



**FIRST AMENDMENT TO PROFESSIONAL SERVICES
AGREEMENT BETWEEN THE CITY OF CUPERTINO AND
LIFETIME TENNIS, INC.**

This First Amendment to the Professional Services Agreement between the City of Cupertino and Lifetime Tennis, Inc., for reference dated November 28, 2016, is by and between the CITY OF CUPERTINO, a municipal corporation (hereinafter "City") and Lifetime Tennis, Inc., a California corporation, whose address is 1901 South Bascom Avenue Suite #1225, Campbell, CA 95008 (hereinafter "TENNIS PRO"), and is made with reference to the following:

RECITALS:

- A. On March 20, 2012, an agreement was entered into by and between City and Lifetime Tennis, Inc. for professional services relating to providing tennis lessons to city-sponsored groups at the Cupertino Sports Center and other designated courts at Memorial Park (hereinafter "Agreement").
- B. Throughout the Agreement, Lifetime Tennis, Inc., Lifetime Activities and TENNIS PRO are referred to as TENNIS PRO, and shall apply to each jointly and individually to the extent that they are separate entities;
- C. City and TENNIS PRO 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. TENNIS PRO has registered a fictitious business name "Lifetime Activities", and is now doing business as its dba "Lifetime Activities." Correspondence and payments to TENNIS PRO shall hereafter use fictitious business name of "Lifetime Activities". TENNIS PRO represents and warrants that it has all of the legal rights to do business as "Lifetime Activities" and there has been no change of ownership or other change of the corporate structure of "Lifetime Tennis, Inc."

2. "COORDINATION OF SERVICES" section 2. (a) of the Agreement is modified to read as follows:

- (a) City. The City Manager shall be the representative of the CITY for all purposes under this Agreement. The Director of Recreation and Community Services is hereby designated as the SERVICE COORDINATOR for the City

4. "COMPENSATION" section 4 of the Agreement is modified to add language as follows:

COMPENSATION. For the full performance of the services described herein by TENNIS PRO:

CITY shall pay TENNIS PRO based on the following schedule for each lesson for tennis lesson, service of table tennis and badminton shall be as follows:

Financial Terms:

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

Compensation for all other said programs (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.
- TENNIS PRO to retain 65% of each fee charged.
- City retains \$5 administration fee for each transaction received from the public.

(a) Payments for all services shall be paid within thirty (30) days of the end of each session.

(b) 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.

(c) 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.

(d) 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.

PRO shall pay the City of Cupertino rent per month of \$3/square foot for any City provided additional office space. City will deduct such office rental fee from the gross revenues due to TENNIS PRO each month, as payment of the office rent. CITY may terminate TENNIS PRO's ability to use the additional on-site space on 30-days' written notice without cause.

8. "TERM: EARLY TERMINATION: OPTION TO EXTEND" section 6, of the Agreement, is modified as follows:

The services to 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 one (1) year 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.

9. "NONDISCRIMINATION" section 19 of the Agreement, is deleted and replaced as follows:

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Consultant agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Consultant or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

10. "INDEMNITY" OR "HOLD HARMLESS" section 12 of the Agreement, is deleted and replaced as follows:

Consultant shall, to the fullest extent allowed by law, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the City and its officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage, including sexual abuse and molestation coverage, in the following minimum limits:

Bodily Injury: \$500,000

each occurrence

\$1,000,000

aggregate - all other

Property Damage: \$100,000 each occurrence

\$250,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:** Proof of automobile insurance required at the California statutory minimums.

B. **SUBROGATION WAIVER:**

Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her insurance for recovery. Consultant hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or City with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of said Consultant may acquire against City by virtue of the payment of any loss under such insurance.

C. **FAILURE TO SECURE:**

If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. **ADDITIONAL INSURED:**

City, its City Council, boards and commissions, officers, employees and volunteers shall be named as an additional insured under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured

(4) Other City projects as appropriate.

C. Consultant shall, at such time and in such form as City may require, furnish reports concerning the status of services required under this Agreement.

D. All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on both sides of the paper except for one original, which shall be single sided.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by City.

15. The Agreement, is amended to add paragraph 25, "Compliances" to read as follows:

25. COMPLIANCES:

Consultant shall comply with all state or federal laws and all ordinances, rules and regulations enacted or issued by City.

16. The Agreement, is amended to add paragraph 26, "Advertisement" to read as follows:

26. ADVERTISEMENT:

Consultant shall not on City property post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless approval has been secured from City to do otherwise.

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.

EXHIBIT B

ACKNOWLEDGEMENT OF MANDATED REPORTING REQUIREMENTS, RECEIPT OF TRAINING, AND RECEIPT OF PENAL CODES STATUTES

A mandated reporter is an individual who is obligated by law to report suspected cases of child abuse and neglect. In general, any individual who, in the ordinary course of their employment, has contact with children is a mandated reporter. Mandated reporters include child care workers, teachers and coaches. (California Penal Code 11165.7).

If your job duties as an employee or an independent contractor of Lifetime Activities include contact with children, you are a Mandated Reporter. Prior to commencing employment and as a prerequisite of that employment, California law requires that you sign a statement to the effect that you have knowledge of the provisions of the Mandated Reporter Law, and will comply with those provisions. (California Penal Code 11166.5).

The following are the Mandated Reporter responsibilities under California law. You are also being provided with a separate informational document which includes the text of the California Mandated Reporter Law and contact information for Child Abuse and Neglect Reporting for the County of Santa Clara. Please review this information carefully and acknowledge your receipt and understanding where indicated. If you have questions or concerns about this form or your Mandated Reporter responsibilities, please contact the Recreation Supervisor at 408-777-3120.

I understand that:

- By virtue of my employment or independent contractor status with Lifetime Activities, and because my employment requires me to have contact with children, I am a Mandated Reporter as defined by California Penal Code 11165.7.
- The following situations trigger mandatory reports: a) Physical Abuse (willful harming of a child); b) Sexual abuse including sexual assault, child exploitation, pornography, and trafficking; c) Severe or General Neglect; and d) Extreme Corporal Punishment (resulting in injury). (Cal. Pen. Code 11165 et. seq.) I further understand that I may, but am not required to, report suspected Emotional Abuse.
- If I reasonably suspect that a child is being abused, I must immediately make a telephone report. I must follow up with a written report within 36 hours. This report may be made to local law enforcement, or County Sheriff's Department, Probation Department or Child Welfare Agency. (Cal Pen. Code 11166(a)).
- I am not required to, but I may, share information about suspected abuse with my supervisor or management or the parents of the alleged victim.
- When I make a mandated report, I will be required to give my name. However, my identity will be kept confidential unless I either consent to disclosure or if the disclosure is made pursuant to a court order. Further, agencies investigating the mandated report may disclose my identity to one another. (Cal Pen. Code 11167(d)).
- The following agencies and individuals receiving or investigating mandated reports may disclose my identity to one another:

EXHIBIT C
City of Cupertino Contractor Declaration

The undersigned does hereby certify that:

1. I am a representative of Lifetime Activities; that I am familiar with the facts herein and am authorized and qualified to execute this declaration.
2. I declare that Lifetime Activities 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. That a complete and accurate list of Consultant's employees, who may come in contact with minors during the course and scope of the Agreement, are included below.
4. All of the below mentioned employees have tested negative for TB, or X-ray results for TB, and have current documentation on file with Consultant.
5. 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.

A List of all TENNIS PRO Employees working for the City of Cupertino:

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

6. The City of Cupertino will be notified by TENNIS PRO 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:

Date

Consultant Signature

Title