



Item No. 13 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

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

FROM: THERESA DELLASANTA, ASSISTANT TO THE CITY MANAGER

DATE: SEPTEMBER 17, 2014

SUBJECT: APPROVAL OF AYSO CONTRACT FOR 2014 SEASON

RECOMMENDATION

Approve the 2nd 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 in coordination with Lacrosse and Little League. The 2014 season began in mid-August and ends in mid-November. Due to the cancellation of the August Council meeting AYSO is currently operating month-to-month via the 2013 contract. 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%. The fee for field usage was \$3,500 for the 2013 season. Staff met with AYSO and discussed the annual fee as well as participation in community events. AYSO suggested that the fee for the 2014 season be increased to \$4,000 and that they would help publicize Town events as well as provide volunteers to assist. AYSO would use their own outreach channels to help publicize any future community events (such as the Town's National Night Out) and by donating volunteer hours as needed.

There are no usage conflicts with other Park users.

FISCAL IMPACT

The \$4,000 fee collected is recorded as General Fund Revenue but attributed to the Parks Department as revenue to the Park. Funds received are used to defer costs of park maintenance and improvements.

ATTACHMENT(S)

Original Agreement
Amendment

**3rd AMENDMENT TO THE AGREEMENT FOR INSTRUCTOR/VENDOR SERVICES
AGREEMENT BY AND BETWEEN THE TOWN OF ATHERTON AND AYSO**

This 3rd Amendment to the AYSO Agreement ("Agreement") by and between the Town of Atherton ("Town") and AYSO REGION 109 ("Vendor") dated July 11, 2011 for youth soccer programs, 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 current expiration date of June 30, 2014 with June 30, 2015.
2. Exhibit B, COMPENSATION SCHEDULE, is amended by replacing the current fee of \$3500 with a new fee of "\$4000.
3. The remaining terms and conditions of the Agreement as previously amended shall remain in full force and effect.

Dated: September ____, 2014

TOWN OF ATHERTON:

VENDOR:

By: _____
George Rodericks, City Manager

AYSO President

ATTEST:

Approved as to Form

Theresa DellaSanta, City Clerk

William B. Conners, City Attorney

INSTRUCTOR/VENDOR SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the 11th day of July, 2011, 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, 2012 unless terminated as provided herein. Before the Agreement terminates, Town and Vendor may agree in writing to extend the Agreement for another two-year term on the same terms and conditions as provided in this Agreement.
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:

City Manager
Town of Atherton - Town Hall
91 Ashfield Road
Atherton, CA 94027

If to Vendor:

Ken Johnson
1023 Berkeley Avenue
Menlo Park, CA 94025

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

By: _____

City Manager

Date: _____

9-7-11

VENDOR

By: _____

Name: Michael A. Malano

Title: Regional Commissioner

Date: _____

August 22, 2011

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 4:30 - 6:30 pm commencing Monday, August 29th through Friday November 4th, 2011. For the week of Monday, November 7th through Friday, November 11, 2011 from 4:00 - 5:30 pm.
- (2) If vendor wishes to add additional dates during the FY 11-12, 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.



CERTIFICATE OF LIABILITY INSURANCE

RGN 0109
DATE (MM/DD/YYYY)

6/30/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Willis Insurance Services of Atlanta, Inc. One Glanlake, Suite 1100 Atlanta, GA 30328	CONTACT NAME:		
	PHONE (A/C, No. Ext): (800) 872-2976	FAX (A/C, No): (310) 643-5310	
www.ayso.org	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE	NAIC #	
INSURED American Youth Soccer Organization AYSO Region 0109 19750 S. Vermont Avenue, Suite 200 Torrance CA 90250	INSURER A : Philadelphia Indemnity Insurance Co		18058
	INSURER B : Starr Indemnity & Liability Company		38318
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

COVERAGES CERTIFICATE NUMBER: 10558934 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			PHPK706923	7/1/2011	7/1/2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Participant <input checked="" type="checkbox"/> Legal Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Sexual Abuse & Molestation Sublimit			PHPK706923	7/1/2011	7/1/2012	1,000,000 Per Person 2,000,000 Policy Agg
B	Participant Sport Accident			BAP-129134-1	7/1/2011	7/1/2012	\$50,000 Max Benefit per policy terms/excl

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

American Youth Soccer Organization
Certificate Holder is an Additional Insured as respects AYSO sanctioned events only where required by contract. Waiver of Subrogation applies as respects General Liability. General Aggregate Limit Applies on a per Region basis.

CERTIFICATE HOLDER	CANCELLATION
Town of Atherton Holbrook Palmer Park 150 Watkins Avenue Atherton CA 94027	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Terry Michelitch</i> Terry Michelitch

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ACORD 25 (2010/05)

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AYSO
American Youth Soccer Organization
Region 109
P.O. Box 403
Menlo Park, CA 94026

August 21, 2011

Dear Ms. Cardona:

Enclosed please find our check in the amount of \$3,500.00 for use of Holbrook-Palmer Park as a soccer practice field for our region during the 2011 fall season. Your continued support of our organization is very much appreciated and critical to our success in providing soccer to the children in our communities that make up Region 109.

On behalf of our entire organization, we thank you again for your continued support of AYSO Region 109. We cannot do it without the generous support and commitment of people and/or organizations like you. We look forward to our continued relationship in the future.

Sincerely,


H. Gregory Nelch
Region 109 Treasurer

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: September 13, 2013


TOWN OF ATHERTON:


By: 
George Rodericks, City Manager

ATTEST:


Theresa DellaSanta, City Clerk

VENDOR:


AYSO President Regional Commissioner
Michael Molano, Region 109
Approved as to Form


William B. Connors, City Attorney