



## Item No.5a Town of Atherton

### **PARK AND RECREATION COMMITTEE – REGULAR AGENDA**

**TO: PARKS AND RECREATION COMMITTEE**

**FROM: SALLY BENTZ-DALTON – PARK MANAGER**

**DATE: APRIL 5TH, 2023**

**SUBJECT: TENNIS PROGRAM AREAS REVIEW WITH MICHAEL JESSUP ATTENDING**

#### **Discussion**

Michael Jessup will be attending the April Park & Rec meeting to give his review of the tennis program.

Below are the key questions and discussion points we want to review with PC based on the committee discussion are:

- Tennis facility improvement projects
  - Clay court replacement with hard court
  - Demolish tennis practice wall near rail tracks
- Tennis tournaments
- Tennis court reservations
  - How to address times reserved, but not used?
- Court allocation between PC and key holders
  - How are the courts are currently split between PC and key holders
  - Are there ways to optimize the court usage split?
    - What are PC's popular times vs. key holder popular times?
    - What to do with the clay court in usage split
- Tennis facility management agreement revenue vs. costs
  - Capital and maintenance costs increasing, but revenues are mostly flat
  - Possible solutions
    - Change from flat monthly rate model to revenue sharing with Atherton
    - Adjust the monthly rate upwards in line with costs, such as using the local inflation rate
    - Other suggestions?

Attached is Player Capital Tennis (PC) Contract and amendments for your review.

**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 25<sup>th</sup> day of September, 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

## **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.

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.

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.

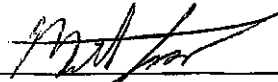
**SECTION 24. LAW TO GOVERN; VENUE.**

**TOWN OF ATHERTON**

By:   
City Manager

Date: 25 SEP 2014

**CONTRACTOR**

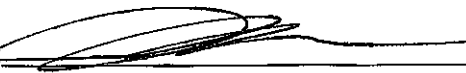
By:   
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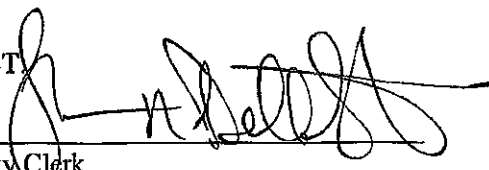
Title: Principle

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

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

**APPROVED AS TO FORM:**

By:   
City Attorney

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

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.

(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.