

ITEM 6.B.

MOORPARK CITY COUNCIL AGENDA REPORT

TO: The Honorable City Council

FROM: Stephanie Anderson, Recreation Superintendent *sa*

DATE: September 5, 2013 (CC Meeting September 11, 2013)

SUBJECT: Consider Agreement with Away We Grow Preschool, LLC, for Contract Instructor Services at the Arroyo Vista Recreation Center and Authorize the City Manager to Execute the Agreement

DISCUSSION

Alice Cantwell has been a contract instructor for the City since 1999, offering the Away We Grow preschool program for 3 and 4 year-olds. Over the years, the program has grown, with Toddler Time classes added and class sizes increased. In 2011, Alice Cantwell formed Away We Grow, LLC.

The anticipated payment amount to Away We Grow, LLC for the 2013/2014 school year is approximately \$95,000. (Gross revenue for the program is anticipated to be approximately \$130,000.) As the payment amount exceeds the City Manager's signature authority, staff is requesting that the Council approve the agreement with Away We Grow, LLC, and authorize the City Manager to execute the agreement. The subject agreement is the City's standard contract instructor agreement used for all recreation classes.

FISCAL IMPACT

Payments to contract instructors are based on a percentage of revenue received. \$173,000 for instructor payments is included in the FY 2013/2014 recreation budget. Additional funding is not required to cover the cost of this Agreement.

STAFF RECOMMENDATION:

Approve the Agreement with Away We Grow, LLC, and authorize the City Manager to execute the Agreement.

City of Moorpark, Recreation Division
CONTRACT INSTRUCTOR AGREEMENT
For programs held at City's facilities

THIS AGREEMENT, made and entered into this _____ day of _____, 2013, between the CITY OF MOORPARK, a municipal corporation located in the County of Ventura, State of California, hereinafter referred to as "City" and Away We Grow, a limited liability company, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, City offers a variety of recreational classes to the public; and

WHEREAS, Contractor desires to offer his/her class(es) to the public; and

WHEREAS, City shall contract for such services with an independent contractor in anticipation that said contractor can provide such services in a manner acceptable to the City; and

WHEREAS, Contractor is experienced and specializes in providing such services and has the appropriate specialized experience, certifications, and background to carry out the duties involved.

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises contained herein, the parties hereto agree as follows:

1. Scope of Services

Contractor agrees to perform appropriate instructional and teaching services and to devote the number of hours necessary to perform the services in a competent, reasonable and appropriate manner for class sessions as detailed in Scope of Services to be attached hereto and made a part of the Agreement.

2. Compensation

Contractor shall be paid for the services rendered under this Agreement the fee of **73%** of the registration fees received (less participant refunds, credits, and transfers as governed by the City's current "Community Services Recreation and Active Adult Program Cancellation and Withdrawal Policy") for all class(es) conducted by Contractor. Payment for monthly classes shall be made by the 20th day of the month. Payment for all other classes will be made within 30 calendar days of the last class date. City shall not be liable to Contractor for any compensation whatsoever in the event a class is cancelled. The percentage of registration fees retained by City shall be considered payment by Contractor for facility use fees, listing in the quarterly recreation guide, registration services, and overhead costs associated with Contractor's class(es).

3. Term

This Agreement shall be for the term of the 2013-2014 school year, running from September 1, 2013, to June 30, 2014, including classes which will be paid during that period. A written Agreement Addendum, signed by both parties, is required for any changes.

4. Termination or Suspension

This Agreement may be terminated with or without cause by City at any time with no less than ten (10) days written notice of such termination. Contractor may terminate this Agreement only by providing City with written notice no less than thirty (30) days in advance of such termination. In the event of an emergency, as determined by the sole discretion of City, this Agreement may be suspended by City at any time, with no advance notice. If this Agreement is terminated or suspended prior to the end of the term as identified herein, City agrees to pay Contractor for actual service rendered pursuant to and in accordance with this Agreement.

5. General Conditions

A. Contractor shall establish fees to be charged to participants and shall not permit anyone to participate therein who has not paid the required fees, unless otherwise approved by the City. All registrations and fees, if any, shall be received by an authorized member of the Recreation Division staff. No registrations or fees, with the exception of class lab fees, shall be collected from class participants by Contractor. Class lab fees shall be paid directly to Contractor and may be used only for the purchase of class supplies. Participant supplies shall be the responsibility of each participant as pre-determined by Contractor. City reserves the right to approve all fees charged to participants.

B. Contractor may not circulate any written publicity without prior approval of the Assistant City Manager or his/her designee. Recreation classes are published in the City's quarterly recreation guide. Contractor shall furnish City with program content and descriptive material as may be necessary to publicize the activity. Contractor may not change course content without prior written approval by City.

C. City agrees to furnish the space required and/or designated facilities and tables and chairs for use by Contractor while performing the services required under this Agreement. Facility use during the school year (September – June) shall be as follows:

Cypress Room: Contractor shall be granted exclusive use of the back portion of the room Monday at 9:00 a.m. through Friday at 2:00p.m., and may leave equipment set up Monday through Thursday evenings. Contractor shall have use of the front portion of the room during program hours only, plus 45 minutes before and after program hours for set up and clean up time. Contractor shall be permitted to decorate the walls of the room with preschool appropriate items, so long as said decorations do not in any way damage or mar the walls. In the event walls are damaged, Contractor will be responsible for all costs

associated with repairing said damage.

Jacaranda Room: Contractor shall be granted use of the room during program hours only, plus 45 minutes before and after program hours for set up and clean up time. Contractor must put away all supplies and equipment at the conclusion of class each day. Contractor shall be permitted to decorate the walls of the room with preschool appropriate items under the following conditions: 1) said decorations do not in any way damage or mar the walls, 2) all other instructors scheduled in the Jacaranda Room have no objections to said decorations, and 3) decoration must be removed entirely in the event a renting party requests such.

Storage Space: City agrees to furnish storage space for Contractor's equipment and supplies as follows: Up to one-half of the storage space in Storage Room #3 (adjacent to Cypress Room) and the 5 cabinets in the Jacaranda Room located along the east wall. Contractor's supplies and equipment shall not be stored in any other location. City does not accept any responsibility for damaged or missing equipment or supplies belonging to Contractor. City reserves the right to reclaim storage space upon 30 days written notice to Contractor.

Contractor agrees to furnish the necessary supplies and materials required to perform the services required under this Agreement. City agrees to furnish equipment limited to tables, chairs, and one large classroom rug at no cost for use by Contractor while performing the above-described services required under this Agreement. At City's sole discretion, additional equipment may be furnished by the City for Contractor use, and a fee of \$1 per class session will be charged for use of City equipment. The City may provide photocopying services for the Contractor at the current rates established by City Council.

Contractor will take proper care of the facility and any equipment furnished by City for the activity, and shall be responsible for damage caused thereto resulting from misconduct, negligent acts and improper use or care. City supplied equipment must be used for the purpose for which it was intended. Contractor will be responsible for cleaning tables, chairs, equipment and floors following each class session so that the facility and equipment are left in the same condition as existed prior to the start of the class session.

For certain class(es) requiring specialized equipment, Contractor's facility or facilities may be used as agreed upon by City and Contractor as described in Scope of Services.

D. Contractor shall establish minimum and maximum enrollment numbers for each class. Minimum and maximum enrollment numbers shall be indicated for each class detailed in the Scope of Services. Class(es) which fail to meet established minimum numbers shall be cancelled. Maximum enrollment numbers may not exceed established maximum room capacities.

E. Contractor shall be at the appropriate facility a minimum of ten (10) minutes prior to the scheduled start time of each class, ready to commence instruction. In the event Contractor will be absent or tardy, Contractor must notify enrolled participants and City. A

make-up class must be scheduled for each class missed.

F. Contractor shall submit such reports as may be required by City in connection with this Agreement, including but not limited to attendance sheets and participant waiver of liability forms.

G. Contractor shall be responsible for the following expenses: the cost of substitute teachers and assistants, supplies and materials, photocopies, additional advertising, insurance, and transportation. Contractor shall be solely responsible for any compensation due or payment to persons employed, or subcontracted, by him/her in connection with the Scope of Services.

H. Contractor is and shall at all times remain as to the City a wholly independent Contractor. 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 City nor any of its officers, employees, or agents 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 it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

I. Contractor shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City, and any and all of its employees, officials, and agents ("the Indemnitees") 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 attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arises out of, are a consequence of, or are in any way attributable to, in whole or in part, the negligence, willful misconduct, errors or omissions, or 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, except such damage as is caused by negligence of the City or any of its officers, employees, servants, project coordinators, or agents.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this

Section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this Agreement or this Section.

City does not and shall not waive any rights that it may have against Contractor by reason of this Section, because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs, and expenses described in this Section.

J. Contractor shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Attachment "B" attached hereto and made a part of the Agreement.

K. Contractor may represent, perform services for, and be employed by such companies and governmental entities as Contractor, in Contractor's sole discretion, sees fit, with the exception of any firm or individual which may present a potential conflict of interest with City. Contractor is responsible to advise City of any potential conflicts which may arise in connection with contractual relationship with City.

L. It is acknowledged by the parties that the Contractor is uniquely qualified to perform the services under this Agreement. Contractor agrees to furnish the necessary labor required to perform the services required under this Agreement. Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Contractor without the prior written consent of City.

M. This Agreement constitutes the entire Agreement of the parties concerning the subject matter hereof and all prior Agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed, and acknowledged by both of the parties hereto.

N. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

O. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

P. In the event any action, suit, or proceeding is brought for the enforcement of, or

the declaration of any right or obligation pursuant to this Agreement, or as a result of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Q. Any and all grievances, concerns, or complaints regarding facilities, staff, equipment, scheduling, or any other aspect of any contractual class shall be submitted in writing to the Parks and Recreation Director within five (5) days of occurrence.

R. No Contractor providing services, programs, or activities to the public on behalf of the City shall discriminate against any person because of sex, race, color, creed, national origin, or disability. Contractor shall comply with the Americans with Disabilities Act and City policies pursuant thereto when providing said services, programs, or activities.

S. Contractor and Contractor's employees, subcontractors, and volunteers, must satisfactorily pass a fingerprinting process and background verification prior to conducting any class(es) in which minors participate. Unless otherwise directed in writing by City, Contractor agrees to have itself and any of its employees and volunteers providing instructor services to the City, pursuant to this Agreement, submit to a fingerprinting process prior to performing said services. The fingerprinting process shall be as subscribed by the City and the cost shall be paid by the Contractor for itself and any of its employees and volunteers. Contractor agrees that the City's costs for fingerprinting process shall be deducted from City's payment to Contractor for services rendered under this Agreement, in addition to the terms in Section 2 of this Agreement. A Contractor that fingerprints its own employees shall provide written documentation that it is registered with the Department of Justice hereinafter referred to as "DOJ" in compliance with Section 11105.3 of the California Education Code and, accordingly, submits to the DOJ fingerprints of all employees, volunteers, contractors, or subcontractors prior to any work assignments. Contractor shall not use an employee or volunteer who fails to receive a satisfactory fingerprint report (e.g., a fingerprint report showing conviction of certain criminal offenses that would make it illegal for such individuals to have direct supervisory or disciplinary authority over minors) in the service of this Agreement.

T. Contractor shall keep informed of, and shall comply with, all federal, state, and local laws and regulations which in any manner affect her/his performance under this Agreement. Contractor shall conduct said services in a professional and dignified manner and shall not violate, nor permit any person participating therein to violate, any rule, regulation or ordinance of City, the State or the Federal Government.

U. This Agreement is made, entered into, executed and is to be performed in Moorpark, Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions or covenants referred to herein shall be filed in the applicable court in Ventura County, California.

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

CITY OF MOORPARK

By: _____
Steven Kueny, City Manager

By: _____
Alice Cantwell, Owner

Attest:

Maureen Benson, City Clerk

City of Moorpark, Recreation Division

**Attachment A
SCOPE OF SERVICES
Fall 2013
Instructor Class Schedule**

Instructor Name: Alice Cantwell
 Business Name: Away We Grow
 Address: P.O. Box 492184
 City: Los Angeles State: CA Zip: 90049
 Business Phone: (818) 634-5881 Alternate Phone: _____
 Email: _____

This Agreement made and entered into by the City of Moorpark ("City") and the above-named person, partnership or corporation engaged as an independent Contractor ("Contractor") in offering instructional services for personal services to be rendered for City as an instructor of recreational classes. Contractor agrees to perform appropriate instructional and teaching services and to devote the number of hours necessary to perform the services in a competent, reasonable, and appropriate manner for the session(s) as follows:

CLASS TITLE: Away We Grow PreSchool

Class description: Your little one will experience a variety of early childhood activities including arts & crafts, games, finger plays, music, stories, circle time, and more in a safe, fun learning environment. This program is designed to develop the child's large and fine motor skills, social skills, speech and language, and thought processes such as color, shape, number, and letter recognition. Bring a sack lunch.

Instructor Name: Away We Grow **Ages:** 3-4 **Min/Max:** 16-24

Location: AVRC, Cypress

4-year old class

| CODE | DATES | DAYS | TIMES | FEE |
|----------|-----------|-------|---|-------|
| 1210.413 | September | M/W/F | 9:00 a.m.-2:00 p.m. (noon on Friday) | \$260 |
| 1211.413 | October | M/W/F | 9:00 a.m.-2:00 p.m. (noon on Friday) | \$260 |
| 1212.413 | November | M/W/F | 9:00 a.m.-2:00 p.m. (noon on Friday) | \$260 |
| 1210.114 | December | M/W/F | 9:00 a.m.-2:00 p.m. (noon on Friday) | \$260 |
| 1211.114 | January | M/W/F | 9:00 a.m.-2:00 p.m. (noon on Friday) | \$260 |
| 1212.114 | February | M/W/F | 9:00 a.m.-2:00 p.m. (noon on Friday) | \$260 |
| 1210.214 | March | M/W/F | 9:00 a.m.-2:00 p.m. (noon on Friday) | \$260 |
| 1211.214 | April | M/W/F | 9:00 a.m.-2:00 p.m. (noon on Friday) | \$260 |
| 1212.214 | May | M/W/F | 9:00 a.m.-2:00 p.m. (noon on Friday) | \$260 |

3-year old class

| CODE | DATES | DAYS | TIMES | FEE |
|----------|-----------|-------|---------------------|-------|
| 1210.413 | September | Tu/Th | 9:00 a.m.-2:00 p.m. | \$215 |
| 1211.413 | October | Tu/Th | 9:00 a.m.-2:00 p.m. | \$215 |
| 1212.413 | November | Tu/Th | 9:00 a.m.-2:00 p.m. | \$215 |
| 1210.114 | December | Tu/Th | 9:00 a.m.-2:00 p.m. | \$215 |
| 1211.114 | January | Tu/Th | 9:00 a.m.-2:00 p.m. | \$215 |
| 1212.114 | February | Tu/Th | 9:00 a.m.-2:00 p.m. | \$215 |

| | | | | |
|-----------------|-------|------------------|--|-------|
| 1210.214 | March | Tu/Th | 9:00 a.m.-2:00 p.m. | \$215 |
| 1211.214 | April | Tu/Th | 9:00 a.m.-2:00 p.m. | \$215 |
| 1212.214 | May | Tu/Th | 9:00 a.m.-2:00 p.m. | \$215 |
| Lab Fee: | \$45 | No Class: | 9/5, 11/11, 11/25-29, 12/23-1/3, 1/20, 1/27, 2/17, 3/10, 4/21, 3/24-28, 4/18, 5/26 | |

CLASS TITLE: Toddler Time

Class description: Toddler time is an early childhood class designed for children 18 to 36 months of age.

Instructor Name: Away We Grow **Ages:** 18 mo-3yrs **Min/Max:** 8/12

Location: AVRC, Cypress

Tuesday/Thursday Class

| CODE | DATES | DAYS | TIMES | FEE |
|----------|-----------|-------|----------------------|-------|
| 1210.413 | September | Tu/Th | 9:00 a.m.-11:00 a.m. | \$125 |
| 1211.413 | October | Tu/Th | 9:00 a.m.-11:00 a.m. | \$125 |
| 1212.413 | November | Tu/Th | 9:00 a.m.-11:00 a.m. | \$125 |
| 1210.114 | December | Tu/Th | 9:00 a.m.-11:00 a.m. | \$125 |
| 1211.114 | January | Tu/Th | 9:00 a.m.-11:00 a.m. | \$125 |
| 1212.114 | February | Tu/Th | 9:00 a.m.-11:00 a.m. | \$125 |
| 1210.214 | March | Tu/Th | 9:00 a.m.-11:00 a.m. | \$125 |
| 1211.214 | April | Tu/Th | 9:00 a.m.-11:00 a.m. | \$125 |
| 1212.214 | May | Tu/Th | 9:00 a.m.-11:00 a.m. | \$125 |

Monday/Wednesday Class

| CODE | DATES | DAYS | TIMES | FEE |
|----------|-----------|------|----------------------|-------|
| 1210.413 | September | M/W | 9:00 a.m.-11:00 a.m. | \$125 |
| 1211.413 | October | M/W | 9:00 a.m.-11:00 a.m. | \$125 |
| 1212.413 | November | M/W | 9:00 a.m.-11:00 a.m. | \$125 |
| 1210.114 | December | M/W | 9:00 a.m.-11:00 a.m. | \$125 |
| 1211.114 | January | M/W | 9:00 a.m.-11:00 a.m. | \$125 |
| 1212.114 | February | M/W | 9:00 a.m.-11:00 a.m. | \$125 |
| 1210.214 | March | M/W | 9:00 a.m.-11:00 a.m. | \$125 |
| 1211.214 | April | M/W | 9:00 a.m.-11:00 a.m. | \$125 |
| 1212.214 | May | M/W | 9:00 a.m.-11:00 a.m. | \$125 |

Lab Fee: \$45 **No Class:** 9/5, 11/11, 11/25-29, 12/23-1/3, 1/20, 1/27, 2/17, 3/10, 4/21, 3/24-28, 4/18, 5/26

I authorize City to **prorate** classes: _____ Yes or _____ No

Signature: _____ Date: _____

Print Name: _____

**Attachment B
Insurance Requirements**

As a condition precedent of the effectiveness of this Agreement, Contractor shall procure, and thereafter maintain in full force and effect at Contractor's sole cost and expense, the following types and amounts of insurance:

1. A general liability insurance policy written with a company acceptable to City and authorized to do business in the State of California. Such policy shall provide for a minimum coverage of One Million Dollars (\$1,000,000.00) for bodily injury or death of any person or persons in any one occurrence, and One Million Dollars (\$1,000,000.00) for loss by damage or injury to property in any one occurrence and shall include automobile coverage. The policy shall contain a provision providing for a broad form of contractual liability, including Product Liability coverage if food and beverages are dispensed on Premises. The policy or policies shall be written on an occurrence basis. The policy shall name Contractor as the insured and the City of Moorpark, its officials, employees, and agents as an additional insured. The policy shall also provide that the City shall be notified in writing, at least thirty (30) days prior to any termination, amendment cancellation or expiration thereof. Contractor shall furnish City evidence of all insurance policies required by this Agreement in the form of a Certificate of Insurance and additional insured endorsement.

Contractor may elect to purchase insurance through the City's provider at the current rate. Contractor shall pay to City insurance fees due on or before the first class date. If said insurance fees are not paid prior to the first class date, insurance fees shall be deducted from Contractor's compensation.

I shall maintain insurance coverage as described above.

(Contractor's Signature): _____

I elect to purchase insurance through the City's provider and to pay all costs associated with the purchase of said insurance.

(Contractor's Signature): _____

2. Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than State statutory limits per accident. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees, subcontractors, or volunteers will use personal autos in any way in performing the services under this Agreement, Contractor shall provide evidence of personal auto liability for each such person.

3. Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than one million dollars (\$1,000,000) per accident or disease. A Workers' Compensation Insurance Certificate shall be filed with City before beginning work, unless Contractor submits a written certification that no one other than Contractor, or subcontractors, are performing any services under this Agreement.

Workers' Compensation Statement

As Contractor, I certify that no one other than myself or subcontractors will perform any services under this Agreement.

I certify that in the performance of this Agreement, I shall not employ any person in any manner so as to become subject to the Workers' Compensation laws of the California Labor Code, and agree that if I should become subject to the Workers' Compensation provisions of the California Labor Code, I shall forthwith comply with those provisions.

Contractor's Signature: _____ Date: _____

Print Name: _____