

**SECOND AMENDMENT TO AGREEMENT 12-033 BETWEEN
THE CITY OF CUPERTINO AND LIFETIME TENNIS INC.,
DBA LIFETIME ACTIVITIES INC. FOR INSTRUCTION AND
SUPERVISION OF CAMPS, CLASSES, LESSONS, RETAIL
SERVICES, AND COURT MAINTENANCE**

This Second Amendment to Agreement 12-033 between the City of Cupertino and Lifetime Tennis Inc., DBA Lifetime Activities Inc., for reference dated 7/21/2020, is by and between the CITY OF CUPERTINO, a municipal corporation (hereinafter "City") and Lifetime Tennis Inc., DBA Lifetime Activities Inc., a California Corporation ("Contractor" or "Tennis Pro") whose address is 1901 South Bascom Ave., Suite 1225, Campbell, CA 95008, and is made with reference to the following:

RECITALS:

- A. On 3/20/2012, Agreement 12-033 ("Original Agreement") was entered into by and between City and Contractor for tennis lessons, retail service, and court maintenance.
- B. On 7/1/2018, City and Contractor entered a First Amendment to the Original Agreement.
- C. The Agreement and the First Amendment are collectively referred to as the "Agreement" unless otherwise indicated.
- D. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

1. Compensation

The following sentences are added to the end of Paragraph 4 of the Agreement:

Notwithstanding the foregoing, for the period of March 16, 2020 to June 30, 2021, the City may accept the lesser of the then-current annual rent or 16% of the total annual revenue.

City and Contractor may mutually agree for Contractor to teach a class online rather than in person, provided that City and Contractor mutually agree to compensation for that online class. Compensation for that online class shall be specified in writing in a separate agreement before online instruction for a class begins.

- 2. Exhibits A and B of the Agreement are replaced with new Exhibits A and B attached hereto.

3. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed.

CONTRACTOR

By _____

Title _____

Date _____

CITY OF CUPERTINO

By _____

Title _____

Date _____

APPROVED AS TO FORM

City Attorney

ATTEST:

City Clerk

Date _____

EXPENDITURE DISTRIBUTION

PO #2018-155	570-63-621 700-702
Original	\$7,600,000
Amendment #1:	\$10,800,000
Amendment #2:	\$0
Total:	\$18,400,000

EXHIBIT A
SCOPE OF WORK, PERFORMANCE AND PAYMENT SCHEDULES

The CONTRACTOR will provide INSTRUCTION AND SUPERVISION in, but not limited to, the following:

TENNIS, BADMINTON, TABLE TENNIS, BASKETBALL, VOLLEYBALL, PICKLEBALL AND CHESS

1. Duties of Lifetime Tennis Inc., DBA Lifetime Activities Inc.

- a) Class and camp instruction for all City-sponsored groups as determined by the City. Class size and court usage shall be established and approved by the City. All instruction shall be provided at a quality consistent with the standards found at other facilities in the area which are open to the public.
- b) Will provide all necessary and appropriate equipment for the purpose of teaching high quality programs, including, but not limited to, tennis balls, ball machines, nets, and table tennis tables. This equipment shall be stored at the Cupertino Sports Center in space provided by Lifetime Tennis Inc., DBA Lifetime Activities Inc.
- c) Will respond to all public complaints no later than two (2) days after the complaint was registered. Both complaints and responses will be documented and forwarded to the City no later than the first of each month.

2. Optional Services

- a) The City shall have the sole right to establish the use of all tennis courts at the Sports Center and Lifetime Tennis Inc., DBA Lifetime Activities Inc.'s right to give private lessons on any court is subject to the City's right to priority usage for the City sponsored events.
- b) Utilize courts #5 and #6 at Memorial Park for the sole purpose of teaching tennis lessons (Exception: Lifetime Tennis Inc., DBA Lifetime Activities Inc. is prohibited from using said courts on Tuesdays from 8:00 a.m. to Noon).

3. Collection of Fees and Charges

- a) All fees and charges for classes, camps, and private lessons provided by Lifetime Tennis Inc., DBA Lifetime Activities Inc. shall be collected from the public by the City. The fees and charges for all classes, lessons, and camps for both city-sponsored and private pupils will be established solely by the City pursuant to its normal procedure for establishing such fees and charges.
- b) During the term of this Agreement, Lifetime Tennis Inc., DBA Lifetime Activities Inc. is granted the exclusive privilege of providing tennis instruction at the Cupertino Sports Center other than that which is provided by City employees in connection with City-sponsored programs.

4. Retail Service

- a) The Retail Service to commence on July 1, 2018, and continue through June 30, 2024.
- b) The Retail Service that Lifetime Tennis Inc., DBA Lifetime Activities Inc. will be offering at the Cupertino Sports Center will consist of the following:
 - Racquet restringing for tennis and racquetball racquets.
 - Grip- build-up service

- Various accessories for tennis racquets (grips, vibration dampers, etc.)
 - Tennis racquet demo program and tennis racquet sales
 - Table tennis paddles
 - Pre-packaged food and beverages.
- c) The Retail Service will be located in the existing pro shop space located next to the lobby of the Cupertino Sports Center.
- d) Hours of Operation
- Monday-Saturday 8:00 a.m. – 9:30 p.m.
 - Sunday 8:00 a.m. – 8:00 p.m.
- Any changes to the hours of operation must be authorized by the City representative.
- e) Monthly Financial Statements – No later than fifteen (15) days after the end of each month Lifetime Tennis Inc., DBA Activities Inc. shall submit to the City of Cupertino a written statement for the preceding month showing the gross revenue and expenses for the Retail Service.
- f) Court Maintenance - Lifetime Tennis Inc., DBA Lifetime Activities Inc. is to provide at its own expense, weekly maintenance services for all 18 tennis courts at the Cupertino Sports Center. This service is to include biweekly court washing and alternating biweekly court blowing/sweeping. In addition, Lifetime Tennis Inc., DBA Lifetime Activities Inc. will provide all necessary materials to provide these maintenance services. Materials include, but are not limited to, court washing wands, industrial grade hoses, hose carrier cart, portable air blower, and toolkit.

5. Facility Closure

- a) The City reserves the right to close the facility for maintenance, for five consecutive week days, once per fiscal year, commencing in the fiscal year 2019/2020. The City will consider programming schedules and high traffic times of the facility when scheduling the closure.

Location and Time of CONTRACTOR Services:

Refer to the Recreation Schedule dated SUMMER 2018 - SPRING 2024 for agreed upon dates, times, and locations of a class, camp, activity, program, or service (“class”). The City, at its sole discretion, may change the agreed dates, times and locations of a class, or may cancel a class.

Eligible Participant Minimum and Maximums for CONTRACTOR Services:

Minimum: 2 - 4
 Maximum: 99

If less than the required minimum number of participants enroll in and pay for a particular class as identified in the schedule before the class is scheduled to start, the City may cancel the particular class and/or terminate this Agreement without additional notice or payment to Contractor.

List of all Contractor Employees working for the City of Cupertino (if no Employees, identify "self"):

Performance of CONTRACTOR Services

Class Cancellation

Contractor will only receive compensation for a class that is performed. If performance of a class is cancelled by the City or Contractor before instruction begins, Contractor will not receive compensation for the class. If the City or Contractor cancels performance of certain meetings of a class, Contractor will only receive compensation for those meetings of the class that are performed.

In the case Contractor unilaterally cancels performance of a class without City approval, City reserves the right to immediately and without notice cancel the remainder of classes offered and or performed by Contractor.

COVID-19 Health Order Compliance

Contractor acknowledges that its duty to comply with Laws, as stated in Section 13 of the Agreement, includes compliance by Contractor with the restrictions on travel and the Social Distancing Requirements set forth in Section 13.k of the health order issued by the County of Santa Clara Public Health Department on March 31, 2020, in response to the COVID-19 pandemic, and any subsequent amendments or superseding orders thereto (the "Health Order"), and any other local, state, or federal laws or policies that have been or may be enacted in response to the COVID-19 pandemic (collectively, "Health Laws"). Contractor shall comply with these restrictions on travel and Social Distancing Requirements when performing work under this Agreement. If this Agreement specifies work that cannot be performed in compliance with the Health Order or Health Laws, Contractor shall refrain from conducting the work and immediately inform the City. Contractor shall likewise comply with any City protocols designed to help prevent the spread of COVID-19. Contractor acknowledges that the need to comply with the Health Order and Health Laws may result in the City canceling performance of any class or meetings of a class referenced in this Agreement.

Registration, Enrollment, and Supervision

The Contractor shall follow all guidelines pertaining to registration procedures as listed in the quarterly recreation schedule. Participants may not take part in the program unless they are listed on the class roster or can show proof of enrollment. All participants and volunteers need to complete the City's Waiver of Liability form prior to taking part in the program. If applicable, contractors who are responsible for supervising minors must remain with the class until a parent or legal guardian has arrived and all minors are released to them.

Injury of a Class Participant

In the event of an injury occurring to a participant, the Contractor will notify the City within 1 hour and complete an Incident Report in the form approved by the City. The Incident Report must be submitted to the City within 24 hours of the injury occurring.

Exhibit B

Insurance Requirements for Recreation Contracts

As required by the Agreement, Contractor shall procure prior to commencement of Services and maintain the following insurance for the duration of the Agreement against claims arising from or in connection with Contractor, its agents, representatives, employees or subcontractors Services under this Agreement.

Minimum Scope and Limit of Insurance. Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, it must apply separately to this project/location (CG 25 03 or 25 04) or be twice the required occurrence limit.
 - a) It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b) Additional Insured coverage under Consultant's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 01 (04/13).
 - c) The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured. law
2. **Automobile Liability (select one):**
 - └ ISO CA 0001 covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage. (*Required if automobile is used to perform work under this contract.*)
 - └ Proof of Contractor's personal auto insurance with limits required by state law. (*Contractor shall not transport or use its personal vehicle to transport participants or perform work under this contract.*)
 - └ Automobile insurance is waived. (*Contractor shall never use a vehicle while working under this contract, other than to commute to and from the work site. Contractor shall not use a vehicle to travel between City sites, between classes, etc.*)
3. **Workers' Compensation:** As required by the State of California, with Statutory and Employer's Liability Insurance limits of no less than \$1,000,000 per accident for bodily injury or disease.
 - └ *Required if Contractor has employees.*
 - └ *If no employees, Contractor must sign Affidavit of No Employees.*
4. **Sexual Abuse/Molestation:** Insurance or the equivalent as required for activities/services involving minors, (i.e., after school activities, recreational programs, athletics, study/training events and transportation of minors). Coverage may be included under General Liability or be obtained in a separate policy, such as Educators Legal Liability (ELL) policy, with a limit of no less than \$1,000,000 per occurrence. If a general aggregate limit applies, it must apply separately to this contract or be twice the required occurrence limit.
 - └ *Required if Contract involves services to children.*

Insurance coverage required may be satisfied by a combination of Primary and Excess/Umbrella insurance.

OTHER INSURANCE PROVISIONS

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers (“Additional Insureds”) are to be covered as additional insureds on Consultant’s CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Consultant’s insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

Primary Coverage

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant’s insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

Consultant waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At City’s option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

Acceptability of Insurers

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

Verification of Coverage

Consultant must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

Subconsultants

Consultant shall require and verify that all subconsultants maintain insurance that meet the requirements of this Contract, including naming the City as an additional insured on subconsultant’s insurance policies.

Higher Insurance Limits

If Consultant maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Consultant.

Adequacy of Coverage

City reserves the right to modify these insurance requirements/coverages based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.