

RESPONSES TO COUNCIL QUESTIONS RE: 3/17/15 AGENDA

CONSENT CALENDAR:

Item 1.F.

Please send a copy of Exhibits A & B in the contract.

Staff Response: A copy of the agreement with Exhibits A and B is attached.

Not really a question about 1F so much as a finance question about such programs. as i understand it, fees on such programs cover costs to city, so that there is no net impact to the general fund. is that correct? so, the fees we charge to cover staff time incorporate all-in costs, including pension costs and the full pension liability allocated over the hours involved...that is to say, the hourly rate may be higher than the hourly rate we use for our own budgeting, correct?

Staff Response: User fees for recreation services take into consideration cost recovery, market forces, and adjustments based on factors such as perceived benefit to the community, pricing which favors Sunnyvale residents over non-residents, target populations and promotional/marketing considerations. As a result, some fees may not be full cost recovery.

Budgeted salary rates for staff factor in pension, medical, workers' compensation, and paid time off expenses in addition to the salary paid. The pension and medical expenses also include payment on the unfunded liability for pension and retiree medical benefits. These budgeted salary rates are used when determining the cost recovery of fees.

It should also be noted that for the item under consideration, the City is contracting with an outside vendor to provide youth sports classes and camps. The vendor is providing the services and setting the fees. A small amount of City staff time is required, primarily for registration, marketing, facilities management and contract administration. The City's share of the fee revenue (30%) does recover costs for the City's expenses.

PUBLIC HEARING/GENERAL BUSINESS:

Item #2

Attachment 4 mentions an electronic payment option for TOT. Do other hotel operators in Sunnyvale pay their TOT electronically?

Staff Response: Yes, two hotel operators pay their TOT electronically through an ACH (Automated Clearing House) credit transfer from their banks to ours. In addition, a third hotel operator remits payment through on-line banking and we receive a check from their bank.

Item #3

The table on page 6 implies the butcher house item costs us \$50k, but elsewhere i thought it said it didn't ... which is it?

Staff Response: Per DPW 15-10 the cost will be \$50,000. These funds would be used to master plan and identify a possible location for the Butcher house. The analysis would also include conceptual infrastructure needs and a discussion of

possible impacts to the rest of the facility. The original study issue stated that the actual relocation of the house would have “no cost to implement” since it would be privately funded, however per page 3 – 4 of the staff report, it has been clarified that the museum requested that the City cover some of the relocation/ construction costs that could be in the \$200,000 to \$400,000 range. If Council wishes the proposed relocation of the house to result in zero fiscal impact to the City from either project studies or project implementation, staff will convey that message to the Historical Society following official Council action.

Regarding park dedication impact fee, how long did it take from approval of the study issue, to completion of the study, to implement an increased park dedication fee on residential development?

Staff Response: The City Council adopted a phase-in of the park dedication acreage requirements that took several years to implement. Whatever the rate was at the time of a complete application is what applied to individual residential projects. The land value in-lieu fees are reviewed annually (and are independent of the acreage requirements). The fees do not take effect for 60 days. The zoning code specifies that, for rental projects, the fee is calculated at the time of building permit submittal. The subdivision code specifies that the fee is calculated at final map.

DPW 13-10c - says staff has not been successful in identifying grant funding...could staff provide a list of grant-funded bike projects in the queue in the county now, and indicate why this project does not meet similar criteria?

Staff Response: Below is a summary of grant funded bicycle projects in Sunnyvale that were awarded within similar timeframes:

Project	GRANT
Mary Ave Bike Lanes	TDA
Duane Ave	TDA
Sunnyvale Bike Lane Projects Mathilda Ave Bike lanes Wildwood Bike Lanes Moffett Park Dr ECR Fair Oaks	TFCA
Maude Avenue	OBAG
Sunnyvale East and West Channel Multi-Use Trail	OBAG

In addition to the above list, the City was also awarded three grants that provide funding for Safe Routes to School Improvements, which help with bike access.

The key difference between the above projects and DPW 13-10 is that the awarded projects were for actual implementation of bike facilities. DPW 13-10 is pursuing grant funding to design concepts and community outreach. Actual construction is more competitive and usually qualifies for more grants.

Item #4

If developers are allowed to provide affordable units instead of paying the impact fee, what are staff's thoughts on the duration of the affordability requirement?

Staff Response: The City's previous existing BMR rental housing program required a term of 55 years. It would be consistent to continue this term for the in-lieu housing units. However, the minimum term required under state density bonus law is 30 years. Council could provide input as to how long a term they prefer within this range, keeping in mind that a longer term may serve as somewhat of a disincentive for developers to opt to provide units instead of fees. There would be some administrative efficiency in keeping it consistent with either the density bonus rules or the previous BMR program rules, rather than coming up with a new term such as 40 years.

What do other nearby cities do when they provide this option?

Staff Response: There are not that many cities yet with a rental impact fee, but staff will be examine further how other cities address in-lieu units as part of the ordinance preparation process. It is likely they use a similar range of 30 – 55 years, which encompasses almost all types of affordable rental housing programs.

Would the new impact fee apply to projects that are already in the planning process or entitled but not yet constructed when the fee goes into effect?

Staff Response: As currently recommended by staff, the impact fee would not apply to projects that have already been entitled (planning approval) or have a "deemed complete" planning application filed with the City before the effective date of the ordinance. Projects would be subject to the impact fee if their applications are filed or deemed complete after the effective date of the new ordinance.

Regarding the rental housing fee, have we looked into giving developers the option of providing the equivalent number of BMR-style units in lieu of paying the fee? Or a land dedication for affordable housing? Or renovating existing housing stock as affordable housing? I'm told other cities have done this, and we seem focused on just getting the money.

Staff Response: The primary reason that the focus is on impact fees is due to the inability of cities to require inclusionary units for new rental housing development. However, staff believes that the option or providing affordable units either within a project or off-site (new or rehab units) instead of paying impact fees are desirable alternatives. Staff has discussed these alternatives with developers and other stakeholders in many of the outreach meetings, commission hearings and study sessions on this topic. Developers have expressed support for this option. Pages 8 – 9 of the RTC address the option of providing affordable units in lieu of the fee (see section entitled "Alternatives to Fee Payment") In addition, Alternative 5, which is part of the staff recommendation, provides the following on p.12 of the RTC (emphasis added): "Direct staff to include in the ordinance an option to allow developers to provide affordable units within a project instead of paying the impact fee, as well as other possible options such as providing off-site affordable units or dedicating land."

Item #8

ECR - the report indicates the CAC should have 3 residents from the study area ... how many neighborhood associations and homeowner associations do we have that overlap the study area? could staff provide the email contact information for each, and summarize what notice was provided to them, of this agenda item?

Staff Response: The following neighborhood associations were sent an email regarding the March 17 Council item to form a Citizen Advisory Committee for the Sunnyvale El Camino Real Corridor

Plan: <http://sunnyvale.ca.gov/Portals/0/Sunnyvale/OCM/CR-Files/2014SunnyvaleNAContactList.pdf>. In addition, notices were sent to interested parties (those that have requested to be updated on the project), including community and business organizations and the Grand Boulevard Initiative staff. Once the Council approves the composition of the committee, extensive noticing will be conducted to advertise the application process for selection of committee members.

Item #9

The draft EIR mentions a sliver take of commercial property along Hendy Avenue. Where exactly would the take occur and what is the process?

Staff Response: The sliver of commercial property along Hendy Avenue mentioned in the Draft EIR includes portions of the landscape strip and parking lot between Hendy Avenue and Home Depot (however no parking spaces are expected to be affected). The process to acquire the property includes the following steps:

- Identify the right-of-way needs for the new larger structure and relocated utilities
- Conduct appraisals of the required property
- Share the appraisal with the property owner and begin negotiations to acquire the property

The notes from the scoping meeting mention a resident's concern that the new sidewalk on the bridge would be too steep for someone in a wheelchair. Will the bridge's new sidewalk meet ADA requirements?

Staff Response: In some sections the slope of the existing bridge is steeper than current ADA requirements. Since the new sidewalk will be installed contiguous with the existing roadway, it is permissible to install the added sidewalk to match those slopes. All other sidewalks curb ramps and pedestrian facilities will be installed to current ADA requirements.

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

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and SKYHAWKS SPORTS ACADEMY, INC., a Washington corporation ("CONTRACTOR").

WHEREAS, the CITY is in need of services to provide youth sports recreation classes and camps; and

WHEREAS, CONTRACTOR has the skill and ability to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services

CONTRACTOR shall provide services in accordance with Exhibit "A" attached and incorporated by reference. CONTRACTOR shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be two years, commencing on May 1, 2015, and continuing through April 30, 2017, 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 which CONTRACTOR shall perform the required services, include a listing for each of CONTRACTOR's classes and camps in each Sunnyvale Recreation Activity Guide published during the term of this Agreement, and provide class and camp registration services.

4. Compensation

CITY agrees to pay CONTRACTOR as full compensation for the services rendered pursuant to this Agreement, the amounts set forth in Exhibit "A".

5. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR's obligations under this Agreement.

6. Compliance with Laws

- (a) CONTRACTOR shall not discriminate against any participant, student, employee or applicant for employment under this Agreement because of race, religion, creed, color, gender, age, disability, national origin or any other basis to the extent prohibited by federal, state or local law.
- (b) CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

7. 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.

8. Indemnity

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in Exhibit "A", caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

9. 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."

10. CITY Representative

Daniel Wax, as City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

11. CONTRACTOR Representative

Chris Stiles 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.

12. 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: Daniel Wax
Department of Library and Community Services
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONTRACTOR: Kia Merkia
SKYHAWKS SPORTS ACADEMY
6311 East Mt. Spokane Park Drive
Meade, WA 99021

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.

13. Assignment

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

14. Termination

If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days after written notification of failure to pay.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

15. 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.

16. 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:

SKYHAWKS SPORTS ACADEMY, INC.
("CONTRACTOR")

By _____
City Attorney

By _____

Name and Title

EXHIBIT "A"

SCOPE OF SERVICES

CONTRACTOR shall:

- Provide youth sports recreation classes and camps at various CITY facilities.
- Throughout the term of this Agreement, comply with the requirements of CITY's Handbook for Independent Contract Instructors, dated 12/1/04 and/or as amended.
- Provide youth sports recreation camps for the Columbia Neighborhood Center during the summer.

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 70% 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 obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

CONTRACTOR shall take out and maintain during the life of the contract **Workers' Compensation** insurance coverage to statutory limits as may be required by law.

CONTRACTOR shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect CONTRACTOR, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by CONTRACTOR, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from CONTRACTOR's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract. *Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.*
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.