being performed in accordance with the requirements and intentions of this Agreement. All equipment, including tennis courts, shall be subject City Manager's inspection and approval.
4. **Vendor's Services.** Vendor shall perform the services set forth in Exhibit A-1, attached hereto and incorporated herein by reference ("Services").
5. **Town's Services.** In consideration of Vendor's Services and compensation to be provided to Town, Town shall perform the services set forth in Exhibit A-2, attached hereto and incorporated herein by reference.

If services provided to Vendor listed on Exhibit A-2 include the right to store personal property on Town premises, the risk of loss or damage to the property shall be borne entirely by Vendor. No bailment is created, and Town makes no representation that storage areas are secure. Vendor shall indemnify the Town and hold it harmless from any claims by third parties arising in connection with Vendor's storage of property on Town premises.

6. Compensation. The compensation to be paid for the services to be rendered hereunder shall be in accordance with Exhibit B, attached hereto and incorporated herein by reference.

7. Vendor's Books and Records.

A. Vendor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for Services, or expenditures and disbursements to Town and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years from the date of termination or completion of this Agreement, or for any longer period required by law

B. Additional Services. Town shall make no payment to Vendor for any extra, further, or additional services unless such services and payment have been mutually agreed to and this Agreement has been formally amended in writing. Vendor shall not commence any services exceeding the Scope of Services in Section 4 without prior written approval from Town.

8. Independent Contractor. Vendor, its officers, employees and agents shall not have any power to bind or commit Town to any decision. It is expressly agreed that at all times during the term of this Agreement, Vendor and its employees and agents, in the performance of the services agreed to be performed by Vendor, shall act as and be independent contractors and not agents or employees of Town. As independent contractors, neither Vendor nor any employees or agents of Vendor shall obtain any rights to retirement benefits or other benefits which accrue to Town's employees. Vendor hereby expressly waives any claim it may have to any such rights.

9. Compliance with Laws. Vendor shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Vendor represents and warrants to Town that Vendor has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Vendor to practice its profession. Vendor shall maintain a Town business license. Town is not responsible or liable for Vendor's failure to comply with any and all of its requirements under this Section.

10. Taxes. Vendor shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers' compensations insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the Services to be performed by Vendor.

11. Assignment. Vendor shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without Town's prior written consent.

12. Subcontractors; Employees. Vendor shall be responsible for employing or engaging all persons necessary to perform the services of Vendor hereunder. No subcontractor of Vendor shall be recognized by Town as such; rather, all subcontractors are deemed to be employees of Vendor, and Vendor agrees to be responsible for their performance. Vendor shall give personal attention to the fulfillment of the provisions of this Agreement by all employees and subcontractors, if any, and shall keep the work under its control.

13. Indemnity. Vendor hereby agrees to defend (by counsel reasonably satisfactory to Town), indemnify, and hold harmless Town, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Vendor, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of Town. Town has no liability or responsibility for any accident, loss, or damage to any services performed under this Agreement. Vendor's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Vendor under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Vendor and shall continue to bind the parties after termination/completion of this Agreement.

14. Litigation Support. Vendor agrees to testify at Town's request if litigation is brought against Town in connection with Vendor's Services.

15. Liability of Members and Employees of Town. No member of Town and no other officer, employee or agent of Town shall be personally liable to Vendor or otherwise in the event of any default or breach of Town, or for any amount which may become due to Vendor or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

16. Insurance. Vendor agrees to have and maintain, for the duration of the term of this Agreement, the following insurance coverage with insurers with a Best's rating of no less than A:VII.

A. General Liability. A general liability insurance policy in an amount not less than \$2,000,000 combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage. This policy shall name Town and its officers, agents, employees, and representatives as additional insureds. Vendor shall furnish Town with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall contain a statement of obligation on the part of the carrier to notify Town of any material change, cancellation or termination at least thirty (30) days in advance of the effective date of such material change, cancellation or termination. Coverage provided hereunder by Vendor will be primary insurance

and will not be contributing with any insurance, self-insurance or joint-self insurance maintained by Town. The required certification and endorsements will be furnished by Vendor to Town prior to commencement of Vendor's Services.

B. Automobile Liability. An automobile liability insurance policy in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage. Vendor shall furnish Town with a certificate of insurance evidencing the required insurance coverage.

C. Workers' Compensation. If applicable, a Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Vendor. This policy shall provide coverage for Workers' Compensation (Coverage A) and Employers' Liability (Coverage B).

17. Termination; Suspension. This Agreement and all obligations hereunder may be terminated by either party, with or without cause, upon 60-days' written notice to the non-terminating party. If Vendor fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violates any of the terms of this Agreement or is convicted of a felony, in addition to all other remedies provided by law, Town may, at its sole option, suspend or terminate this Agreement immediately upon written notice. Town shall be entitled to any compensation owing to it under this Agreement up to the time of such suspension or termination.

18. Written Notification. Any notice, demand, request, consent, approval or communication ("Notice") shall be in writing and either served personally or sent by prepaid, first class mail. Notice shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing.

If to Town:

If to Vendor:

City Manager

Ken Johnson

Town of Atherton - Town Hall

1023 Berkeley Avenue

91 Ashfield Road

Menlo Park, CA 94025

Atherton, CA 94027

19. Equal Employment Opportunity. Vendor is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity.

20. Force Majeure. If, in the opinion of City Manager, the facilities at Holbrook-Palmer Park are damaged or made unusable due to a natural disaster or causes beyond the control

of Town, Town and Vendor will be relieved of their respective duties and obligations under this Agreement until the facilities are deemed usable by City Manager.

21. Execution; Authority. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

22. Miscellaneous Provisions. This Agreement constitutes the complete and exclusive statement of agreement between Town and Vendor and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both Town and Vendor. This Agreement shall be interpreted as though it was a product of a joint drafting effort. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, trial of such action shall be held exclusively in a state court in the County of San Mateo, California. If either party commences any legal action against the other party arising out of this Agreement or the performance hereof, the prevailing party in such action may recover its reasonable costs and expenses, including attorneys' fees.

IN WITNESS WHEREOF, Town and Vendor have executed this Agreement as of the date first above written.

TOWN OF ATHERTON

VENDOR

By: _____

By: _____

City Manager

Name: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

City Attorney

ATTEST:

By: _____

City Clerk

EXHIBIT A-1

SCOPE OF SERVICES – VENDOR

Subject to such policy direction and approvals as the Town through its staff may determine from time to time, Vendor shall perform the following services:

- (1) Vendor may use the Main Field at Holbrook Palmer Park on the following dates: Monday through Friday from 4:00 - 6:30 pm commencing Monday, August 27th through Friday November 2nd, 2012; Monday, November 5th through Friday, November 16, 2012 from 3:45 – 5:30 pm.
- (2) If vendor wishes to add additional dates during the FY 12-13 those dates must be identified and agreed to at least 30 days prior in writing to the Town of Atherton.

EXHIBIT A-2

SCOPE OF SERVICES – TOWN

The Town shall perform the following services:

- (3) Permit vendor to use the field(s) at Holbrook Palmer Park for AYSO instruction;
- (4) Town shall maintain fields at Holbrook Palmer Park to ensure AYSO may utilize them on specified dates and contact the vendor should any issues arise in use.

EXHIBIT B
COMPENSATION SCHEDULE

Total Compensation: Vendor to pay \$3500 fee payable to the Town of Atherton due at the beginning of said contract.

**2nd AMENDMENT TO THE AGREEMENT FOR INSTRUCTOR/VENDOR
SERVICES AGREEMENT BY AND BETWEEN THE TOWN OF ATHERTON
AND AYSO**

This 1ST Amendment to the AYSO Agreement (“Agreement”) by and between the Town of Atherton ("Town") and AYSO ("Vendor") for youth soccer programs dated June 18, 2012, is hereby amended to extend the agreement for an additional year.

The Agreement is hereby amended as follows:

1. Section 2, TERM OF AGREEMENT, is amended by replacing the entire section with the following sentence: “This Agreement shall commence upon its execution and shall continue in full force and effect until June 30, 2014 unless terminated as provided herein.”

3. The remaining terms and conditions of the Agreement shall remain in full force and effect.

Dated: August ____, 2013

TOWN OF ATHERTON:

VENDOR:

By: _____
George Rodericks, City Manager

AYSO President

ATTEST:

Approved as to Form

Theresa DellaSanta, City Clerk

William B. Connors, City Attorney