

**PROFESSIONAL SERVICES AGREEMENT
(Tennis Pro)**

THIS AGREEMENT, made and entered into this 20TH day of MARCH, 2012, by and between the CITY OF CUPERTINO, a municipal corporation of California, hereinafter referred to as "CITY", and LIFETIME TENNIS, INC., with offices at 1901 South Bascom Avenue #1225, Campbell, CA, hereinafter referred to as "TENNIS PRO". DANA K. GILL is President of LIFETIME TENNIS, INC.

WITNESSETH:

WHEREAS, CITY wishes to retain services in conjunction with providing tennis lessons to city-sponsored groups at the Cupertino Sports Center; and

WHEREAS, CITY wishes to engage TENNIS PRO to provide these services by reason of its qualifications and experience for performing such services, and TENNIS PRO has offered to provide the required services on the terms and in the manner set forth herein;

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. DEFINITIONS.

(a) The word "City" shall mean and include all the territory lying within the municipal boundaries of the City of Cupertino, California, as presently existing, plus all territory which may be added thereto during the term of this agreement by annexation or otherwise.

(b) The term "City Manager" shall mean the duly appointed City Manager of the City of Cupertino, California, or designated representative.

(c) The term "City Attorney" shall mean the duly appointed City Attorney of the City of Cupertino, California, or designated representative.

(d) The term "City Clerk" shall mean the duly appointed City Clerk of the City of Cupertino, California, or designated representative.

(e) The term "Personal Services" shall mean the providing of tennis instruction by Tennis Pro or his employees at the City's Sports Center and Memorial Park Tennis Courts #5 and #6.

2. COORDINATION OF SERVICES.

(a) City. The City Manager shall be the representative of the CITY for all purposes under this Agreement. The Director of Parks and Recreation is hereby designated as the SERVICE COORDINATOR for the City Manager, and shall supervise the progress and execution of this Agreement.

(b) Tennis Pro. The President of Lifetime Tennis, Inc., DANA K. GILL, shall have overall responsibility for all services provided under this Agreement.

3. DUTIES OF THE TENNIS PRO.

(a) Services to be Furnished. TENNIS PRO shall provide all specified services as set forth below:

(1) Tennis lessons for all City-sponsored groups as determined by the CITY. Class size and court usage shall be established and approved by the CITY.

(2) All lessons shall be provided at a quality consistent with the standards found in other tennis facilities in the area which are open to the public.

(3) During the winter and summer sessions, TENNIS PRO will distribute to each tennis pupil an evaluation form prepared by the CITY and designed for pupil to evaluate the level of instruction given, and will, at the conclusion of each session, return all completed evaluation forms to the CITY.

(4) Will provide all necessary and appropriate equipment for the purpose of teaching "high quality tennis lessons," including, but not limited to, tennis balls and ball machines. This equipment shall be stored at the Cupertino Sports Center in space provided by the TENNIS PRO.

(5) Will respond in writing 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

(6) Will teach lessons based on the following minimum and maximum number of students:

	<u>Minimum</u>	<u>Maximum</u>
• Small Group Lessons	2	4
• Large Group Lessons	4	8
• Pee Wee Lessons	4	8

The minimum and maximum number of students may be modified by mutual agreement of the parties.

(b) Optional Services. TENNIS PRO may provide the following services:

(1) Private tennis lessons utilizing one court of the Cupertino Sports Center and any other court approved by the CITY, provided, however that the CITY shall have the sole right to establish the use of all tennis courts at the Sports Center and the TENNIS PRO's right to give private lessons on any court is subject to the CITY's right to priority usage for the CITY-sponsored activities.

(2) Utilize Courts #5 and #6 at Memorial Park for the sole purpose of teaching tennis classes (Exception: TENNIS PRO is prohibited from using said courts on Tuesdays from 8:00 a.m. to Noon).

(c) Laws to be Observed. TENNIS PRO and its employees shall obey all rules, regulations, and laws of the CITY or any other governmental agency and shall procure, at its sole cost, all permits and licenses required for the conduct of business at the Sports Center.

(d) Collection of Fees and Charges. All fees and charges for tennis instruction services provided by TENNIS PRO shall be collected from the public by the CITY.

4. COMPENSATION. For the full performance of the services described herein by TENNIS PRO, CITY shall pay TENNIS PRO based on the following schedule:

Financial Terms:

- City retains 20% of gross revenue up to \$1,000,000 from tennis lesson fees received from the public.
- City retains 5% of gross revenue \$1,000,000 and above from tennis lesson fees received from the public.
- City retains \$7 administration fee for each tennis lesson transaction received from the public in addition to the percentage of gross revenue.

(a) Payments for lessons given to City-sponsored groups shall be paid within thirty (30) days of the beginning of each class session.

(b) Payments for private lessons shall be paid within thirty (30) days of commencing instruction.

(c) The CITY shall provide TENNIS PRO a written monthly accounting of all monies received pursuant to this Agreement. Unless written objections to any particular accounting is received by CITY from TENNIS PRO within thirty (30) days of receipt, such accounting shall be deemed to be final.

(d) The fees and charges for all lessons both for city-sponsored and private pupils will be established solely by the CITY pursuant to its normal procedure for establishing such fees and charges.

(e) Exclusive Privilege. During the term of this Agreement, TENNIS PRO 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.

5. RETAIL SERVICE

(a) Length of Agreement. Retail Service to commence July 1, 2012, and continue through June 30, 2018. In addition, the CITY will have the option to extend this contract for an additional six-year (6) period through June 30, 2024.

(b) Rent Payment. TENNIS PRO will pay the City of Cupertino rent per month based on the following schedule:

TENNIS PRO will be charged \$12,000 per year for the privilege of utilizing a retail proshop service on site at Sports Center. CITY will deduct \$1,000 per month from the gross revenues due TENNIS PRO each month as payment of the \$12,000.

(c) Scope of Service. The "Retail Service" that TENNIS PRO will be offering at the Cupertino Sports Center will consist of the following:

- (1) Racquet restringing for tennis and racquetball racquets
- (2) Grip build-up service
- (3) Various accessories for tennis racquets (grips, vibration dampers, etc.)
- (4) Tennis racquet demo program and tennis racquet sales
- (5) Pre-packaged food and beverages

Any changes to the "Scope of Service" must be authorized by the City of Cupertino Recreation Supervisor.

(d) Court Maintenance Service. TENNIS PRO 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, TENNIS PRO 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.

(e) 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 of Cupertino Recreation Supervisor.

(f) Monthly Financial Statements. No later than fifteen (15) days after the end of each month TENNIS PRO (Dana Gill) shall submit to the City of Cupertino a written statement for the preceding month showing the gross revenue and expenses for the "Retail Service".

(g) Location. The "Retail Service" will be located in the existing "primary"

office area in the lobby of the Cupertino Sports Center. This single office is currently being used by TENNIS PRO to conduct tennis lesson administration.

6. TERM: EARLY TERMINATION: OPTION TO EXTEND. The services to be performed hereunder shall commence on July 1, 2012, and shall continue until June 30, 2018, unless earlier terminated pursuant to this Agreement. Either party may terminate this Agreement at an earlier time than above specified by giving two (2) years written notice to the other party. In addition, the CITY will have the option to extend this Agreement for an additional six-year period through June 30, 2024, if CITY gives notice to TENNIS PRO of such extension no later than December 31, 2017.

7. TERMINATION FOR BREACH. Notwithstanding the provisions of section 6 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 the other party.

8. TEMPORARY SUSPENSION. The City Manager shall have the authority to suspend this Agreement, wholly or in part, for such period as he deems necessary due to unfavorable conditions or to the failure on the part of the TENNIS PRO to perform any provision of this Agreement.

9. ASSIGNMENT; SUBCONTRACTORS; EMPLOYEES.

(a) Assignment. Both parties shall give their personal attention to the faithful performance of this Agreement and shall not assign, transfer, convey, or otherwise dispose of this Agreement or any right, title, or interest in or to the same or any part thereof without the prior written consent of the other party, and then only subject to such terms and conditions as the other party may require. A consent to one assignment shall not be deemed to be a consent to any subsequent assignment. Any assignment without such approval shall be void and, at the option of the other party, shall terminate this Agreement and any license or privilege granted herein. This Agreement and any interest herein shall not be assignable by operation of law without the prior written consent of the other party.

(b) Subcontractors; Employees. TENNIS PRO shall be responsible for employing or engaging all persons necessary to perform the services of TENNIS PRO hereunder. No subcontractor of TENNIS PRO will be recognized by CITY as such; rather, all subcontractors are deemed to be employees of TENNIS PRO, and it agrees to be responsible for their performance. TENNIS PRO shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of TENNIS PRO fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, he shall be discharged immediately from the work under this Agreement on demand of the CITY.

10. NOTICES. All notices hereunder shall be given in writing and mailed, postage

prepaid, by certified mail, addressed as follows:

TO CITY: City of Cupertino
Office of the City Clerk
10300 Torre Avenue
Cupertino, CA 95014

TO TENNIS PRO: Lifetime Tennis, Inc.
Attn: Dana K. Gill
1901 South Bascom Avenue #1225
Campbell, CA 95008

11. INTEREST OF TENNIS PRO. TENNIS PRO covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. TENNIS PRO further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. TENNIS PRO certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of CITY. It is expressly agreed that, in the performance of the services hereunder, TENNIS PRO shall at all times be deemed an independent contractor and not an agent or employee of CITY.

12. INDEMNITY. TENNIS PRO hereby agrees to indemnify and save harmless CITY, its officers, agents, and employees of and from:

(a) Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any injury to or death of any person or damage suffered or sustained by any person or corporation caused by, or alleged to have been caused by, any act or omission, negligent or otherwise, of TENNIS PRO or any subcontractor under this agreement or of TENNIS PRO's or any subcontractor's employees or agents;

(b) Any and all damage to or destruction of the property of CITY, its officers, agents, or employees occupied or used by or in the care, custody, or control of TENNIS PRO, or in proximity to the site of TENNIS PRO's work, caused by any act or omission, negligent or otherwise, of CONTRACTOR or any subcontractor under this Agreement or of TENNIS PRO's or any subcontractor's employees or agents.

(c) Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any injury to or death of or damage suffered or sustained by any employee or agent of TENNIS PRO or any subcontractor under this agreement, however caused, excepting, however, any such claims and demands which are the result of the sole negligence or willful misconduct of CITY, its officers, agents, or employees;

(d) Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any infringement or alleged infringement of any patent rights or claims caused or alleged to have been caused by the use of any apparatus, appliance, or materials furnished by TENNIS PRO or any subcontractor

under this agreement; and

(e) Any and all penalties imposed or damages sought on account of the violation of any law or regulation or of any term or condition of any permit.

TENNIS PRO, at its own cost, expense, and risk, shall defend any and all suits, actions, or other legal proceedings that may be brought or instituted by third persons against CITY, its officers, agents, or employees on any of the above claims or demands of such third persons, or to enforce any of the above penalties, and pay and satisfy any judgment or decree that may be rendered against CITY, its officers, agents, or employees in any such suit, action, or other legal proceedings.

13. WORKERS' COMPENSATION. TENNIS PRO certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with such provisions before commencing the performance of the work of this Agreement.

14. FINGERPRINTING/TB TEST. In the event that the TENNIS PRO has employees who will assist in the performance of this Agreement, TENNIS PRO shall, for those instructing person 18 years and younger, conduct fingerprint clearance and current T.B. test for every employee providing those services. Copies of these clearances and current T.B. tests shall be provided to the City upon request.

15. INSURANCE. City of Cupertino's Minimum Insurance Requirements
On or before the commencement of the terms of this Agreement, Contractor shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the coverage limits below in 15A. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days advance written notice to the City of Cupertino by certified mail, 'Attention: City Manager.' It is agreed that Contractor shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City as additional insured shall be submitted with the insurance certificates.

A. COVERAGE

Contractor shall maintain the following insurance coverage:

(1) Workers' Compensation:

Statutory coverage as required by the State of California

(2) Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$1,000,000 each occurrence

\$2,000,000 aggregate – all other

Property Damage: \$500,000 each occurrence

\$1,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amount of

\$2,000,000 will be considered equivalent to the required minimum limits shown above.

(3) Automotive:

Comprehensive automobile liability coverage in the following minimum limits:

Bodily injury: \$500,000 each occurrence

Property Damage: \$500,000 each occurrence

or

Combined Single Limit: \$1,000,000 each occurrence

Certificates of such insurance, preferably on the forms provided by CITY, shall be filed with CITY concurrently with the execution of this agreement or, with CITY's approval, within ten (10) days thereafter. Said certificates shall be subject to the approval of the City Attorney and shall contain an endorsement stating that said insurance is primary coverage and will not be cancelled or altered by the insurer except after filing with the City Clerk thirty (30) days' written notice of such cancellation or alteration, and that the City of Cupertino is named as an additional insured. Current certificates of such insurance shall be kept on file at all times during the term of this agreement with the City Clerk.

16. AGREEMENT BINDING. The terms, covenants, and conditions of this agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

17. WAIVERS. The waiver by either party of any breach or violation of any term, covenant, or condition of this agreement or any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money that may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this agreement or of any applicable law or ordinance.

18. COSTS AND ATTORNEYS FEES. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

19. NONDISCRIMINATION. No discrimination shall be made in the employment of persons under this Agreement because of the race, color, national origin, ancestry, religion or sex of such person. If the value of this Agreement is, or may be, Five Thousand Dollars (\$5,000) or more, TENNIS PRO agrees to meet all requirements of the Cupertino Municipal Code pertaining to nondiscrimination in employment and to complete and submit the "Compliance Report--Nondiscrimination Provisions of City of Cupertino Contracts" on the form furnished by CITY.

If TENNIS PRO is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the performance of this Agreement, it shall thereby be found in material breach of this Agreement. Thereupon, CITY shall have the power to cancel or suspend this Agreement, in whole or in part.

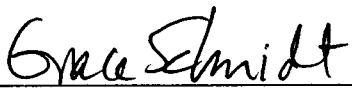
If TENNIS PRO is found in violation of the nondiscrimination provisions of this Agreement, TENNIS PRO shall be found in material breach of this Agreement. Thereupon, CITY shall have the power to cancel or suspend this Agreement, in whole or in part.

20. AGREEMENT CONTAINS ALL UNDERSTANDINGS. This document represents the entire and integrated Agreement between CITY and TENNIS PRO and supersedes all prior negotiations, representations, or Agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and TENNIS PRO. All provisions of this Agreement are expressly made conditions. This Agreement shall be governed by the laws of the State of California.

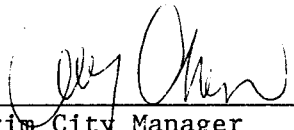
IN WITNESS WHEREOF, CITY and TENNIS PRO have executed this agreement the day and year first above written.

ATTEST

CITY OF CUPERTINO




City Clerk

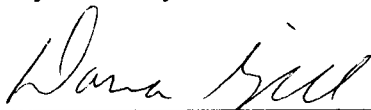


Interim City Manager

APPROVED AS TO FORM:



City Attorney



Dana K. Gill
President, Lifetime Tennis, Inc.
1901 South Bascom Avenue #1225
Campbell, CA 95008

(408) 781-4249 or (408) 777-3169
Telephone

77-0475700
Social Security or
Tax I.D. number