



RECREATION SERVICES AGREEMENT

1. Parties. This contract is made and entered into as of 8/1/2019 (“Effective Date”), by and between the City of Cupertino, a municipal corporation (“City”), and with DAN GERTMENIAN, 167 ACALANES DRIVE #15, SUNNYVALE, CA 94086 (“Contractor”), a SOLE PROPRIETORSHIP for EDUCATIONAL CLASSES AND EDUCATIONAL EVENTS.

2. Services. Contractor agrees to provide the Services included in the Scope of Work and in accordance with the Schedule of Performance attached in **Exhibit A**.

3. Term. This contract begins on the Effective Date and ends on 7/31/2021 (“Contract Time”), unless extended or terminated as provided herein. Time is of the essence and Contractor must have sufficient time, resources, and qualified staff to deliver the Services as required. Contractor must promptly notify City of any actual or potential delays to afford the Parties adequate opportunity to address or mitigate such delays.

4. Compensation. City will pay Contractor for satisfactory performance of the Services an amount that will be based upon actual costs but that will be capped so as not to exceed \$422,500 (“Contract Price”), based upon the Scope of Services, budget, performance schedule, and rates included in **Exhibit A**. The maximum compensation includes all costs, expenses and reimbursements and will remain in place even if Contractor’s actual costs exceed the capped amount. Contractor must submit invoices and the information required in Exhibit A in order to receive payment. City will compensate Contractor within 30 days after approval of written invoices.

Invoices are subject to review and audit by City during regular business hours upon 24-hours’ notice. Contractor must maintain complete and accurate records of payrolls, expenditures, disbursements and other cost items charged to City or establishing the basis for an invoice, for a minimum of four (4) years from the date of final payment.

5. Independent Contractor. Contractor is an independent Contractor and not an employee, partner, or joint venture of City. Contractor is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. No civil service status or other right of employment will be acquired by virtue of Contractor’s performance of the Services. Contractor is not entitled to City’s health benefits, worker’s compensation or any other benefit. Contractor must have the skills and qualifications to perform the Services in a competent and professional manner. Contractor will supply all tools, materials and equipment required to perform the Services under this Contract. Contractor is responsible for obtaining permits and licenses required by law and must obtain a City business license.

6. Proprietary/Confidential Information. To the extent Contractor may have access to private or confidential information owned or controlled by the City, Contractor agrees to treat it confidential and use it solely to perform this Agreement. Contractor must exercise the same standard of care to protect City information as a reasonably prudent Contractor would use to protect its own proprietary data.

7. Ownership of Materials. To the extent Contractor prepares written material, drawings or data in connection with this contract, City will have the property rights to those materials and all copyrights, if any, to such work product will constitute City property.

8. Records. Contractor must maintain complete, accurate, and detailed accounting records relating to its performance in accordance with generally accepted accounting principles and procedures. The records must include detailed information about Contractor's services, benchmarks, deliverables and costs/fees, and must be made reasonably available to City. The records and supporting documents must be kept separate from other files and maintained for four years from the date of City's final payment.

9. Assignment. This Contract is not assignable. Contractor may not substitute another or transfer any rights or obligations under this Contract without prior written approval of City. Only those persons whose names are included in **Exhibit A** may perform the Services.

10. Publicity and Signs. Any publicity generated by Contractor related to this contract or the Services during the Contract Time and for one year thereafter must reference City contributions. The words "City of Cupertino" shall be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. No signs may be posted, exhibited or displayed on or about City property, except signage required by law or under this Agreement without prior written approval from City.

11. Indemnification. To the fullest extent allowed by law and except for losses caused by the sole negligence or willful misconduct of City personnel, Contractor agrees to indemnify, defend, and hold harmless the City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers and Contractors (collectively, "Indemnitees"), through legal counsel acceptable to City, from and against any liability for damages, claims, actions, causes of action, demands, charges, losses, costs and expenses (including attorney fees, legal costs and expenses related to litigation, arbitrations, administrative and regulatory proceedings), of every nature, arising out of or in any way related to Contractor's or Contractor's agents performance of this contract or the Services. This includes but is not limited to Liability resulting in personal injury, death, property damage, or economic losses. Contractor must pay any costs City may incur in enforcing this provision and must accept a tender of defense upon receiving notice from City. Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Contract.

12. Insurance. Contractor shall comply with the insurance requirements in **Exhibit B**. City will not execute the Agreement until it has received and approved satisfactory certificates of insurance and endorsements evidencing the type, amount, and dates of coverage. Alternatively, City in its sole discretion may purchase insurance and deduct the costs from payments to Contractor, or terminate the contract.

13. Compliance with Laws and Other City Requirements.

Requirements for all Contracts. This contract is subject to local, state and federal laws and regulations prohibiting discrimination, including Title VII of the Civil Rights Act of 1964, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, and other laws that pertain to fair employment and anti-discrimination practices. Contractor must comply with labor laws pertaining to prevailing wages, working hours, overtime, payroll records, and other requirements imposed by the Department of Industrial Relations. If Contractor does not have employees, it must sign the Affidavit of No Employees, attached as **Exhibit C**. Contractor is responsible for verifying employment eligibility of employees pursuant to the Immigration Reform and Control Act of 1986. Contractor must comply with conflict of interest laws and regulations applicable to this Agreement and avoid conflicts of interest. Contractor may be required to file a conflict of interest form for engaging in governmental decisions or serving in a staff capacity, and is hereby advised to review the requirements of California Political Reform Act and the California Code of Regulations. Services may only be performed by persons who are not employed by City and who do not have a contractual relationship with City other than this contract. Contractor agrees to abide by City policies and administrative rules prohibiting gifts to City officials and employees.

Additional Requirements for Services Provided to Minors: Contractor and its employees who provide services under this Agreement must comply with these additional requirements:

- A. Undergo fingerprinting and a criminal background check and verify all employees providing services under this contract have met this requirement.
- B. Complete a Tuberculosis screening test as required by law and as set forth in **Exhibit D**.
- C. Comply with the Mandatory Reporting under California Penal Code 11164-11174.3 and with the protocols, reporting, and training required under California Health and Safety Code Section 124235, AB2007, and other laws pertaining to concussion evaluation, removal from play, and return to play protocols. (Refer to Center for Disease Control & Prevention, <https://www.cdc.gov/headsup/index.html>).
- D. Submit required forms and acknowledgments included in **Exhibit D**, and ensure its each participant is provided with a concussion information sheet, signs and returns the forms to the City as required by Health and Safety Code Section 124235.
Require coaches and administrators to successfully complete the concussion and head injury education at least once either online or in person, before supervising a participant. Contractor shall offer training, educational materials, or both to each Contractor administrator on a yearly basis. (Training resources are available at the Center for Disease Control & Prevention (link cited above).
- E. If providing instruction, Contractor must acknowledge and comply with all requirements set forth in the Recreation & Community Services Instructor Manual.

Check one (if applicable):

- This contract requires services for children.

- This contract currently does not require services for children. If in the future, services for children are required, the contract will require a 'written amendment' to include the appropriate insurance coverages as required in 'Exhibit B – Insurance Requirements for Recreation Contracts', proof of finger printing and additional requirements under Paragraph 13. The contract amendment will also require the approval of the Director of Recreation and Community Services and City Attorney.

14. Coordination of Services. The Parties designate the following persons as Services Coordinators with the responsibility to oversee the delivery of Services in accordance with the terms of this Agreement. Contractor's designation and any substitution are subject to City approval.

For City: Name: Daniel Mestizo Position: Recreation Coordinator Contact: danielm@cupertino.org 408-777-3134	For Contractor: Name: Dan Gertmenian Position: Instructor Contact: uclarhapsody@hotmail.com 650-967-3500
-------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------

15. Abandonment. City may abandon or postpone the Activity or Program and will notify Contractor as soon as possible. Contractor will be paid for satisfactory Services rendered through the date of abandonment upon submission of final invoices approved by City.

16. Termination. City may terminate this contract for cause or without cause at any time and will notify Contractor as soon as possible. Contractor will be paid for satisfactory services rendered through the date of termination upon submission of final invoices approved by City.

17. Governing Law, Venue and Dispute Resolution. This contract is governed by the laws of the State of California. Any legal actions or proceedings filed against City in connection with this contract must comply with the government claims filing requirements and must be filed with the Superior Court for the County of Santa Clara, State of California. At City's request, Contractor is required to continue to provide Services pending resolution of any dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. Attorney Fees. If City is required to pursue litigation, arbitration or other administrative or regulatory proceeding to enforce its rights or the terms of this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs. This Section survives this Agreement.

19. Third Party Beneficiaries. There are no third party beneficiaries under this Contract.

20. Waiver. Neither acceptance of Services nor payment thereof constitutes a waiver of any contract provision. City waiver of a breach shall not constitute waiver of another term, provision, covenant or condition, or a subsequent breach, whether of the same or a different character.

21. Entire Agreement. This Agreement and all referenced Exhibits are hereby attached and incorporated into the Agreement by this reference and represent the full and complete understanding as to those matters contained herein, and supersede any other contract or understanding, either oral or

written, between the Parties. This Agreement may not be modified or amended except in writing signed by both Parties. If there is any inconsistency between the main contract and any attachments or exhibits thereto, the main contract shall prevail.

22. Inserted Provisions. Each provision or clause required by law or this contract is deemed to be included and will be inferred herein. Either party may request an amendment to cure any mistaken insertion or omission of a required provision.

23. Headings. The headings are for convenience only and are not a part of the contract or intended to affect, limit or amplify the terms or provisions of this Agreement.

24. Severability/Partial Invalidity. If any contract term or provision, or their application to a particular situation, is found by the court to be void, invalid, illegal or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other contract terms and provisions and their application to specific situations will remain in full force and effect.

25. Survival. All provisions which by their nature must continue after the Agreement ends, including without limitation Indemnification, Insurance, Ownership of Materials, Records, Governing Law and Attorney Fees, will survive the expiration or termination of this Agreement.

26. Notices. All notices and instruments pertaining to material provisions of this contract or significant disputes which are required by law or under this contract to be in writing must be sent to the persons listed below. The notices will be deemed effective on the date of personal delivery or the date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission.

To City of Cupertino: Office of the City Manager 10300 Torre Ave., Cupertino CA 95014 cc: Representative/Coordinator: Daniel Mestizo Email: danielm@cupertino.org	To Contractor: 167 Acalanes Drive #15, Sunnyvale, CA 94086 cc: Representative/Coordinator: Dan Gertmenian Email: uclarhapsody@hotmail.com
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------

27. Validity of Contract. This contract is valid and enforceable only if it complies with the provisions of Cupertino Municipal Code Chapters 3.22 and 3.23, is signed by the City Manager or authorized designee, and is approved for form by the City Attorney's Office.

28. Execution. The person executing this contract on behalf of Contractor represents and warrants that Contractor has full right, power, and authority to execute this contract and to carry out all actions and services required. This contract constitutes a legally binding obligation of Contractor, and may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument.

IN WITNESS WHEREOF, the parties have caused this contract to be executed.

CONTRACTOR

Dan Gertmenian

CITY OF CUPERTINO

A Municipal Corporation

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Tax I.D. No.: _____

APPROVED AS TO FORM:

ATTEST:

HEATHER M. MINNER
Cupertino City Attorney

GRACE SCHMIDT
City Clerk

Contract/Encumbered Amount: \$422,500

Account No.: 580-62-613 700-702

EXHIBIT A
SCOPE OF WORK, PERFORMANCE AND PAYMENT SCHEDULES

The CONTRACTOR will provide EDUCATIONAL CLASSES AND EDUCATIONAL EVENTS in, but not limited to, the following:

MATH OLYMPIADS, MATH OLYMPIAD HONORS, MATH OLYMPIAD ACCELERATED, CHESS, MATH THEMED EVENTS, CHESS EVENTS, INFORMATION NIGHTS, TRIAL MATH CLASSES, OPTIONAL PARTICIPANT EVENTS, PARENT-CHILD MATH OLYMPIAD CLASSES

Location and Time of CONTRACTOR Services:

Refer to the Recreation Schedule dated FALL 2019 – FALL 2021 for agreed upon dates, times, and class locations. The City, at its sole discretion, may change the agreed terms.

Compensation for CONTRACTOR Services:

Contractor shall be compensated for services performed pursuant to this Agreement. Compensation shall consist of the following: 65% of the resident fee based on final class rosters, minus copier use fees. The total compensation to the Contractor shall not exceed \$ 422,500.

Eligible Participant Minimum and Maximums for CONTRACTOR Services:

Minimum: 10
Maximum: 30

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:

In the case Contractor unilaterally cancels performance of a class, camp, activity or service without City approval, City reserves the right to immediately and without notice cancel the remainder of programs/services offered and or performed by Contractor.

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.

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 C
AFFIDAVIT OF NO EMPLOYEES

State of California
County of Santa Clara
City of Cupertino

I, the undersigned, declare as follows:

I am an independent contractor and the owner of _____.

I wish to enter into a services contract with the City of Cupertino. I am fully aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage for employees in accordance with the provisions of that Code. I am also aware that I must provide proof of workers' compensation insurance to the City of Cupertino for any and all employees I may have, pursuant to Section 12 of the City of Cupertino's contract.

I hereby certify that I do not have any employees nor will I have any employees working for me or my business during the term of any service contract with the City of Cupertino. I am not required to have Workers' Compensation insurance.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this ____ day of _____, 2019, at _____, California.

PRINT NAME

SIGNATURE

EXHIBIT D
Contractor's Mandated Reporter Declaration

The undersigned does hereby certify that:

1. I am a representative of DAN GERTMENIAN; that I am familiar with the facts herein and am authorized and qualified to execute this declaration.
2. I declare that DAN GERTMENIAN has complied with fingerprinting and criminal background investigation requirements with respect to all Contractor's employees who may have contact with minors in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in California Penal Code Section 11105.3.
3. I declare that each coach and administrator shall be required to successfully complete concussion and head injury education at least once, either online or in person, before supervising a participant, as required by California Health and Safety Code Section 124235, et seq.
4. On a yearly basis, all participants shall be required to sign and return a concussion and head injury information sheet in compliance with California Health and Safety Code Section 124235, which may be in the form attached as D-1.
5. That a complete and accurate list of Contractor's employees, who may come in contact with minors during the course and scope of the Agreement, are included below.
6. All of the below mentioned employees have tested negative for TB, or X-ray results for TB, and have current documentation on file with Contractor.
7. All of the below mentioned employees have received training and understand their responsibilities under the Mandated Reporter laws of this state and are willing and able to comply.

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

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

8. The Contractor will notify the City of Cupertino in writing of any new employees and will be added to the above list prior to beginning work at the City of Cupertino.

I declare under penalty of perjury that the foregoing is true and correct.

DAN GERTMENIAN

By: DAN GERTMENIAN

Title: INSTRUCTOR

Date: _____