

**FOURTH AMENDMENT TO AGREEMENT 22-005 BETWEEN
THE CITY OF CUPERTINO AND RED LINE GYMNASTICS LLC,
DBA: BAY AERIALS GYMNASTICS FOR GYMNASTICS
CLASSES AND PROGRAMS**

This Fourth Amendment to Agreement 22-005 between the City of Cupertino and RED LINE GYMNASTICS LLC, DBA: BAY AERIALS GYMNASTICS is by and between the CITY OF CUPERTINO, a municipal corporation (hereinafter "City") and RED LINE GYMNASTICS LLC, DBA: BAY AERIALS GYMNASTICS, a Limited Liability Company ("Contractor") whose address is 4883 Davenport Place, Fremont, CA 94538, and is made with reference to the following:

RECITALS:

- A. On January 10, 2022, Agreement 22-005 ("Agreement") was entered into by and between City and Contractor for Gymnastics Classes and Programs.
- B. On May 16, 2022, City and Contractor agreed to the First Amendment for Gymnastics Classes and Programs.
- C. On March 16, 2023, City and Contractor agreed to the Second Amendment for Gymnastics Classes and Programs.
- D. On June 15, 2023, City and Contractor agreed to the Third Amendment for Gymnastics Classes and Programs.
- E. The Agreement, First Amendment, Second Amendment, and Third Amendment are collectively referred to as the "Agreement" unless otherwise indicated.
- F. 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 the undersigned parties as follows:

1. Paragraph 3 of the Agreement is modified to read as follows:
Term. This contract begins on the Effective Date and ends on 12/31/2026 ("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. 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.
2. Paragraph 4 of the Agreement is modified to read as follows:
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 \$817,028.80 ("Contract Price"), based upon the Scope of Services, budget, performance schedule, and rates included in Exhibit A-4. 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 requirement in Exhibit A-4 in order to receive payment. City will compensate Contractor within thirty (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, and 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 the final payment.

3. Exhibit A-3 of the Agreement is replaced with a new Exhibit A-4 attached hereto.
4. 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.

CITY OF CUPERTINO

RED LINE GYMNASTICS LLC,
DBA: BAY AERIALS GYMNASTICS

By _____
Title _____
Date _____

By _____
Title _____
Date _____

APPROVED AS TO FORM

City Attorney

ATTEST:

City Clerk

Date _____

EXPENDITURE DISTRIBUTION

Item	PO Number	Amount
Base Amount	2022-348	75,000.00
Amendment 1	2022-348	32,000.00
Amendment 2	2023-80	43,000.00
Amendment 3		24,000.00
Amendment 4		643,028.80
-	-	817,028.80

1429656.1

EXHIBIT A-4
SCOPE OF WORK, PERFORMANCE AND PAYMENT SCHEDULES

The CONTRACTOR will provide Gymnastics Classes and Programs in, but not limited to, the following:

Sweet Peas Gymnastics Levels 1-5, Girls Gymnastics Beginner and Advanced Beginner, Lil Ninjas 3-5, Cupertino Ninjas

Location and Time of CONTRACTOR Services:

Refer to the City's Publications 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.

Compensation for CONTRACTOR Services:

Contractor shall be compensated for services performed pursuant to this Agreement.

For a class taught in person, 60% of resident fees.

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

The total compensation to the Contractor shall not exceed \$817,028.80.

Eligible Participant Minimum and Maximums for CONTRACTOR Services:

Minimum: 4
Maximum: 10

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"):

See attached list of employees.

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 any restrictions on travel or social distancing or other requirements set forth in any health order issued by any local, state, or federal authority, 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 all applicable Health Laws when performing work under this Agreement. If this Agreement specifies work that cannot be performed in compliance with the 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 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.