BOARD OF TRUSTEES
Agenda Item Description

BOARD MEETING DATE: 1/9/2014

SUBJECT: Agreement with City of Napa Parks and Recreation

PROPOSAL: Napa Valley College, Upper Valley campus community service program to provide program seats to prospective Parks and Recreation participants for marketing and registration.

RECOMMENDATION: Approve the Agreement with City of Napa Parks and Recreation

SUPPORTING INFORMATION:

Background & Summary: Through its community service programs, NVC will make available a set number of class seats (classes identified by Parks and Recreation) that Parks and Recreation can promote to its target customers. City of Napa will market these classes and process registrations for its identified students. The opportunity for NVC is that a broader audience will be exposed to our programs, potentially increasing enrollment. All classes identified are Napa-based. The greatest opportunity for growth will be in the Health and Wellness area (swimming, fitness, tennis and dance) and Trips and Tours.

Pilot will begin in January 2014 for the Spring semester.

Fiscal Impact of Proposal: City of Napa Parks and Recreation will receive 30% of class fees for each student registered through their site.

Submitted By: Judi Watkins
Approved for Consideration By: Faye Smyle
Associate Dean, Upper Valley Campus
Interim Vice President, Instruction

Attachments? Yes XXX No
Agreement with City of Napa Parks and Recreation
CITY OF NAPA
AGREEMENT FOR RECREATION AND CULTURAL CONTRACTOR

THIS AGREEMENT is dated this 26 day of November, 2013, by and between Napa Valley College a corporation, hereinafter referred to as “Contractor,” and City of Napa, a municipal corporation, hereinafter referred to as “City.”

RECITALS

A. City desires to provide for the citizens of Napa various recreation and cultural activities; and

B. City has authorized the Director of Parks and Recreation Services (“Director”) to enter into agreements with individuals with the appropriate backgrounds and experience to give instruction/leadership in various program areas as independent contractors; and

C. Contractor is a competent and experienced individual in a particular recreation or cultural activity and is willing to provide program instruction/leadership for the City:

NOW, THEREFORE, in consideration of the above recitals and the covenants and conditions herein contained, the parties do mutually agree as follows:

1. SERVICES TO BE PERFORMED BY CONTRACTOR. Contractor shall perform the following services: non-credit courses and organized trips, meets with City staff and mutually agree on the topics, locations, dates, fees and times of non-credit courses and organized trips to be offered each brochure cycle. The contractor agrees to provide all materials, supplies, teaching tools and instruction necessary to administer the classes.

2. TERM. The Term of this Agreement shall commence on November 26, 2013 (the “Commencement Date”) for a term of one year, unless the term is terminated pursuant to Section 3 of this Agreement. This Agreement shall automatically renew annually, commencing with the first annual anniversary date (twelve (12) months after the Commencement Date) and thereafter on each annual anniversary date of the Commencement Date, unless terminated by either the Contractor or City pursuant to Section 3 of this Agreement.

3. TERMINATION. The Agreement may be terminated by either party hereto for any reason or no reason whatsoever by giving fifteen (15) days written notice mailed to the address listed on the signature page of this Agreement. Notice of termination by City shall be given by the Director. Upon such termination, City shall pay to Contractor the proportionate amount of the compensation specified in Paragraph 5 hereof due Contractor and unpaid by City prior to the effective date of termination.

4. COLLECTION OF FEES. In addition to the services provided in Section 1 of this Agreement, Contractor, when required by the Director, shall collect fees from all individuals in classes and activities the Contractor is authorized to conduct. Fee schedules shall be determined by the Director and subject to Recreation Advisory Commission recommendation and City Council approval, and in no event shall Contractor collect a fee greater than authorized. All fees collected by Contractor shall be promptly submitted to the appropriate Parks and Recreation Department location, along with any accounting or financial information required by the Director.

5. COMPENSATION. In consideration of the performance of the services provided herein, Contractor shall be compensated pursuant to the subsections marked below with an "X." Subsections which do not apply shall be identified as not applicable, marked below with “N/A.”

   __X__ A. 60 percent of basic fees collected for classes taught in City provided facilities. Basic fee shall equal to the amount of fee required to be paid by City residents. Contractor shall not receive any portion of the fees paid by non-City residents in excess of the City resident fees.
Agreement for Recreation and Cultural Contractor

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6. **METHOD OF PAYMENT.** The compensation provided in Paragraph 5 shall be paid according to the City of Napa accounts payable schedule as determined by closure of registration period and/or the completion of the class.

7. **NOTICES.** All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

   **TO CITY:**
   Parks and Recreation Services
   City of Napa
   P.O. Box 660
   Napa, CA 94559-0660
   Attn: Wendy Stratton

   **TO CONTRACTOR:**
   Napa Valley College
   Attn: Judi Watkins
   2277 Napa-Vallejo Hwy
   Napa, CA. 94558

8. **INDEPENDENT CONTRACTOR.** The services Contractor performs pursuant to this Agreement are intended to have the result of increasing the ability and enjoyment of the participants in recreation or cultural classes or activities Contractor conducts. The means and the manner by which Contractor accomplishes this result and conducts the activity shall be determined by Contractor. Each party to this Agreement shall act in an independent capacity and not as agents, employees, partners, or joint ventures of the other. Contractor is not an employee of City and is not entitled to any of the rights, benefits of privileges of City employees, including but not limited to medical or workers' compensation insurance.

9. **BACKGROUND CHECKS.** Under California Public Resources Code 5164, City may not allow any persons convicted of crimes specified and enumerated under California Penal Code 11105.3 to work in parks, playgrounds or recreational centers while having supervisory or disciplinary authority over any minor. Prior to the performance of any services under this Agreement, Contractor shall pay for, perform and successfully complete a Live Scan and state and federal background check of themselves and any of Contractor's employees identified who will have supervisory or disciplinary authority over any minor in performing the services described in Section 1 to confirm that Contractor and its employees have not been convicted of any of the enumerated offenses. Copies of these background check documents shall be furnished to City at City's request. City shall treat all such information as confidential and shall not disclose such information to any third party unless such disclosure is required (a) pursuant to subpoena or other court process; (b) at the express direction of any authorized government agency; or (c) as otherwise required by law or regulation.

10. **TAXES.** Prior to performing any of the service provided in this Agreement, Contractor shall pay to City appropriate business tax as provided in the Napa City Municipal Code. Inasmuch as the Contractor is an independent contractor, City will not pay/provide income taxes, worker's compensation, or unemployment insurance. Contractor shall file tax returns and pay all applicable taxes on compensation earned under this Agreement and shall hold City harmless from any liability Contractor may incur to the United States or State of California as a consequence of Contractor's failure to pay taxes.

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11. **COMPLIANCE WITH LAW.**

A. Contractor, in the conduct of the instruction and/or services contemplated hereunder, shall comply with all statues, state or federal, and all ordinances, rule and regulations enacted or issued by City. Contractor warrants it has all licenses, permits and approvals legally required to perform the services hereunder, including, but not limited to, City of Napa business license.

B. Contractor agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of Contractor performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. Contractor shall make the required documentation available upon request to City for inspection.

C. Contractor is hereby notified that the American Disability Act (Public Law 101-336 and, specifically, Subtitle A of Title II, and 28 Code of Federal Regulations Part 35) provides that no qualified person with a disability may, on the basis of the disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any public entity, whether directly or through any contractual arrangements. Contractor acknowledges it has the same responsibility as City under such law and agrees to make the services, programs, and/or activities provided hereunder accessible to persons with disabilities.

12. **INDEMNIFICATION.** Contractor shall indemnify, hold harmless, release and defend City, its officers and employees, from and against any losses, liabilities, claims, actions, demands, disabilities, damages, expenses and fees (collectively "liabilities") of any nature that may be asserted by any person, including Contractor, arising out of Contractor's activities hereunder, excepting only such liabilities due to the adjudicated sole negligence or willful misconduct of City. This indemnification shall survive termination/completion of this Agreement.

13. **INSURANCE**

A. **Workers’ Compensation.** In the event Contractor has employees, Contractor shall, throughout the period of this Agreement, maintain in full force and effect a policy of workers’ compensation insurance meeting statutory limits of Labor Code covering all its employees and volunteers.

If Contractor has no employees, Contractor may sign and file the following certification in lieu of insurance:

“I am aware of the provisions of California Labor Code Section 3700 which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with the provisions of that code before commencing with and during the performance of the work of this contract.”

B. **Liability.** Contractor agrees to purchase and maintain at its sole cost and expense during the life of this Agreement the following insurance with insurers satisfactory to City. A certificate of insurance evidencing the following insurance shall be completed by Contractor or its agent and submitted to City before City’s execution of Agreement:

1. Commercial General Liability Insurance with policy limits of not less than $1,000,000 combined single limit per occurrence. Such insurance policy shall be endorsed to add City of Napa, its officers, employees and agents as additional insured and to provide that coverage will not be cancelled or substantially reduced without the City being given thirty (30) days written notice of the effective date of such cancellations or reductions (10 days for non-payment of premium).

2. In the event Contractor will be using a vehicle for the services provided under this Agreement, Automobile Liability Insurance with policy limits not less than $1,000,000 combined single limit per accident. Such insurance policy shall be endorsed to provide that coverage will not be cancelled or substantially reduced without the City being given thirty (30) days prior written notice of the effective date of such cancellations or reductions (10 days for non-payment of premium).
14. EMPLOYMENT PRACTICES. Contractor shall not discriminate in its performance under the Agreement, either directly or indirectly, on the grounds of race, color, religion, sex, age, national origin, or other prohibited grounds in its employment practices, and Contractor shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or other prohibited grounds.

15. COVENANT AGAINST CONTINGENT FEES. Contractor warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

16. ACCIDENT REPORT. If any damage (including death, personal injury, or property damage) occurs in connection with the performance of this Agreement, Contractor shall promptly submit to the City Clerk's Office a written notice of such accident with the following information:

A. Name and address of the injured or deceased person(s);
B. Name and address of any witness;
C. Name and address of Contractor’s insurance company; and
D. A detailed description of the damage and whether any City property was involved.

17. GENERAL PROVISIONS.

A. Headings. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

B. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

C. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement shall be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Napa.

D. Attorney's Fees. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred, whether or not such action proceeds to judgment.

E. Assignment and Delegation. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Contractor's duties be delegated without the written consent of City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

F. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

G. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

H. Time. Time is of the essence in carrying out the duties hereunder.
I. **Entire Agreement.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

J. **Each Parties’ Role in Drafting the Agreement.** Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

K. **Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Contractor and the City.

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

**CITY OF NAPA:**

(Signature)

Larry Mazzuca, Parks and Recreation Director

**CONTRACTOR:**

Judi Watkins/Corporation

(Type name of Contractor/form of organization)

**ATTEST:**

(Signature)

Dorothy Roberts, City Clerk

**COUNTERSIGNED:**

(Signature)

Desiree Brun, City Auditor

**APPROVED AS TO FORM:**

(Signature)

Michael W. Barrett, City Attorney

Address: 2277 Napa-Vallejo Hwy

Napa Ca. 94558

Phone: 707-967-2911

Email: jwatkins@napavalley.edu

Budget Code: 45125-53201

*Corporation, partnership, limited liability corporation, sole proprietorship, etc. Unless corporate resolution delegates an individual to sign contracts, an Agreement with a corporation shall be signed by the President or Vice President and the Secretary or Treasurer of the corporation. A general partner shall sign on behalf of a general partnership. The managing member, if authorized, may sign on behalf of a limited liability corporation.