



## Item No. 28 Town of Atherton

### **CITY COUNCIL STAFF REPORT – REGULAR AGENDA**

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

**FROM: MICHAEL KASHIWAGI, COMMUNITY SERVICES DIRECTOR  
STEVE TYLER – PARK SUPERINTENDENT**

**DATE: SEPTEMBER 17, 2014**

**SUBJECT: TENNIS FACILITY MANAGEMENT SELECTION**

#### **RECOMMENDATION**

Approve contract with Player Capital Tennis to manage the tennis facility at Holbrook-Palmer Park.

#### **BACKGROUND**

Alan Margot has been under contract for many years with the Town as its exclusive vendor of tennis instruction (both youth camps/clinics and private instruction). The contract required Mr. Margot to pay the Town \$25 per hour of instruction. Exclusivity was incorporated into the contract such that lessons on the courts could only be provided through Alan Margot in exchange for revenues received through camps and clinics and the \$25 per hour of instruction. Over the years, the Town received approximately \$1,500 *per year* from the camp programs administered by Mr. Margot but little in the way of revenue from lessons or private instruction. With the contract's term ending June 2014, the Council expressed a desire to reframe the arrangement in an effort to stimulate continued use of the courts and on May 21, 2014, approved issuing a request for proposal (RFP) for Tennis Facility Management Services.

#### **ANALYSIS**

On June 25, 2014, proposals were due to the City Clerk's office by 3:00 PM. A total of three (3) proposals were collected by that time. The proposals came from the following management providers:

- Team Bay Tennis Academy Foundation (TBTAf)
- Player Capital Tennis
- Kim Grant Tennis Academy

Staff put together a team to assist in the hiring selection for this contract. The team consisted of one member of Town staff, two members of the Park & Recreation Committee (one tennis player and one not), and one Atherton resident who volunteered due to her qualifications as a former player (at Stanford) as well as her general love of the game.

The proposals were rated as to the criteria required within the proposal. The team was impressed that all three proposers were well qualified to be able to manage the tennis facility. It was decided that all three proposers would be interviewed for the position.

On July 24, 2014, interviews were held for the contract of providing Tennis Management Services at Holbrook-Palmer Park. All three candidates were interviewed for the position. Once again, the team was excited to have such a fine selection of candidates to choose from for the position.

In the end, the scoring ranked the candidates as follows:

1. Player Capital Tennis
2. Kim Grant Tennis Academy
3. TBTAf

The Town has worked with Michael Jessup, owner of Player Capital Tennis (PCT), to negotiate a contract (attached). Along with financial obligations owed the Town through this contract, the scope of work details the issues regarding maintenance, walk-on play, both Town and Contractor obligations and the exclusivity of PCT to be the sole provider of tennis instruction at the facility.

PCT is not so large that they will overwhelm the court usage and the same time, they are not so small that it will take a long amount of time to see the usage increase at the courts. PCT has a proven system to bring to our facility to assist key holders in making online reservations to assure court time when and where they would like to have it. Atherton resident (key-holders) will receive a minimum of one-day priority in court reservations. This system will alleviate players showing up to play at the courts and not being able to find an open court.

**Until the reservation system becomes fully implemented (Feb. 1, 2015), there will be at least two courts open at all times for open play Sunday through Friday and three courts available on Saturday mornings.**

PCT has a strong base of youth players, and hopes to grow camps, clinics and tournaments to provide for their tennis growth at the facility. PCT staff is well qualified to give high-level tennis instruction, but offers instruction for all levels of players. They will offer private lessons, adult and junior clinics, summer camps, tournaments and social events (ie - bbq's, tennis mixers, and team tennis). In addition to the annualized revenue to the Town through the management contract, PCT will provide additional funds to the Town to maintain and improve the courts with a multi-year contract. PCT came with many endorsements from Atherton residents who currently use PCT for their personal services but need to travel to other areas (Woodside HS or Canada College) for lessons.

PCT was placed on the agenda and gave a presentation to the Atherton Park and Recreation Committee at their September 3, 2014 meeting. Following their presentation, PCT answered questions regarding the programs fit in the park. The Parks and Recreation Committee voted unanimously to endorse Player Capital Tennis as the new Tennis Facility Manager to the Atherton City Council.

It is predicted that this contract will begin on October 1, 2014, which coincidentally follows the last day of the contract extension with Alan Margot as Tennis Camp instructor.

### **FISCAL IMPACT**

PCT has agreed to pay the Town for the opportunity to manage and have exclusivity of the Tennis Facility a flat rate of \$40,000 per year or \$3,333 per month. This price is non-dependent of how many camps or other activities they are able to provide at the courts.

Currently, the Town is receiving approximately \$1,600 annually for Tennis Management Services. Beginning with the 2013/14 Budget, the Town created an income statement for the Park. All revenues and expenditures related to Holbrook-Palmer Park are balanced to create a clearer picture of the Park's expenses. Revenues that are raised from Park activities are spent within the Park's quasi "enterprise fund" – essentially, the Town is treating the Park as a separate entity for its revenues and expenditures.

**AGREEMENT FOR TENNIS FACILITY MANAGEMENT SERVICES**  
**between the TOWN OF ATHERTON and**  
**PLAYER CAPITAL TENNIS**

This AGREEMENT for tennis facility management services between the TOWN OF ATHERTON and PLAYER CAPITAL TENNIS is made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and between the TOWN OF ATHERTON, a municipal corporation ("TOWN"), and PLAYER CAPITAL TENNIS ("CONTRACTOR").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**SECTION 1. TERM OF AGREEMENT.**

Subject to the provisions of SECTION 17, "TERMINATION OF AGREEMENT" of this AGREEMENT, the term shall be for a period of one (1) year from the date of execution, as first shown above. Such term may be extended upon written agreement of both parties to this AGREEMENT for a period two (2) additional three (3) year terms for a total of seven (7) years.

**SECTION 2. SCOPE OF SERVICES.**

CONTRACTOR agrees to perform tennis facility management services for TOWN at the Holbrook-Palmer Park Tennis facility at various times as set forth in EXHIBIT "A," "SCOPE OF SERVICES," and made a part of this AGREEMENT. Additionally, the original proposal of CONTRACTOR submitted on or about June 24, 2014, shall be incorporated and included herein as part of EXHIBIT "A" as if set forth in full herein and shall also be applicable as outlining the total scope of services to be provided under this AGREEMENT by CONTRACTOR.

**SECTION 3. ADDITIONAL SERVICES.**

CONTRACTOR shall not be compensated for any services rendered in connection with its performance of this AGREEMENT unless such additional services and compensation are authorized in advance and in writing by TOWN. CONTRACTOR shall be compensated for any such additional services in the amounts and in the manner agreed to between CONTRACTOR and TOWN.

**SECTION 4. COMPENSATION AND METHOD OF PAYMENT**

- (a) Subject to any limitations set forth in this AGREEMENT, CONTRACTOR agrees to pay TOWN the annual amount of forty thousand dollars (\$40,000.00). The CONTRACTOR shall accomplish this through equal advance monthly payments of three thousand, three hundred thirty three dollars and thirty three cents (\$3,333.33) due the first of each month for use of

the facility in that month. This monthly payment constitutes payment in full for the previous months use and exclusivity of the facility.

- (b) Following the successful completion of the initial 1 year Tennis Facility Management contract and at the renewal of the contract, Contractor agrees to pay the Town an additional \$15,000 for each 3 year extension with the money to be used only for tennis court maintenance/resurfacing/or other tennis facility related expenses.

## **SECTION 5. OWNERSHIP OF DOCUMENTS.**

All original documents prepared, developed or discovered by CONTRACTOR in the course of providing any services pursuant to this AGREEMENT, if any, may be used, reused or otherwise disposed of by TOWN without the permission of the CONTRACTOR.

## **SECTION 6. CONTRACTOR'S BOOKS AND RECORDS.**

(a) CONTRACTOR shall maintain any and all documents and records demonstrating or relating to CONTRACTOR's performance of services pursuant to this AGREEMENT. CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to TOWN pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONTRACTOR pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for a minimum of three (3) years from the date of creation or termination, whichever comes later

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by TOWN or its designated representative. Copies of such documents or records shall be provided directly to TOWN for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONTRACTOR's address indicated for receipt of notices in this AGREEMENT.

(c) Where TOWN has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded in the future due to dissolution or termination of CONTRACTOR's business, TOWN may, by written request, require that custody of such documents or records be given to TOWN.

(d) Each month CONTRACTOR shall furnish to TOWN a report detailing all activities at the courts during the preceding month. These activities include private lessons, group lessons, clinics and camps, mixers, tournaments, social events/parties that take place on the courts. Once the reservation system is up and running, a total number of court reservations for each month shall also be provided.

## **SECTION 7. STATUS OF CONTRACTOR.**

(a) CONTRACTOR is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of TOWN. CONTRACTOR shall have no authority to bind TOWN in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against TOWN, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by TOWN. It is not the intent of this clause to prevent CONTRACTOR from entering into agreements to provide services, such as lessons or participation in clinics, to the general public without further written permission from TOWN.

(b) The personnel performing the services under this AGREEMENT on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither TOWN, nor any elected or appointed boards, officers, officials, employees or agents of TOWN, shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees or agents, except as set forth in this AGREEMENT. CONTRACTOR shall not at any time or in any manner represent that CONTRACTOR or any of CONTRACTOR's officers, employees or agents are in any manner officials, officers, employees or agents of TOWN.

(c) Neither CONTRACTOR, nor any of CONTRACTOR's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits that may otherwise accrue to TOWN employees.

## **SECTION 8. STANDARD OF PERFORMANCE.**

CONTRACTOR represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONTRACTOR shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONTRACTOR shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONTRACTOR under this AGREEMENT.

## **SECTION 9. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND LICENSES.**

CONTRACTOR shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONTRACTOR shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither TOWN, nor any elected or appointed boards, officers, officials, employees or agents of TOWN, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.

## **SECTION 10. NONDISCRIMINATION.**

In performing the services under this Agreement, CONTRACTOR agrees as follows:

(a) CONTRACTOR will not discriminate against any student, user of the tennis facility, employee or applicant from employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act—Government Code Section 12900-12996). CONTRACTOR will take positive action or ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy. Such action shall include but not be limited to the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by TOWN setting forth the provisions of this nondiscrimination clause.

(b) CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy.

## **SECTION 11. UNAUTHORIZED ALIENS.**

CONTRACTOR hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONTRACTOR so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should any liability or sanctions be imposed against TOWN for such use of unauthorized aliens, CONTRACTOR hereby agrees to and shall reimburse TOWN for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by TOWN.

## **SECTION 12. CONFLICTS OF INTEREST.**

(a) CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of TOWN or which would in any way hinder CONTRACTOR's performance of services under this AGREEMENT. CONTRACTOR further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City

Manager. CONTRACTOR agrees at all times to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of TOWN in the performance of this AGREEMENT.

(b) TOWN understands and acknowledges that CONTRACTOR is, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONTRACTOR is unaware of any stated position of TOWN relative to such projects. Any future position of TOWN on such projects shall not be considered a conflict of interest for purposes of this section.

### **SECTION 13. INDEMNIFICATION.**

**INDEMNIFICATION FOR LIABILITY:** To the full extent permitted by law, CONTRACTOR shall indemnify, defend and hold harmless TOWN, and any and all of its boards, employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this AGREEMENT by CONTRACTOR or by any individual or entity for which CONTRACTOR is legally liable, including but not limited to officers, agents, employees or subcontractors of CONTRACTOR, in a negligent manner.

### **SECTION 14 INSURANCE.**

CONTRACTOR agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "B," "INSURANCE," and made a part of this AGREEMENT. All insurance policies shall be subject to approval by TOWN as to form and content. These requirements are subject to amendment or waiver if so approved in writing by TOWN Manager. CONTRACTOR agrees to provide TOWN with copies of required policies upon request.

### **SECTION 15. ASSIGNMENT.**

The expertise and experience of CONTRACTOR are material considerations for Town's acceptance of this AGREEMENT. TOWN has an interest in the qualifications and capability of the persons who will fulfill the duties and obligations imposed upon CONTRACTOR under this AGREEMENT. In recognition of that interest, CONTRACTOR shall not assign or transfer this Agreement or any portion of this AGREEMENT or the performance of any of CONTRACTOR's duties or obligations under this AGREEMENT without the prior written consent of TOWN Council. Any attempted assignment without TOWN's consent shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling TOWN to any and all remedies at law or in equity, including summary termination of this AGREEMENT. TOWN acknowledges, however, that CONTRACTOR, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

## **SECTION 16. TERMINATION OF AGREEMENT.**

(a) TOWN may terminate this AGREEMENT, with or without cause, upon 30 days written notice to CONTRACTOR. In the event such notice is given, CONTRACTOR shall professionally carry out their responsibilities and commitments until the date of termination.

(b) CONTRACTOR may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to TOWN.

(c) If either CONTRACTOR or TOWN fails to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONTRACTOR or TOWN may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONTRACTOR or TOWN, all property belonging exclusively to TOWN, which is in CONTRACTOR's possession, shall be returned to TOWN. CONTRACTOR shall pay Town on a prorated schedule for all current court usage until the date of termination as set forth in SECTION 4 of this AGREEMENT. If the date of termination does not fall evenly on a month end, the CONTRACTOR will pay the TOWN the amount of \$109.59 per day of contract. This final payment shall be paid in the same manner as set forth in Section 4 of this AGREEMENT.

## **SECTION 17. DEFAULT.**

In the event that CONTRACTOR is in default under the terms of this AGREEMENT, TOWN shall not have any obligation or duty to continue providing the tennis facility and may terminate this AGREEMENT immediately by written notice to the CONTRACTOR.

## **SECTION 18. COOPERATION BY TOWN.**

All public information, data, reports, records, and maps that are existing and available to TOWN, and which are necessary for carrying out the work as outlined in EXHIBIT "A," "SCOPE OF SERVICES," shall be furnished to CONTRACTOR in a reasonable manner to facilitate, without undue delay, the work to be performed under this AGREEMENT.

## **SECTION 19 NOTICES.**

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by fax or certified mail, postage prepaid and return receipt requested, addressed as follows:

To TOWN: Town of Atherton City Manager  
91 Ashfield Road  
Atherton, Ca. 94027

To CONTRACTOR: Player Capital Tennis  
P.O. Box 7847  
Menlo Park, Ca. 94026

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

**SECTION 20. AUTHORITY TO EXECUTE.**

The person or persons executing this AGREEMENT on behalf of CONTRACTOR represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONTRACTOR to the performance of its obligations hereunder.

**SECTION 21. BINDING EFFECT.**

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**SECTION 22. MODIFICATION OF AGREEMENT.**

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONTRACTOR and by TOWN. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void. In the event of any conflict between the terms and conditions of this AGREEMENT and any attached exhibits, the terms and conditions of this AGREEMENT will control.

**SECTION 23. WAIVER.**

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by TOWN of any work or services by CONTRACTOR shall not constitute a waiver of any of the provisions of this AGREEMENT.

**SECTION 24. LAW TO GOVERN; VENUE.**

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue shall lie exclusively in the County of San Mateo.

**SECTION 25. ATTORNEYS FEES, COSTS AND EXPENSES.**

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled.

**SECTION 26. ENTIRE AGREEMENT.**

This AGREEMENT, including the attached EXHIBITS "A" (including CONTRACTOR'S proposal) and "B," is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONTRACTOR and TOWN prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied in the AGREEMENT shall be valid and binding.

**SECTION 27. SEVERABILITY.**

If a term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

**TOWN OF ATHERTON**

**CONTRACTOR**

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

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

**ATTEST:**

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

## **EXHIBIT "A"**

### **SCOPE OF WORK**

#### **TOWN OF ATHERTON**

#### **TENNIS FACILITY MANAGEMENT SERVICES**

The Scope of Work or Services to be provided are as set forth in the RFP inviting proposals for the provision of professional tennis services due June 25, 2014, and Contractor's proposal due June 25, 2014, both of which are attached hereto for reference, but have been modified by mutual negotiation, specifically the following:

- a. Development of administration and coordination of policies, procedures, calendars and materials to demonstrate competence in managing and operating TENNIS FACILITY at HOLBROOK PALMER PARK, within 14 days of Notice to Proceed;
- b. Preparing scheduling, operations and financial records and reports that conform to requirements under Section A (below), Records and Reports;
- c. Developing and distributing promotional material for the facilities;
- d. Developing and placing advertisements in appropriate print and on line media;
- e. Presence by the Project Manager at the tennis facility at least 4 days per week for a minimum of 2 hours per day **and** a total of at least 20 hours per week between the hours of 9 am and 5 pm;
- f. Responding to clients within no more than 24 hours of contact (weekend time excluded);
- g. Booking, scheduling and staffing activities and reservations, oversight of maintaining the Tennis Facilities and equipment (see Section B below) in a safe, clean and attractive condition in accord with high standards expected by the Town and by Event Facility users;
- h. Setting up Tennis Facilities for activities;
- i. Cleaning up Tennis Facilities following tennis activities;
- j. Promptly informing Town's Contract Manager of maintenance and repair needs;
- k. Recommending capital improvements to Town's Contract Manager of Tennis Facilities to maintain them and to enhance their ability to enhance tennis programs;
- l. The Contractor will be provided exclusive rights to provide tennis lessons for hire at the Holbrook-Palmer Park Tennis facility as well as camps, clinics, tournaments and tennis related social gatherings. All fees collected for these services will be collected and retained by the contractor.
- m. Contractor will provide an exclusive tennis court reservation system for all tennis key holders who wish to play tennis at the park beginning 2/1/2015. Until that time, a minimum of two (2) tennis courts will be provided for "walk on" play Sundays through Fridays and a minimum of three (3) courts will be provided on Saturdays.

### **RECORDS AND REPORTS**

#### *Scheduling Records*

- (a) Contractor shall maintain a calendar showing all Tennis Court usage scheduled at Park during

the term of this contract and for at least 24 months beyond the end of the term. The scheduling record shall be maintained in a complete and accurate manner and shall be made available to Town at all times. A copy in print, or in an electronic format acceptable to Town, shall be provided within 5 business days of the end of each month. Records and reports must be submitted with the Contractor's monthly payment.

### *Monthly Activity Report*

A monthly activity report in print, or in an electronic format acceptable to Town, shall be provided within 5 business days of the end of each month. The report shall include the following:

- a. Each month CONTRACTOR shall furnish to TOWN a report detailing all activities at the courts during the preceding month. These activities include private lessons, clinics and camps, mixers, tournaments, social events/parties that take place on the courts. Once the reservation system is up and running, a total number of court reservations for each month shall also be provided.

### **A. MAINTENANCE OF FACILITIES AND EQUIPMENT**

The Town will be responsible to provide the following maintenance and support at the Tennis facility:

1. The Town will empty the garbage cans at the courts a minimum of two times per week. Larger containers for garbage/recycling will be provided outside of the tennis court fenced facility and will be emptied as needed.
2. The Town will blow/sweep the Tennis facility a minimum of one (1) time per week. This day will be worked out by mutual agreement between staff and the facility manager. This includes removal of weeds and/or other foreign growth on the courts.
3. The Town will be responsible to keep the courts secure in a playable condition and will replace tennis nets, wind screens, seating, court appurtenances including court dryers, garbage cans, bulletin boards, fencing, gates and closers as needed.
4. The tennis courts are provided to the contractor as is, and the Town will be responsible for management of their resurfacing every 3-5 years as needed.
5. The Town will provide the contractor one (1) lockable storage unit located on Court 4 of the facility.
6. Town will be responsible to, when not restricted by water regulations, wash down the tennis facility with water 2 times per year by mutual agreement with the court manager.

The contractor shall be responsible for set-up, operations and activity clean-up of the interior of the Tennis Facilities. The contractor will also be responsible for the management of set-up; take-down, cleaning and storage of tennis equipment, ball machines and any other specific equipment used during a tennis activity. The contractor will also be responsible for cleaning exterior areas used during events, returning them to their pre-activity status.

1. The Contractor will provide all maintenance needs required above/beyond the maintenance provided by the Town (listed above in section C – 1 through 7).
2. Clean up following contractor provided daily tennis activities at the park.

## **B. RESERVATION PROCEDURES FOR HP PARK TENNIS COURTS**

Contractor responsibilities;

1. Contractor will operate a website for making reservations for court time at the HP Park Tennis Courts for holders of an Atherton Tennis Key beginning February 1, 2015.
2. Reservations will be taken with the following priorities:
  - a. Atherton residents may reserve a tennis court 7 days in advance of date of use.
  - b. Non-residents may reserve a tennis court 5 days in advance of date of use.
3. Contractor controls master activities book and checks to see if date/time requested are open for booking.
4. Contractor provides all correspondence with requesters for use.
5. Contractor will provide guidance to key holders with discrepancies of court reservations out at the courts.

## **EXHIBIT "B"**

### **INSURANCE**

A. Insurance Requirements. CONTRACTOR shall provide and maintain insurance, acceptable to TOWN, in full force and effect throughout the term of this AGREEMENT, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. CONTRACTOR shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of TOWN.

- (3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of CONTRACTOR and all risks to such persons under this AGREEMENT.

(4) Errors and omissions liability insurance appropriate to CONTRACTOR's profession.

2. Minimum Limits of Insurance. CONTRACTOR shall maintain limits of insurance no less than:

(1) General Liability: \$2,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

(4) Errors and omissions Liability: \$1,000,000 per occurrence.

B. Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:

1. All Policies. Each insurance policy required by this section shall be endorsed and state the coverage shall not be suspended, voided, canceled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after thirty (30) days' prior written notice by Certified mail, return receipt requested, has been given to TOWN.

2. General Liability Accident -- Mobile Liability Rates.

(1) TOWN and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities CONTRACTOR performs; products and completed operations of CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to TOWN, and their respective elected and appointed officers, officials, or employees.

(2) CONTRACTOR's insurance coverage shall be primary insurance with respect to TOWN, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by TOWN, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, CONTRACTOR 's insurance.

(3) CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to TOWN and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage. Unless TOWN otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against TOWN, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by CONTRACTOR.

C. Other Requirements. CONTRACTOR agrees to deposit with TOWN, at or before the effective date of this contract, certificates of insurance necessary to satisfy TOWN that the insurance provisions of this contract have been complied with. TOWN Attorney may require that CONTRACTOR furnish TOWN with copies of original endorsements effecting coverage required by this section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. TOWN reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. CONTRACTOR shall furnish certificates and endorsements from each subcontractor identical to those CONTRACTOR provides.

2. Any deductibles or self-insured retentions must be declared to and approved by TOWN. At the option of TOWN, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects TOWN or its respective elected or appointed officers, officials, employees and volunteers or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT.