

## **REPORT TO THE CITY COUNCIL**

**DATE: AUGUST 22, 2012**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM GREG RAMIREZ, CITY MANAGER**

**BY: DONNA CONLIN, RECREATION MANAGER**

**SUBJECT: APPROVAL OF AGREEMENT WITH THE ACTIVE NETWORK TO PROVIDE ONLINE RECREATION REGISTRATION**

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In 2007, the Department of Community Services purchased RecPro, a recreational registration software program. The software is currently hosted by the City of Agoura Hills, and at the time of purchase, the Department of Community Services did not purchase the online module for a variety of reasons. The purchase of RecPro enabled participants to register more thoroughly and efficiently through phone, fax, and email registration. It also allowed staff to provide more information electronically to participants, including class updates, payment receipts, and program related emails. The software certainly catapulted the Department and its program into a more technologically advanced arena.

More recently, the City of Agoura Hills has had several requests from residents and participants, to have the ability to register for classes online. With so many organizations and services moving towards electronic business, staff pursued online recreation software options. Staff assessed the following software via online presentations: RecPro, The Active Network, Vermont, and Maximum Solutions. The top two preferred software companies were RecPro and The Active Network (ActiveNet), due to their usability features. The one major difference between RecPro and ActiveNet is the fact that by utilizing RecPro, the City of Agoura Hills hosts the product, and uses a third-party vendor to process credit cards in a separate payment portal online. On the other hand, ActiveNet is a non-hosted product and, also, a credit card merchant. The obvious benefit is that registration and payment works cohesively together as one transaction. Furthermore, Active Merchant Services and ActiveNet are P.C.I. compliant, and the fact that they process over a million credit card transactions annually, staff is confident that the software is contributing to the way the City conducts business.

Active Community Solutions, a division within ActiveNet, brings a thirty-year history of delivering organizational efficiencies and improved citizen service to local governments. ActiveNet serves over 4,000 local governments (cities and counties), parks and recreation, non-profits, sports organizations and associations, throughout the United States, Canada, Europe, Australia, and New Zealand. ActiveNet is a full-featured management solution, designed to provide a secure, on-demand access to our recreation data from any computer. It also features; remote web-based access anytime to both staff and customers. Staff would be able to accept credit cards and securely process off-site registrations for activities such as: camps, tennis, and

the “Night at the Adobe.” All residents are able to view a schedule of our local facilities and parks to see what is available for rental or what classes might be of interest to them. Instructors are able to view their classes and check their rosters from the privacy of their own home. Lastly, ActiveNet marketing aids in the execution of effective marketing programs that encourage community participation, while driving online registrations.

ActiveNet features a transaction pricing model, rather than directly charging for product use and upgrades. The City of Agoura Hills will be assessed 2% for every registration/transaction that is input into ActiveNet by staff regardless of cash, check, or charge. Furthermore, if staff inputs a credit card, there is an additional 2.5% credit card processing fee. ActiveNet accepts Visa, Mastercard, Discover, American Express, and can also support Electronic Check Processing, which allows for deduction directly from checking and/or savings accounts with routing and account numbers.

ActiveNet requests that residents utilizing online registration pay a \$2.00 flat “convenience fee” per transaction, and the City of Agoura Hills will pay the 2.5% credit card processing fee. It is important to note what some of our neighboring agencies are charging for online services. For example, Conejo Recreation and Park District charges a \$3.00 flat convenience fee; City of Moorpark charges a 6.5% transaction fee based on the total cost of services, plus a \$0.50 convenience fee; and the City of Calabasas, along with Rancho Simi Recreation and Park District, have no user fees for online services. In the ActiveNet model proposed to the City of Agoura Hills, a participant would pay an online \$2.00 convenience fee, regardless of the number of programs or the total cost of the programs. The City would also pay ActiveNet a 2.5% credit card usage fee. ActiveNet does not allow for the refund of online convenience fees, even in the case that the department cancels the class. If the City opted to refund the entire cost of a class, including the convenience fees, to participants, then the City would have to reimburse ActiveNet. The impact would be minimal, as the number of classes that are cancelled in the program is low.

The Department of Community Services will start the training in September 2012 in order to begin using the registration software product in October 2012. The goal is to be online by the winter program season, January 2013. In order to mitigate potential customer dissatisfaction, the Department of Community Services will introduce a marketing campaign to let residents know about the registration software changes and implement them gradually. Staff will begin this campaign in fall 2012 with the brochure, senior newsletter, city newsletter, flyers, city website, and email blasts. Additionally, the Department of Community Services will offer free computer training to the public in November for individuals to familiarize themselves with the new software, including showing seniors how to register online.

This item has been discussed and approved by the Community Services Subcommittee. The proposed agreement has been reviewed by the City Attorney and approved to as form.

## **RECOMMENDATION**

Staff respectfully recommends the City Council approve the Agreement with The Active Network for recreation registration software and services.

Attachment: Agreement

## Software as a Service Agreement

This Software as a Service Agreement ("Agreement") is made effective as of August 1, 2012 (the "Effective Date") and entered into between The Active Network, Inc., 10182 Telesis Court, San Diego, CA 92121 ("TAN" or "we" or "us") and City of Agoura Hills ("you" or "City's" or "Client"). The parties agree as follows:

1. Services. TAN will provide City access to its software as a solution product ("Software") as well as services and support ("Services") related to City's events, camps, licenses, classes, tickets, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "Events"). The features, services, options, and fees are described more fully in schedule(s) to this Agreement (each, a "Schedule"). The initial Schedule is attached hereto as Exhibit A. Each additional Schedule must be signed by both parties and will be governed by this Agreement. City agrees to provide us with certain information relating to City's organization as necessary for us to provide the Software and Services. Software provided under this Agreement is deemed delivered when made available to you.

2. License to Intellectual Property/Promotion. a) TAN retains all right, title, and interest in and to its Software and Services and any underlying software subject to the limited license provided by this Agreement.

b) TAN hereby grants to City a limited, non-exclusive, non-transferable license (i) to use the Software and Services solely in accordance with the Schedule and this Agreement, and (ii) to display, reproduce, distribute, and transmit in digital form TAN's name and logo solely for the purposes set forth in this Section 2. City hereby grants to TAN a limited license to use information provided by City relating to City's organization, which may include City's name, trademarks, service marks, and logo, in connection with the promotion of City's organization or Events.

c) City will make reasonable efforts to promote and encourage the use and availability of the Software in connection with the promotion of City's Events for which City is using the Software and Services. City will include TAN's name and logo in newsletters, printed registration forms or mailings provided by City to prospective participants (e.g., by inserting the following statement in any online or print media related to City's Event: "Online Registration Powered by Active.com"). TAN will be the sole and exclusive provider of registration services similar to the Software and Services provided to Client hereunder for each Event for which City is using TAN's Software and Services during the term of this Agreement.

d) City agrees to receive notifications regarding free product, promotional items, and giveaways at City's Event(s) or facility(ies), but City may opt not to receive the items from TAN. Registrants of City's Events may opt-in to receive information, items, or promotions/deals from TAN; we will be responsible for providing customer service for any such offers.

e) Each party agrees to comply with all applicable laws, rules, and regulations relating to such party's obligations hereunder.

3. Information Collection. TAN collects certain information from individuals as part of the registration process for City's Events. City may login to our data management system to access this information. City is responsible for the security of City's login information and for the use or misuse of such information by users authorized by City to use the Software and Services. City will immediately notify TAN in writing if any such users are no longer authorized. Both parties agree to use the collected information in compliance with (i) all applicable laws, rules and regulations, including, without limitation, those governing online privacy and use of credit card data (i.e. using credit card information only for purposes authorized by the cardholder); (ii) applicable Payment Card Industry Data Security Standards; and (iii) TAN's privacy policy as published on its website.

4. Fees. a) Client will pay the fees as more fully described in the applicable Schedule. For registration Software, unless otherwise set forth on the applicable Schedule, TAN will collect registration fees charged by City from individuals who register for City's Events online, for the purposes of card association rules, as a merchant of record but not a seller of record. TAN will remit those sums to you, net of chargebacks and any other offsets, bi-weekly unless otherwise set forth in the applicable Schedule, less TAN's service fees as set forth in the applicable Schedule. TAN may suspend its performance hereunder, including remitting payments, in the event it reasonably believes that the Software or Services are being used for fraudulent or other suspect purposes. TAN may also reimburse itself for any chargebacks, returned items or overdue fees owed by City out of the registration fees it collects on City's behalf by offsetting City's account. If the Schedule indicates that City are paying on a subscription basis, City will be invoiced for the first year of subscription fees upon the first live operational use of the Software ("Go-Live Date"), with subsequent annual subscription fees being invoiced upon each anniversary of Go-Live Date. Payment of subscription fees is due within forty-five (45) days of City's receipt of an invoice. All fees and prices are in United States Dollars unless otherwise specified.

b) All fees that are not directly collected by TAN as part of registration fees will be due from City within thirty (30) days from the end of the remittance cycle during which the fees accrued. These fees are displayed on City's account statement. Past due fees shall accrue interest at the annual rate of ten percent (10%) per annum. In the event of delay in paying a fee, City agrees to reimburse TAN for any fees incurred in its collection efforts. TAN may suspend or deactivate City's account if City's account is more than thirty (30) days past due.

c) After the second anniversary of the Effective Date, TAN reserves the right to modify the fees once per calendar year, provided that any increase will not exceed four and a half percent (4.5%). TAN shall notify Client at least thirty (30) days in advance of any such change. If we modify the fees, City can terminate this Agreement at that time by providing written notice within thirty (30) days following the date the change is implemented.

d) As the seller of record, City will be solely responsible for, and will pay, any and all use, excise, sales or privilege taxes, duties, value added taxes, fees, assessments, or similar

liabilities, chargeable by a governmental authority as a result of any Software or Service provided under this Agreement. Taxes on TAN's net income are excluded.

d) In the event City is entering into this Agreement and seeking the Services for the benefit of a third-party event or organization ("Third Party Beneficiary"), City agrees that we may send registration fees collected by us directly to the Third Party Beneficiary.

5. Disclaimer of Warranty/Limitation of Liability. TAN EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE USE OF ITS SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE SOFTWARE OR SERVICES WILL MEET CITY'S REQUIREMENTS. SOFTWARE AND SERVICES ARE PROVIDED TO CITY ON AN "AS-IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TAN SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR LOST PROFIT DAMAGES. TAN'S TOTAL AGGREGATE LIABILITY FOR ANY MATTER ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY CITY AS CONSIDERATION FOR THE SOFTWARE AND SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

6. Indemnification. a) To the extent permitted by law, each party (the "Indemnifying Party") shall defend, settle, and pay damages (including reasonable attorneys' fees) ("Damages") relating to any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("Claims") against the other party hereto (the "Indemnified Party") to the extent that such Claim is based upon: (i) the Indemnifying Party's violation of any applicable law, rule, or regulation; and/or (ii) provision, by the Indemnifying Party, of materials, products, or services as part of such party's obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used in accordance with this Agreement.

b) City shall further defend, settle, and pay Damages relating to Claims to the extent based on (i) injury or death to a person or damage to property resulting from the participation in an Event operated by City in connection with the Software and/or Services; and/or (ii) brought by a Third Party Beneficiary that relate to or arise from City's negligence, wrongdoing, or lack of authority to act on behalf of such third party. For the purposes of Sections 5 and 6, reference to TAN shall also include its suppliers and licensors.

7. Term and Termination. The term of this Agreement shall be for three (3) years from the Effective Date with an optional renewal for a three (3) year term thereafter, unless either party gives written notice to the other party to terminate this Agreement no less than ninety (90) days prior to the expiration of the then-current term. Either party may terminate this Agreement: (a) upon a material breach by the other party, if such breach is not cured within thirty (30) days following written notice to the breaching party; or (b) where the other party is subject to a filed bankruptcy petition or formal insolvency proceeding that is not dismissed within thirty (30) days.

8. Miscellaneous. a) Any notices required to be given under this Agreement shall be in writing sent to the address set forth below for Client or, in the case of TAN, to the address set forth above to the attention of General Counsel. Notices will be deemed received the next day if sent via overnight mail or courier with confirmation of receipt, or three (3) days after deposited in the mail sent certified or registered.

b) This Agreement is non-assignable without the written consent of the other party, except that TAN may assign without consent: (i) its rights to receive payments; or (ii) the Agreement to an affiliate or in connection with any sale of or any other transaction involving the transfer of more than fifty percent of its voting securities or assets. Any assignment in violation of this Agreement will be void.

c) This Agreement shall be governed by the laws of the State of California, without giving effect to the conflict of laws provisions thereof. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act shall apply to this Agreement. Any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in Los Angeles County, California. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

d) This Agreement contains the entire understanding of the parties regarding the subject matter hereof and can only be modified or amended by a subsequent written agreement executed by both parties.

e) Sections 2, 3, 5, 6, 7, and 8 of this Agreement and any fees owed by City shall survive any termination or expiration of this Agreement.

f) If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

g) No waiver of any provision of this Agreement or any attachment shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

h) Neither party will be deemed to be in default hereunder, or will be liable to the other, for failure to perform any of its obligations under this Agreement to the extent that such failure results from any event or circumstance beyond that party's reasonable control.

9. Independent Contractor. a) TAN is and shall at all times remain as to City a wholly independent contractor. The personnel performing the Services under this Agreement on

### **Software as a Service Agreement**

behalf of TAN shall at all times be under TAN's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of TAN or any of TAN's officers, employees, or agents except as set forth in this Agreement. TAN 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 City. TAN shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b) No employee benefits shall be available to TAN in connection with the performance of this Agreement. Except for the fees paid to TAN as provided in this Agreement, City shall not pay salaries, wages, or other compensation to TAN for performing Services hereunder for City.

SIGNATURE PAGE

By signing this Agreement, each party represents and warrants that it has the necessary and full right, power, authority, and capability to enter into this Agreement and to perform its obligations hereunder.

TAN  
By: Case Dinnally  
(Signature)  
Case Dinnally  
Print Name and Title  
Date: 8.14.12

CLIENT  
City of Agoura Hills  
(Full Legal Name)  
Phone: 818-597-7324  
By: \_\_\_\_\_  
(Signature) 30001 LADYFACE COURT  
Agoura Hills, CA

Greg Ramirez, City Manager  
Print Name and Title

TAN  
Checks payable to  
Date: 06/28/2012

SCHEDULE 1

**The Active Network**  
10182 Telesis Court, Suite 100  
San Diego, CA, 92121, United States

**Date:** 06/28/2012  
**Expires:** 09/26/2012

Customer:

CITY OF AGOURA HILLS

Bill To:  
City of Agoura Hills  
30001 LADYFACE COURT

Ship To:  
CITY OF AGOURA HILLS  
30001 LADYFACE COURT

AGOURA HILLS, CA 91301-1434  
UNITED STATES

AGOURA HILLS, CA 91301-1434  
UNITED STATES

**Sales Representative:** Block, Neal

**Payment Terms:** 30 NET

Line	Product	Units	Qty	Unit Price Selling (USD)	Total Price Selling (USD)
1.0	ActiveNet - Activity Registration	Ea	1	\$0.00	\$0.00
2.0	Daycare/Flex Registration	Ea	1	\$0.00	\$0.00
3.0	ActiveNet - Facility Reservation	Ea	1	\$0.00	\$0.00
4.0	ActiveNet - Public Access	Ea	1	\$0.00	\$0.00
5.0	Activenet - Resource Scheduler	Ea	1	\$0.00	\$0.00
6.0	Business Process Review	Hr	8	\$175.00	\$1,400.00
7.0	Project Planning	Hr	16	\$100.00	\$1,600.00
8.0	General Settings	Hr	8	\$100.00	\$800.00
9.0	Activity Registration Training	Hr	16	\$100.00	\$1,600.00
10.0	Day Care/Flex Registration Training	Hr	16	\$100.00	\$1,600.00

11.0	Facility Reservation Training	Hr	20	\$100.00	\$2,000.00
12.0	Resource Scheduler Training	Hr	4	\$100.00	\$400.00
13.0	Public Access Training	Hr	12	\$100.00	\$1,200.00
14.0	Finance Export	Hr	8	\$175.00	\$1,400.00

**Category Subtotal**

ActiveNet.SaaS.Online Transactions	Subtotal (Selling Price)	\$0.00
ActiveNet.Service.Consulting - Hosted	Subtotal (Selling Price)	\$12,000.00

**Tax**

COUNTY (Rate 2.5% )	\$0.00
STATE (Rate 6.25% )	\$0.00

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<b>Total(USD)</b>	<b>\$12,000.00</b>
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# Quote

27829 - 1

## Offline Service Charges

**Payments:**

Payments entered by staff through the offline interface will be assessed a 2.0% Service Charge. Non monetary transactions will be exempt from this Service Charge. An additional credit card transaction fee of 2.5% will be applied to offline credit card payments. An additional ECP (electronic check payment) processing surcharge of 1.5% will be applied to offline ECP payments.

**Refunds:**

Refunds to credit cards will be assessed a \$.10 credit card refund fee. Refunds to ECP will be assessed a \$.10 refund fee. All offline Service Charges will be paid for by the Customer and will be absorbed in offline transaction totals. There are no fees for refunds on cash and check charges.

## Online Service Charges Percentage

Payments entered directly by participants through the online interface will be assessed a Service Charge equal to \$2.00 per total transaction plus the organization will absorb an additional credit card transaction fee of 2.5%.

## Online Service charge

All online Service Charges will be paid for by the participant in addition to transaction totals. The online Service Charge is \$2.00 per total transaction.

## General

Sales taxes, where applicable, are not included and prices are in the currency of the country of installation (subject to change without notice). Hardware, operating system, 3rd party software and site preparation are not included unless otherwise noted.

## Method of Payment:

- Invoice Me      Purchase Order Number: \_\_\_\_\_
- 
- Credit Card       Visa       MasterCard       American Express



# Quote

27829 - 1

Credit Card Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

I hereby Agree to Pay above quote with the stated Method.

Customer Name: City of Agoura Hills

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

Effective Date: \_\_\_\_\_

End of Quote