

ATTACHMENT #1

DRAFT SERVICES AGREEMENT BETWEEN THE 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 instructional 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 for two years, commencing on May 1, 2016, and continuing through April 30, 2018, unless otherwise terminated. Agreement may be renewed 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

CONTRACTOR shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONTRACTOR is aware of the prohibition that no officer 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'S employees have been examined by a physician or other qualified medical provider and have 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, 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

Dan Wax, Superintendent of Community Services as City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement, other than invoices for payment as defined in Section 14. 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

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

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: Dan Wax
Superintendent of Community Services
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
780 Montague Expressway, Suite 602
San Jose, CA 95131

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

A. 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. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of satisfactory 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.

- B. 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.
- C. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

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:

NAYA, LLC dba KIDZ LOVE SOCCER
("CONTRACTOR")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

EXHIBIT "A"

SCOPE OF SERVICES

CONTRACTOR shall:

- Provide youth soccer 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 indicated 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.

EXHIBIT "B"
INSURANCE REQUIREMENTS

CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the CONTRACTOR, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance. CONTRACTOR shall maintain limits no less than:

1. **Commercial General Liability**: \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.
4. **Errors and Omissions** Liability Insurance appropriate to the CONTRACTOR's Profession: \$1,000,000 per occurrence.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The CONTRACTOR shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** policy shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the CONTRACTOR's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The 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.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

CONTRACTOR shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.