



OPERATING AGREEMENT FOR SPORTS CENTER PROGRAMS

1. PARTIES

This Agreement is made by and between the City of Cupertino, a municipal corporation (“City”), and _____ (“Contractor”), a _____ for _____, and is effective on the last date signed below (“Effective Date”).

2. SERVICES

2.1 Contractor agrees to provide the services and perform the tasks (“Services”) set forth in detail in Scope of Services and Compensation attached here and incorporated as **Exhibit A**. Contractor further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

2.2 Contractor’s duties and services under this agreement shall not include preparing or assisting the City with any portion of the City’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor’s participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this agreement.

3. TIME OF PERFORMANCE

3.1 This Agreement begins on the Effective Date and ends on _____ (“Contract Time”), unless terminated earlier as provided herein. Contractor’s Services shall begin on the Effective Date and shall be completed by _____. The City’s appropriate department head or the City Manager may extend the Contract Time through a written amendment to this Agreement, provided such extension does not include additional contract funds. Extensions requiring additional contract funds are subject to the City’s purchasing policy.

4. COMPENSATION

4.1 Maximum Compensation. City will compensate Contractor for satisfactory performance of the Services an amount that will be capped so as not to exceed \$24,000,000 (“Contract Price”), based upon the scope of services and compensation in **Exhibit A**. The Contract Price shall be 88%

of the total annual revenue, as hereinafter defined, generated by the programs managed by Contractor at the Cupertino Sports Center. Total annual revenue shall be calculated from the period from January 1 to December 31 and consist of gross revenue without reduction for any incurred costs, including but not limited to, credit card fees. Pursuant to the payment schedule set forth in Exhibit A, Contractor shall remit to the City 12% of all total annual revenue or \$250,000, whichever is greater. The \$250,000 base amount for calendar year 2025 shall be subject to a \$10,000 annual escalator added to the base compensation throughout the duration of the contract. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor's actual costs exceed the Contract Price. No extra work or payment is permitted without prior written approval of City.

4.2 Payments. Contractor shall collect all fees for services offered and be compensated with 88% of total annual revenue generated by the programs managed by the Contractor at the Cupertino Sports Center and will remit to the City at least 12% of total annual revenue or \$250,000, whichever is greater. The \$250,000 base amount for calendar year 2025 shall be subject to a \$10,000 annual escalator added to the base compensation throughout the duration of this Agreement. Contractor shall pay to the City based on the compensation schedule set forth in **Exhibit A**.

Quarterly payments must state a description of the program activities completed, include financial reports, and the amount paid for the preceding quarter. Payments shall be received no later than the 15th of the following month. The final quarter payment will include any additional compensation due to meet the base amount for the calendar year.

5. CAPITAL CONTRIBUTION

Maximum Contribution. Contractor will contribute up to a not to exceed amount of \$500,000 towards capital improvements at the Cupertino Sports Center within the first year of the contract, based upon the scope of services and compensation in **Exhibit A**.

6. INDEPENDENT CONTRACTOR

61 Status. 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. Contractor is not entitled to health benefits, worker's compensation, or other benefits from the City.

62 Contractor's Qualifications. Contractor warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Services in a competent and professional manner and according to the highest standards and best practices in the industry.

63 Permits and Licenses. Contractor warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Services as required by law and have procured a City Business License, if required by the Cupertino Municipal Code.

64 Subcontractors. Only Contractor's employees are authorized to work under this Agreement. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Agreement will apply to any approved subcontractor.

65 Tools, Materials, and Equipment. Contractor will supply all tools, materials and equipment required to perform the Services under this Agreement.

66 Payment of Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City, and actual attorney's fees incurred by City in connection with the above.

7. PROPRIETARY/CONFIDENTIAL INFORMATION

In performing this Agreement, Contractor may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details the disclosure of which to third parties may be damaging to City. Contractor shall hold in confidence all City information provided by City to Contractor and use it only to perform this Agreement. Contractor shall exercise the same standard of care to protect City information as a reasonably prudent contractor would use to protect its own proprietary data.

8. OWNERSHIP OF MATERIALS

8.1 Property Rights. Any interest (including copyright interests) of Contractor in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium (collectively, "Work Product"), prepared by Contractor in connection with this Agreement will be the exclusive property of the City upon completion of the work to be performed hereunder or upon termination of this Agreement, to the extent requested by City. In any case, no Work Product shall be shown to any third-party without prior written approval of City.

8.2 Copyright. To the extent permitted by Title 17 of the U.S. Code, all Work Product arising out of this Agreement is considered "works for hire" and all copyrights to the Work Product will be the property of City. Alternatively, Contractor assigns to City all Work Product copyrights. Contractor may use copies of the Work Product for promotion only with City's written approval.

8.3 Patents and Licenses. Contractor must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or

copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.

84 Re-Use of Work Product. Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Contractor or its sub-contractors prepared or created under this Agreement, to execute or implement any of the following:

- (a) The original Services for which Contractor was hired;
- (b) Completion of the original Services by others;
- (c) Subsequent additions to the original Services; and/or
- (d) Other City projects.

85 Deliverables and Format. Contractor must provide electronic and hard copies of the Work Product, on recycled paper and copied on both sides, except for one single-sided original.

9. RECORDS

Contractor must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed information of Contractor's performance, benchmarks and deliverables, which must be available to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for four (4) years from the date of City's final payment.

Contractor acknowledges that certain documents generated or received by Contractor in connection with the performance of this Agreement, including but not limited to correspondence between Contractor and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Contractor shall comply with all laws regarding the retention of public records and shall make such records available to the City upon request by the City, or in such manner as the City reasonably directs that such records be provided.

10. ASSIGNMENT

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Contractor as a legal entity is considered an assignment of the Agreement and subject to City approval, which shall not be unreasonably withheld. Control means fifty percent (50%) or more of the voting power of the business entity.

11. PUBLICITY / SIGNS

Any publicity generated by Contractor for the project under this Agreement, during the term of this Agreement and for one year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will 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 this Contract, without prior written approval from the City.

12. INDEMNIFICATION

12.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers, and consultants (“Indemnitees”), through legal counsel acceptable to City, from and against any and all liability, damages, claims, actions, causes of action, demands, charges, losses, costs, and expenses (including attorney fees, legal costs, and expenses related to litigation and dispute resolution proceedings) of every nature, arising directly or indirectly from this Agreement or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations, or warranties;
- (b) Negligent or willful acts or omissions committed during performance of the Services;
- (c) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors;
- (d) Unauthorized use or disclosure of City’s confidential and proprietary Information;
- (e) Claim of infringement or violation of a U.S. patent or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

12.2 Contractor must pay the costs City incurs in enforcing this provision. Contractor must accept a tender of defense upon receiving notice from City of a third-party claim. At City’s request, Contractor will assist City in the defense of a claim, dispute, or lawsuit arising out of this Agreement.

12.3 Contractor’s duties under this section are not limited to the Contract Price, workers’ compensation payments, or the insurance or bond amounts required in the Agreement. Nothing in the Agreement shall be construed to give rise to an implied right of indemnity in favor of Contractor against City or any Indemnitee.

12.4. 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 Agreement, a purchase order, or other transaction.

12.5. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 12 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. 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.

12.6. This Section 12 shall survive termination of the Agreement.

13. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit B**, and must maintain the insurance for the duration of the Agreement, or longer as required by City. City will not execute the Agreement until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision

may result in City, at its sole discretion and without notice, purchasing insurance for Contractor and deducting the costs from Contractor's compensation or terminating the Agreement.

14. COMPLIANCE WITH LAWS

14.1 General Laws. Contractor shall comply with all local, state, and federal laws and regulations applicable to this Agreement. Contractor will promptly notify City of changes in the law or other conditions that may affect the Project or Contractor's ability to perform. Contractor is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act.

14.2 Labor Laws. Contractor shall comply with all labor laws applicable to this Agreement. If the Scope of Services includes a "public works" component, Contractor is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.

14.3 Discrimination Laws. Contractor shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Contractor shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777, and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or its employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

14.4 Conflicts of Interest. Contractor shall comply with all conflict of interest laws applicable to this Agreement and must avoid any conflict of interest. Contractor warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement, in violation of California Government Code Section 1090 et seq. Contractor may be required to file a conflict of interest form if Contractor makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of Regulations. Contractor agrees to abide by the City's rules governing gifts to public officials and employees.

14.5 Remedies. Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursements or terminating this Agreement. City reserves all other rights and remedies available under the law and this Agreement, including the right to seek indemnification under Section 11 of this Agreement.

15. PROJECT COORDINATION

City Project Manager. The City assigns _____ as the City's representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. City reserves the right to substitute another Project manager at any time, and without prior notice to Contractor.

Contractor Project Manager. Subject to City approval, Contractor assigns _____ as its single Representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. Contractor's Project manager is responsible for coordinating and scheduling the Services in accordance with the Scope of Services. Contractor must regularly update the City's Project Manager about the progress with the work or any delays, as required under the Scope of Services. City written approval is required prior to substituting a new Representative.

16. ABANDONMENT OF PROJECT

City may abandon or postpone the Project or parts therefor at any time. Contractor will be compensated for satisfactory Services performed through the date of abandonment, and will be given reasonable time to assemble the work and close out the Services. With City's pre-approval in writing, the time spent in closing out the Services will be compensated up to a maximum of ten percent (10%) of the total time expended to date in the performance of the Services.

17. TERMINATION

City may terminate this Agreement for cause or without cause at any time. Contractor will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Contractor closes out the Services and delivers the Work Product.

18. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Contractor must comply with the claims filing requirements under the Government Code prior to filing a civil action in court. If a dispute arises, Contractor must continue to provide the Services pending resolution of the 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.

19. ATTORNEY FEES

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs.

20. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

21. WAIVER

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City's waiver of a breach shall not constitute waiver of another provision or breach.

22. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of every kind or nature between the Parties, and supersedes any other agreement(s) and understanding(s), either oral or written, between the Parties. Any modification of this Agreement will be effective only if in writing and signed by each Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between any term, clause, or provision of the main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

23. INSERTED PROVISIONS

Each provision and clause required by law for this Agreement is deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions. The Parties will collaborate to implement this Section, as appropriate.

24. HEADINGS

The headings in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit, or amplify the terms or provisions of this Agreement.

25. SEVERABILITY/PARTIAL INVALIDITY

If any term or provision of this Agreement, 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 terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect. The Parties agree to work in good faith to amend this Agreement to carry out its intent.

26. SURVIVAL

All provisions which by their nature must continue after the Agreement expires or is terminated, including the Indemnification, Ownership of Materials/Work Product, Records, Governing Law, and Attorney Fees, shall survive the Agreement and remain in full force and effect.

27. NOTICES

All notices, requests and approvals must be sent in writing to the persons below, which will be considered 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	To Contractor: _____
Attention: _____	Attention: _____
Email: _____	Email: _____

28. EXECUTION

The person executing this Agreement on behalf of Contractor represents and warrants that Contractor has full right, power, and authority to enter into and carry out all actions contemplated by this Agreement and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Contractor. This Agreement 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 the Agreement to be executed.

CITY OF CUPERTINO
A Municipal Corporation

CONTRACTOR

By _____
Name _____
Title _____
Date _____

By _____
Name _____
Title _____
Date _____

APPROVED AS TO FORM:

CHRISTOPHER D. JENSEN
Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA

City Clerk

DATE: _____

EXHIBIT A
SCOPE OF WORK & COMPENSATION

The Contractor shall provide instruction, supervision, court maintenance, storage of equipment, and retail services in, but not limited to, the following:

1. Programs – 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 racquet facilities which are open to the public.
 - A. Tennis – Classes, Camps, and Lessons
 - Contractor provides instructors
 - Contractor takes all registration
 - Contractor provides all teaching aide equipment (balls, ball machines, etc.)
 - B. Badminton – Classes and/or Camps
 - Contractor provides instructors
 - Contractor takes all registration
 - Contractor provides equipment (nets & standards, shuttlecocks, etc.)
 - C. Table Tennis – Classes and/or Camps
 - Contractor provides instructors
 - Contractor takes all registration
 - Contractor provides equipment (tables, nets, etc.)
 - D. Pickleball – Classes and/or Camps
 - Contractor provides instructors
 - Contractor takes all registration
 - Contractor provides equipment (nets & standards, balls, etc.)
 - E. Basketball – Classes and/or Camps
 - Contractor provides instructors
 - Contractor takes all registration
 - Contractor provides equipment (balls, whistles, pinnies, hoops for small children, etc.)
 - F. Chess – Classes and/or Camps
 - Contractor provides instructors
 - Contractor takes all registration
 - Contractor provides equipment (boards, pieces, clocks, etc.)
2. Court Allocation – The allocation rate of court and facility usage for programming is provided below. Reservable hours are Monday through Friday 8:00 a.m. to 10:00

p.m., and Saturday and Sunday 8:00 a.m. to 8:00 p.m. The City reserves the right to alter the allocation to best meet the needs of the patrons and community.

September to May	
Tennis Courts #6-12	No more than 20% of reservable hours per week
Tennis Courts #14-18	No more than 50% of reservable hours per week
Sport Court	No more than 20% of reservable hours per week
Multi-Purpose Room	No more than 30% of reservable hours per week
Racquetball Courts	No more than 5% of reservable hours per week
Recreation Room	Exclusive use for RM #3. Use by request for RM #1
Pickleball Courts	No more than 40% of reservable hours per week
School Breaks and Summer (June through August)	
Tennis Courts #6-12	No more than 30% of reservable hours per week
Tennis Courts #14-18	No more than 60% of reservable hours per week
Sport Court	No more than 45% of reservable hours per week
Multi-Purpose Room	No more than 45% of reservable hours per week
Racquetball Courts	No more than 25% of reservable hours per week
Recreation Room	Exclusive use for RM #3. Use by request for RM #1
Pickleball Courts	No more than 50% of reservable hours per week

3. Retail Service – The Retail Service will be located in the existing pro shop space located next to the lobby of the Cupertino Sports Center. Service will commence at the Cupertino Sports Center on January 1, 2025, and continue through December 31, 2034.

A. The Contractor shall offer services which include the following:

- Provide information and take registration for classes, camps, and lessons
- Racquet restringing for tennis and racquetball racquets
- Re-Gripping service
- Tennis racquet demo program and tennis racquet sales
- Ball machine rental
- Sales of various accessories for tennis, pickleball, badminton, and racquetball
- Sales of pre-packaged food and beverages
- Contractor shall be responsible for providing its own internet services and own office equipment and furnishings for their office and retail space

B. Hours of Operation

- Monday – Friday 8:00 a.m. – 10:00 p.m.
- Saturday and Sunday 8:00 a.m. – 8:00 p.m.

Sports Center Closure Dates:

- July 4
- Thanksgiving Day
- December 24 and 25
- December 31
- January 1

Any changes to the hours of operation must be authorized by the City representative. City staff may require access to facility for maintenance at any given time.

- C. Annual Financial Statements – No later than thirty (30) days after the end of each calendar year, the Contractor shall submit to the City an income statement for the preceding year showing the detailed gross revenue and expenses for the Retail Service. The start of each calendar year begins on January 1 and ends on December 31.

4. Outdoor Racquet Court Management

- A. The Contractor shall manage all court reservations, including USTA team scheduling. The City shall determine the policies for all court reservations.
- B. Court reservation system must include some type of CAPTCHA to determine whether the user is human.
- C. The Contractor shall provide retail/front desk staff.
- D. The Contractor shall provide all software and office equipment necessary to manage court reservations. Software shall not be on the City's network.

5. Tennis Court Maintenance

- A. The Contractor shall provide at its own expense, weekly maintenance services for all outdoor courts at the Cupertino Sports Center.
- B. The Contractor shall include biweekly court washing and alternating biweekly court blowing/sweeping, including the area outside the downstairs Recreation Room adjacent to Court #1. Additional cleaning may be required during pollen season.
- C. The Contractor shall clean the tennis court gutters both inside and outside the courts twice per year as needed.
- D. The Contractor shall replace tennis court nets, repair net strap anchors, and assemble court rollers as needed. Nets and court rollers provided by the City (net for ball machine court to be provided by Contractor).
- E. The Contractor shall empty the trash receptacles on the courts at least twice per week.
- F. The Contractor shall provide all necessary materials to provide these maintenance services, including, but not limited to court washing wands, industrial grade hoses, hose carrier cart, portable air blower, storage sheds, and toolkit.

6. Compensation - The Contractor shall be compensated for services performed pursuant to this Agreement. The total compensation to the Contractor shall not exceed \$24,000,000. For services provided to the City pursuant to Exhibit A, Contractor shall retain a maximum of 88% of the total annual revenue, as hereinafter defined, generated by the programs managed by Contractor at the Cupertino Sports Center. Total annual revenue shall include, but not be limited to, all fees collected by the Contractor for all services, including camps, classes, and private lessons. Total annual revenue shall be calculated from the period from January 1 to December 31 and consist of gross revenue without reduction by any incurred costs, including but not limited to, credit card fees. Contractor shall remit to the City 12% of all total annual revenue or \$250,000, whichever is greater. This includes a \$10,000 annual escalator added to the base compensation throughout the duration of the contract.

Year	Minimum Amount of Revenue Paid to City
1 – 2025	\$250,000* + \$500,000 in capital contribution
2 – 2026	\$260,000*
3 – 2027	\$270,000*
4 – 2028	\$280,000*
5 – 2029	\$290,000*
6 – 2030	\$300,000*
7 – 2031	\$310,000*
8 – 2032	\$320,000*
9 – 2033	\$330,000*
10 – 2034	\$340,000*
Total	\$3,450,000

* Or 12% of Lifetime Activities' gross annual revenue, whichever is greater

Payments will be made to the City, once, at the end of each season, and submitted with the financial reports as described. Payments should be received no later than the 15th of the following month. Seasons are defined as follows:

- Winter (January – March)
- Spring (April – June)
- Summer (July – August)
- Fall (September – December)

Either party may terminate this agreement at an earlier time than above specified by giving one (1) year written notice to the other party. The amount due to the City shall be prorated based on the proposed contract termination date.

7. Capital Contribution – The Contractor shall contribute up to \$500,000 in capital improvements at the Cupertino Sports Center within the first year of the contract.

Improvements include converting Tennis Courts #9 and #10 to pickleball courts; potentially installing new neighbor-friendly LED lights for Tennis Courts #16, #17 and #18; removing the glass partition and remodeling the front counter at the retail/office space.

- A. The Contractor shall prepare plans and specifications in consultation with the City.
- B. The Contractor shall receive approval of all plans and specifications by the Director of Public Works and/or the assigned designee(s) prior to filing of final plans and specifications. The City shall be provided with two complete sets of final plans specifications before construction begins and two complete sets of “as-built” plans and specifications at the completion of construction.
- C. Prior to construction, the Contractor shall have obtained all necessary permits, at no cost, authorizing construction of the Project from the City, in compliance with all applicable laws, regulations, codes and the permitting process.

8. Administration and Recordkeeping

- A. All public complaints shall be responded to by the Contractor no later than two (2) business days after the complaint was registered. Any complaint received and response provided shall be documented and forwarded to the City no later than the first day of the proceeding month.
- B. Any advertising or marketing materials distributed at the Sports Center shall include the City logo and shall be approved by the City representative.
 - The Contractor shall receive up to two pages in the printed Recreation Guide and up to four pages in the non-printed online Recreation Guide.
 - The Contractor shall receive 1 week (7 days) per month of the Cupertino Sports Center outdoor marquee sign (on the corner of Stevens Creek & Stelling) for program advertising.
- C. Financial Reporting – The Contractor shall maintain complete, accurate, and detailed accounting records relating to its performance in accordance with generally accepted accounting principles and procedures. Such reports shall, at a minimum, contain:
 - A list of the gross revenues as shown upon the books and records of the Contractor, and which were used to compute the payment to the City during the period covered by the statement.
 - Detailed information regarding the number participants served, programs, classes, camps, or private lessons rendered, the total gross revenue received for each service, and the resulting calculation of payment to the City.

Said reports shall be included and submitted as backup documentation with the payments to the City. The records and supporting documents must be kept separate from other files and maintained for four (4) years from the date

of the City's final payment.

- D. Auditing – Contractor agrees to make its books and records available to City, or to any City auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of Contractor's earning from Contractor's business. Such books and records shall be kept for four (4) years and shall be maintained and/or made available to City's representative for the purpose of re-auditing these accounts; except that, if an audit is made within such four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Contractor has understated its Gross Receipts, Contractor shall pay City, promptly upon demand, the difference between the amount Contractor has paid and the amount it should have paid to City. If Contractor understates its Gross Receipts by three percent (3%) or more, the cost of the audit shall be borne by Contractor. If Contractor understates its Gross Receipts with knowledge of such understatement or by reason of gross negligence, then, in addition to paying for the cost of the audit, on the first such occasion Contractor shall pay City ten (10) times the amount of the difference between the amount City should have received and amount City actually received. A second such understatement made with knowledge of or by reason of negligence shall be considered an Event of Default.

9. Collections of Fees and Charges

- A. All fees and charges for classes, camps, and private lessons provided by the Contractor shall be collected from the public by the Contractor. The fees and charges for all classes, lessons, and camps for both City-sponsored and private pupils will be established by the City and Contractor pursuant to its normal procedure for establishing such fees and charges.
- B. The Contractor shall absorb the merchant fee associated with any payment.
- C. Any private lessons offered to outside organizations, such as a school, must be approved by the City, and such organization must pay the City any rental fees associated with such use.
- D. During the term of this Agreement, the Contractor is granted the exclusive privilege of providing tennis instruction at the Cupertino Sports Center, however the City retains the right to provide similar services by City employees in connection with City-sponsored programs.

10. Facility Closure – The City reserves the right to close the facility for maintenance, at any time. The City will consider programming schedules and high traffic times of the facility when scheduling the closures.

11. Optional Services

- A. The City shall have the sole right to establish the use of all tennis courts at the

Sports Center and the Contractor'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. In performing its services, Contractor may utilize the City's retail and office space as well as various rooms upon approval by the City.

Location and Time of Contractor Services:

Classes are scheduled on a seasonal basis. Times, dates, and locations of a class, camp, activity, program, or service ("class") must be approved by the City. The City, at its sole discretion, may change the agreed dates, times, and locations of a class, or may cancel a class.

Performance of Contractor Services:

Registration, Enrollment, and Supervision

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, Contractor is responsible for supervising minors by remaining 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 on 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
Professional/Specialized Services Agreement
for Services and Activities Involving
Children

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance and results of the Services hereunder by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. ***Commercial General Liability*** (CGL): Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, contractual liability, property damage, bodily injury, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project (ISO CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement under this agreement 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 (1) the minimum coverage/limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Contractor's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be endorsed at least as broad as ISO CG 20 10 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.
2. ***Sexual Abuse/Molestation*** insurance or the equivalent are required for contracts involving children in after school activities, recreational programs, athletics, studies, transportation of students. Covers potential claims of abuse or child molestation. Sexual Abuse/Molestation coverage must be included under General Liability or obtained in separate policies in an amount of not less than \$2,000,000 per occurrence (\$4,000,000 aggregate).
3. ***Automobile Liability***: ISO Form Number CA 00 01 covering any auto (Code 1), or, if Contractor has no owned autos, then hired autos (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
4. ***Workers' Compensation***: As required by the State of California, with Statutory Limits, and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease. *(Not required if Contractor provides written verification it has no employees).*

5. **Professional Liability.** Insurance which includes coverage for professional acts, errors and omissions, with limits no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate (*if applicable*).

Claims Made Policies (*applicable only to professional liability*)

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
2. Insurance must be maintained for at least five (5) years after completion of the Services.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of the Services.

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

OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are to be covered as additional insureds on the CGL and automobile liability policies with respect to liability arising out of the Services performed by or on behalf of Contractor including materials, parts, or equipment furnished. Endorsement of CGL coverage shall be at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

Primary Coverage

For any claims related to this Contract, the Contractor’s insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Contractor’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

Contractor grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

City may approve self-insured retentions and require proof of Contractor’s ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

Acceptability of Insurers

Insurance shall be placed with insurers admitted in the State of California and with an AM Best rating of A-VII or higher.

Verification of Coverage

Contractor shall furnish the City with acceptable original 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 to City prior to commencing the Services. City retains the right to demand verification of compliance at any time during the Contract.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Insurance coverage shall not limit Contractor's duties to indemnify, defend and hold City harmless. City reserves the right to modify these requirements based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.