

**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 SERVICE, AND COURT
MAINTENANCE.**

This Amendment to Agreement 12-033 between the City of Cupertino and Lifetime Tennis Inc., DBA Lifetime Activities Inc., for reference dated July 1, 2018, is by and between the CITY OF CUPERTINO, a municipal corporation (hereinafter "City") and Lifetime Tennis Inc., DBA Lifetime Activities Inc., a California Corporation ("Consultant") whose address is 1901 South Bascom Ave. Suite 1225, Campbell, Ca. 95008 and is made with reference to the following:

RECITALS:

A. On March 20, 2012, an agreement was entered into by and between City and Consultant (hereinafter "Agreement") for tennis lessons, retail service, and court maintenance. The agreement will expire on 6/30/2018.

B. Beginning December, 2016, Consultant expanded its activities to include instruction in racquet or paddle sports including badminton, table tennis, pickleball, and other such sports at the Cupertino Sports Center, as acceptable to City. As authorized in advance in writing, Contractor may provide instruction in other activities such as basketball, volleyball, cricket, chess, or other sport or recreational activities. Contractor to pay the City \$3 per square foot for use of two office spaces, totaling 220 square feet. Contractor registered a fictitious business name "Lifetime Activities", and began doing business as its dba "Lifetime Activities." Correspondence and payments to Contractor thereafter have used the "Lifetime Activities" dba. Compensation for all non-racquet sports (including but not limited to pickleball, basketball, volleyball, cricket, and chess) shall pay TENNIS PRO based on the following financial terms:

- City to retain 35% of each fee charged.
- Contractor to retain 65% of each fee charged.
- City retains \$5 administration fee for each transaction received from the public.

C. City and Consultant 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**

Paragraph 4 of the Agreement is modified to read as follows:

For the full performance of the services described herein by Lifetime Tennis Inc., DBA Lifetime Activities Inc., City shall pay Lifetime Tennis Inc., DBA Lifetime Activities Inc. based on the following schedule:

Financial Terms: Contractor shall be compensated for services performed pursuant to this Agreement. Compensation shall consist of the following: 100% of class fees. The total compensation to the Contractor shall not exceed \$10,800,000. For the privilege of utilizing the retail and office space, as well as various tennis courts and rooms as designated in the Program Resource Allocation (Exhibit C), Lifetime Tennis Inc., DBA

Lifetime Activities Inc. shall remit \$325,000 in annual rent to the City or 16% of the total annual revenue generated by Lifetime Tennis Inc., DBA Lifetime Activities Inc. for their programs offered at the Cupertino Sports Center and Memorial Park courts in a given fiscal year, whichever is greater. There shall be a \$5,000 per year rent escalator. Payments to be made by the City in 8 seasonal payments during the fiscal year. Rent to be deducted in 8 equal amounts when City processes each of the 8 seasonal payments made to Lifetime Tennis Inc., DBA Lifetime Activities Inc.

2. TERM: EARLY TERMINATION

Paragraph 6 of the Agreement is modified to read as follows:

Exercising the option to extend and amend the original agreement, the services to be performed hereunder shall commence on July 1, 2018, and shall continue, unless earlier terminated pursuant to this agreement until June 30, 2024, when this contract shall be automatically terminated. Either party may terminate this agreement at an earlier time than above specified by giving one (1) year written notice to the other party.

3. The following Exhibits to the Agreement, are amended and replaced to read as shown in the attachments to this Amendment:

a. Exhibit A, Exhibit B, Exhibit C, and Exhibit D

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.

CONSULTANT

By_____

Title_____

CITY OF CUPERTINO

By_____

Title_____

RECOMMENDED FOR APPROVAL

By_____

Title_____

APPROVED AS TO FORM

City Attorney

ATTEST:

City Clerk

EXPENDITURE DISTRIBUTION

PO #2018-155	570 63 621 700 702
Original Contract:	\$7,600,000
Amendment:	\$10,800,000
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. Term and Early Termination

- a) The services to be performed hereunder shall commence on July 1, 2018, and shall continue, unless earlier terminated pursuant to this agreement until June 30, 2024, when this contract shall be automatically terminated. Either party may terminate this agreement at an earlier time than above specified by giving one (1) year written notice to the other party.

6. Termination for Breach

- a) Notwithstanding the provisions of section 5 above, should either party be in default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may, at its option, immediately terminate this Agreement by giving written notification to either party.

7. 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, THROUGH SPRING, 2024, and the Resource Utilization Document for agreed upon dates, times, and class locations. The City, at its sole discretion, may change the agreed terms.

Compensation for CONTRACTOR Services:

Compensation shall consist of the following: 100% of class fees. The total compensation to the Contractor shall not exceed \$10,800,000. For the privilege of utilizing the 570 sq. feet of retail and office space, as well as various tennis courts and rooms as designated in the Program Resource Allocation (Exhibit C), Lifetime Tennis Inc., DBA Lifetime Activities Inc. shall remit \$325,000 in annual rent to the City or 16% of the total annual revenue generated by Lifetime Tennis Inc., DBA Lifetime Activities Inc. for their programs offered at the Cupertino Sports Center and Memorial Park courts in a given fiscal year, whichever is greater. There shall be a \$5,000 per year rent escalator. Payments to be made by the City in 8 seasonal payments during the fiscal year. Rent to be deducted in 8 equal amounts when City processes each of the 8 seasonal payments made to Lifetime Tennis Inc., DBA Lifetime Activities Inc.

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:

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 B

Insurance Requirements for Recreation Contracts

As required by Section 12 of the Agreement, Contractor shall procure and maintain the following insurance for the duration of the contract 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.
2. **Automobile Liability:** 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.*
 - ☐ *Otherwise, proof of Contractor’s personal auto insurance with limits required by state law suffices. Contractor shall not transport or use its personal vehicle to transport participants or perform work under this contract.*
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.

Self-Insured Retentions: Self-insured retentions must be approved by City. City may require Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language must 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 must be issued by insurers acceptable to City and licensed to do business in the State of California, with an A.M. Best’s financial strength rating of “A” or better and a financial size rating of “VII” or better.

OTHER INSURANCE PROVISIONS: The CGL policy must contain, or be endorsed to contain, the following provisions:

1. The City, its City Council, boards and commissions, officers, officials, employees, agents, servants and volunteers are to be covered as additional insureds with respect to liability arising out of work or

operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.

2. **Contractor's insurance shall be primary** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, agents, and volunteers.
3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents, and employees for losses paid under the terms of any policy which arise from work performed by Contractor for City. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this contract shall provide that coverage shall not be canceled, except with notice to the City.

Primary Coverage: The Additional Insured coverage under Contractor's policy shall be primary non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the City and all the insureds/indemnitees. If the limits of insurance required are satisfied in part by **Umbrella/Excess Insurance**, the Umbrella/Excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a "primary and non-contributory" basis for the benefit of the Additional Insureds before City's own insurance is triggered.

Notice of Cancellation: Each insurance policy shall provide that coverage shall not be canceled or allowed to expire without written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums. Such notice must be sent to City via email or certified mail to the attention of the City Manager.

Waiver of Subrogation: Contractor grants City a waiver of any right to subrogation which any insurer of said Contractor may acquire against City by virtue of payment of any loss under such insurance. Contractor will obtain any endorsement that may be necessary to effect 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.

Verification of Coverage: Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications, at any time. At a minimum Contractor must provide acceptable copies of the policy declarations and endorsement page verifying the required insurance coverages.

Homeowner's Insurance: Contractor's homeowner's liability insurance may provide coverage sufficient to meet these requirements. Contractor should provide these requirements to his or her agent to confirm and provide verification to City.

Special Events Coverage: Insurers may provide special events coverage for a reduced fee, or City may be able to offer this coverage. Contractor should contact the City Manager's Office for information or assistance.

Special Risks or Circumstances: City reserves the right to modify these requirements based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Exhibit C - Program Resource Allocation (*September - May*)

Days	CSC Tennis (cts 14-18)*	CSC Tennis (cts 6,7, 9-12)**	M. Park Tennis (MP 5&6)	Sport Court	MPR	Racquetball	Conference Room
Mon-Thur	8am-10pm	3-6pm	8am-10pm	by request	4-6pm	by request	as available
Friday	8am-10pm	2-10pm	8am-10pm	by request	4-6pm,7-9pm	by request	as available
Saturday	8am-10pm	2-10pm	8am-10pm	12-3pm	1:30-9pm	by request	as available
Sunday	8am-8pm	2-8pm	8am-10pm	12-3pm	2:30-5pm	by request	as available

**Memorial Park courts 5 & 6 are not available Tues. 8-Noon.

City of Cupertino reserves the right to alter schedule to best meet the needs of the patrons and community.

School Break Activities Program Resource Allocation (*June-August & holidays*)

Days	CSC Tennis (cts 14-18)*	CSC Tennis (cts 6,7, 9-12)**	M. Park Tennis (MP 5&6)	Sport Court	MPR	Racquetball	Conference Room
Mon-Thur	8am-10pm	8am-6pm	8am-10pm	9am-4pm	1-6pm	by request	as available
Friday	8am-10pm	8am-10pm	8am-10pm	9am-4pm	1-6pm, 7-9pm	by request	as available
Saturday	8am-10pm	2-10pm	8am-10pm	12-3pm	1:30-9pm	by request	as available
Sunday	8am-8pm	2-8pm	8am-10pm	12-3pm	2:30-5pm	by request	as available

* Courts 6 & 7, M-Th Noon-6pm, Friday Noon - 10pm

**Memorial Park Courts 5 & 6 are not available Tuesday, 8-Noon

***Sport Court: CSC needs the sport court from 11:30-1, M-F

City of Cupertino reserves the right to alter schedule to best meet the needs of the patrons and community.

EXHIBIT D
Contractor's Mandated Reporter Declaration

The undersigned does hereby certify that:

1. I am a representative of LIFETIME TENNIS INC., DBA LIFETIME ACTIVITIES INC.; that I am familiar with the facts herein and am authorized and qualified to execute this declaration.
2. I declare that LIFETIME TENNIS INC., DBA LIFETIME ACTIVITIES INC., 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.

LIFETIME TENNIS INC., DBA LIFETIME ACTIVITIES INC.

By: DANA GILL

Title: FOUNDER AND CEO

Date: _____