

TOWN OF FAIRFAX

STAFF REPORT

TO: Mayor, Members of the Town Council

DATE: March 2, 2011

FROM: Michael Rock, Town Manager
Judy Anderson, Town Clerk



SUBJECT: Approval of the termination of the MOU with San Anselmo for recreation program support

Recommendation

Staff recommendation is to terminate the Memorandum of Understanding (MOU) with San Anselmo for recreation program support effective in thirty days, or on April 1, 2011.

Discussion

The MOU with San Anselmo has allowed Fairfax to offer a variety of recreation classes in our buildings to our residents. We have provided our buildings to San Anselmo Recreation for programs at no cost to San Anselmo, and they have provided the administration of the programs held in Fairfax including the collection of fees, disbursement of expenses and advertising in their catalog. This collaboration has benefitted both towns but is no longer necessary.

Through the efforts of Camille Esposito, the Program Director for FOCAS (Fairfax Open Circle Arts and Sports), we have been able to grow our own recreation program and are ready to operate independently of San Anselmo. Camp Fairfax has been a great success and is growing. The use of the Pavilion for low cost birthday parties has been a big hit and demand is increasing. After meetings with David Donery, Community Services Director for San Anselmo, it has been agreed that the MOU has served its purpose but is no longer desirable for either party.

The advantages of conducting our own programs include:

1. Ms. Esposito can work directly with our Finance Department for the processing of FOCAS income and expenses;
2. Our instructors will no longer have to go to San Anselmo for fingerprinting since the Fairfax Police Department can now process them directly;
3. We are building our online exposure and using flyers and plan to produce a small brochure and purchase ad space in the San Anselmo brochure that will provide as much advertising at a lower cost;
4. We will continue to work on creating a simple online registration process or a paper registration until we can justify the cost of an online program/payment system; and
5. All the profits from the programs will go into building our own recreation department and offering more affordable programs to our residents.

Fiscal Impact

More direct control of costs and the potential for greater income.

Attachments

Current MOU with San Anselmo

AGENDA ITEM # 9

**MEMORANDUM OF UNDERSTANDING
REGARDING JOINTLY SPONSORED
RECREATION PROGRAMS**

ARTICLE 1. PARTIES AND EFFECTIVE DATE

- 1.1 This Memorandum of Understanding ("Memorandum") is made and entered into this 4th day of August, 2010 between the Town of San Anselmo, a municipal corporation ("San Anselmo") and the Town of Fairfax, a municipal corporation ("Fairfax"). San Anselmo and Fairfax are sometimes referred to as "Party" or "Parties" throughout this Memorandum. This Memorandum will not become effective until the date of September 1, 2010 on which it has been approved and executed by the duly authorized representatives of the Parties.

ARTICLE 2. RECITALS

- 2.1 In order to provide an increased level of cost effective community recreational programs and classes for its residents, the Parties desire to promote and provide jointly sponsored community recreational classes for the benefit of San Anselmo and Fairfax residents.
- 2.2 The Parties desire to enter into this Memorandum to establish terms of joint sponsorship of a community recreational program (the "Program").

ARTICLE 3. TERMS

- 3.1 Term of Memorandum: The term of this Memorandum shall commence on September 1, 2010 and end on August 31, 2011, ("Term") unless sooner terminated as provided for in this Memorandum. The Parties may extend the Term for an additional year upon the mutual consent in a written Amendment signed by both Parties. To avoid any inconvenience to participants, the termination of this Memorandum shall not affect any recreation program that extends beyond the thirty (30) days' notice required for termination by Section 3.11 of this Memorandum. All recreation programs concluding after the thirty (30) days' written notice are subject to the terms and conditions of this Memorandum.
- 3.2 General Provisions for Joint Sponsorship of Recreational Programs: The Parties shall provide joint community recreational programs, classes, and camps in Town of Fairfax facilities. Special events shall be excluded from this Memorandum.
- 3.2.1 San Anselmo Responsibilities: San Anselmo is responsible for administrative functions, including but not limited to, distributing promotional materials related to the Program, providing means to register Program participants, hiring and

paying Program instructors as independent contractors, conducting background checks pursuant to Public Resources Code section 5164, and processing refunds and class cancellations. San Anselmo shall provide attendance and revenue/expenditure reports to Fairfax at the end of each quarterly session.

San Anselmo will contract with a Program Development Coordinator dedicated to Fairfax programming. Compensation for this position will be based on Fairfax Program revenue.

San Anselmo will include Fairfax-based Program information in three (3) Activity Guides to be mailed to approximately 11,000 residents in the Ross Valley for the winter/spring session, summer session, and fall session.

- 3.2.2 Fairfax Responsibilities: Fairfax will ensure that San Anselmo shall have scheduled times for use of Fairfax facilities and property that are necessary for the provisions of programs and services contemplated in this Memorandum. Fairfax agrees to cooperate in coordinating programs and activities conducted on its property, so as to avoid conflicting or competing uses. Fairfax shall not charge San Anselmo any fees for facilities and property used to carry out the Programs as intended for the purposes and on the terms and conditions as stated in this Memorandum.

Fairfax agrees to make available office space in the Pavilion to the Program Development Coordinator for the duration of this Memorandum for the purpose of developing, implementing, and monitoring recreation programs conducted at Fairfax facilities.

- 3.3 Revenue: The division of the net profit generated from recreation programs offered and managed by San Anselmo through contractual agreement with the Program Development Coordinator and conducted at Fairfax facilities during the term of the Memorandum is as follows: 30% to the Program Development Coordinator, 35% to San Anselmo, and 35% to FOCAS. Net profit is defined as gross Program revenue minus instructor and materials costs.
- 3.3.1 Resident/Non-resident Fee: Fairfax residents shall pay the resident rate for programs offered in Town of Fairfax facilities. Residents of all other municipalities shall pay the non-resident rate.
- 3.4 Condition, Maintenance, and Repair of Property: Fairfax will maintain facilities and property in a condition suitable for public use at its own expense throughout the term of the Memorandum.
- 3.5 Recreation Program Scheduling: The Parties shall review recreational classes, programs, and enrollment and develop a master schedule of facilities, dates and times for the use of Fairfax properties to be established at a meeting

between the Parties to be held at least ten weeks prior to the publication of each Activity Guide. At this meeting, the Fairfax Parks & Recreation Commission and/or its designate, shall work with the San Anselmo recreation staff to develop programs and ensure that all proposed programming is appropriate for the Fairfax community and facilities.

- 3.6 **Indemnification:** The Parties hereby agree to defend, indemnify and hold one another harmless from and against all claims, damages, losses and expenses (including, but not limited to, reasonable attorney's fees and other costs and expenses incident to proceedings or investigations for the defense of any claim) arising out of the Parties' operation of jointly-sponsored recreational programs, caused in whole or in part by any negligent act or omission of one of the Parties, or any of its contractors, any of its subcontractors, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the other Party.
- 3.7 **Insurance:** The Parties hereby acknowledge that they are both members of the Bay Cities Joint Powers Insurance Authority's (BCJPIA) pooled liability program, their respective Self-Insured Retentions are \$50,000 for Fairfax and \$100,000 for San Anselmo, and any coverage under the BCJPIA is subject to all conditions and exclusions specified in the Memorandum of Coverage and other BCJPIA governing documents. Fairfax shall procure and maintain throughout the term of this Memorandum, at their sole cost and expense, general liability coverage and property damage insurance.

The parties acknowledge that each entity will maintain workers compensation insurance (as required by law) and employers' liability insurance. Each city's employees will not be considered employees of the other city, and vice-versa.

Such insurance shall insure against all claims for death and injuries to persons and damages to property which may arise from or in connection with the use of Fairfax's property, including, but not limited to, injuries to third parties such as participants and invitees.

3.7.1 **Minimum Limits of Insurance:** Coverage shall provide limits of no less than:

1. **General Liability:** \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Memorandum or the general aggregate limit shall be twice the required occurrence limit.
2. **Worker's Compensation and Employer Liability:** Workers' compensation limits as required by the Labor Code of the State

of California and Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

- 3.8 **Independent Contractors:** This Memorandum is not intended and will not be construed to create the relationship of principal-agent, -, employer-employee among or between the Parties. San Anselmo is an independent contractor to Fairfax and is responsible for completing the services hereunder.
- 3.9 **Employees:** Each Party shall be solely responsible for compensating and providing benefits for whichever employees, agents, or contractors said Party utilizes to fulfill its obligations hereunder. No Party shall have any rights or responsibilities with respect to any other Parties' employees, agents or contractors.
- 3.10 **Notice:** Any notice, statements, demands, requests, consents, approvals, authorizations, appointments, or designations hereunder by either Party to the other shall be in writing and shall be deemed sufficiently given and served upon the other Party when actually delivered to or deposited in the mail to the following addresses respectively:

San Anselmo: Town of San Anselmo
525 San Anselmo Avenue
San Anselmo, CA 94960
Attn: David Donery,
Community Services Director

Fairfax: Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Attn: Michael Rock, Town Manager

- 3.11 **Termination of Memorandum:** This Memorandum may be terminated by either Party with or without cause with thirty (30) days written notice to the other Party. Alternatively, the Memorandum shall be automatically terminated upon the mutual written agreement by the Parties. The withdrawal of either Party shall not terminate its responsibility, as determined by this Memorandum for all liabilities and claims accrued during the time the Party was a participant and during Term in which notice of intent to withdraw is given.
- 3.12 **Attorneys' Fees:** In the event any action is commenced to enforce or interpret any term or condition of this Memorandum, in addition to costs and any other relief, the prevailing Party shall be entitled to its reasonable attorneys' fees, expert fees, and other reasonable costs of defense.
- 3.13 **Entire Memorandum; Amendment:** This Memorandum contains the entire Memorandum of the Parties hereto with respect to the matters contained

herein, and supersedes all negotiations, prior discussions and preliminary memorandums of understandings, written or oral. No waiver or modifications of this Memorandum shall be binding unless consented to by both Parties in writing.

- 3.14 Non-Assignability: This Memorandum may not be assigned by either Party.
- 3.15 Waiver: No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- 3.16 Invalidity and Severability: If any portion of this Memorandum is declared invalid, illegal, or otherwise unenforceable by a court or competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 3.17 Cooperation; Further Acts: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Memorandum.
- 3.18 Governing Law: This Memorandum shall be governed by the laws of the State of California. Venue shall be in Marin County.
- 3.19 No Third Party Beneficiaries: There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- 3.20 Incorporation of Recitals: The Recitals are incorporated herein and made an operative part of this Memorandum.
- 3.21 Counterparts: This Memorandum may be signed in counterparts, each of which shall constitute an original.

On behalf of the Town of Fairfax:

On behalf of the Town of San Anselmo:

Michael Rock
Town Manager

Debra Stutsman
Town Manager

Date: _____

Date: _____