

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE EXECUTION OF CONTRACT AMENDMENT WITH BARRY POOLE

WHEREAS, Section I-2-3.12 of the Milpitas Municipal Code authorizes the City Council to award consultant contracts for services requiring professional or technical expertise or specialized abilities or a high degree of skill without conducting the formal bid process; and

WHEREAS, the instructors for the athletic programs sponsored by the City of Milpitas Department of Parks and Recreation require specialized abilities and a high degree of skill; and

WHEREAS, the Milpitas Parks & Recreation Department has pre-planned tennis classes for which participants have already registered and paid the fees for the Spring session; and

WHEREAS, the City contracted with Barry Poole to provide a tennis program for the last three years on separate yearly contracts and, in this period of time, Mr. Poole greatly increased the City sponsored tennis class enrollment and the amount of revenue to the City; and

WHEREAS, the City has a current contract with Mr. Poole set to terminate January 31, 2009 in the amount not-to-exceed \$19,000 which does not include instruction for the scheduled Spring classes.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The recitals set forth above are true and correct and incorporated by reference.
2. The City Manager is authorized to execute the first amendment to the contract with Barry Poole for tennis classes extending the termination date to June 30, 2009 for the not-to-exceed amount of \$38,000.00, and subject to approval as to form by the City Attorney.

PASSED AND ADOPTED this _____ day of _____ 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Robert Livengood, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

**FIRST AMENDMENT TO AGREEMENT
FOR CITY OF MILPITAS PARKS AND RECREATION SERVICES
(Barry Poole)**

THIS FIRST AMENDMENT to the Agreement for City of Milpitas Parks and Recreation Services is entered into this ____ day of _____ 2009, by and between the City of Milpitas (“City”) in the State of California and Barry Poole (“Contractor”).

RECITALS

WHEREAS, the current agreement between the City and Contractor terminates on January 31, 2009; and

WHEREAS, the City wishes Contractor to continue providing tennis classes for the Milpitas Department of Parks and Recreation for the Spring session, which ends June 30, 2009.

THEREFORE, the City and Contractor agree to amend the Agreement as follows:

AGREEMENT

1. The effective period of the Agreement is extended from January 31, 2009 to June 30, 2009.
2. The total amount paid under the Agreement pursuant to Paragraph 4 shall not exceed \$38,000.
3. All other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

Contractor:

By: _____
Barry Poole

Date: _____

City of Milpitas:

By: _____
Thomas C. Williams, City Manager

Date: _____

APPROVED AS TO FORM:

ATTEST:

By: _____
Michael J. Ogaz, City Attorney

By: _____
Mary Lavelle, City Clerk

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

Instructor Name: Barry Poole

Address:

1947 Half Pence Wy

San Jose, CA 95132

Phone Number: (408) 569-3109

Tax ID Number: -

Social Security Number: [REDACTED]

This Agreement for Recreation Services is made by and between the City of Milpitas ("City") and Barry Poole, ("Contractor") this agreement will be in effect from September 9, 2008, through January 31, 2009, in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent Contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
2. Contractor No Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: Tennis Classes (see attached list)
 - A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor's sole cost and expense.
 - B. Contractor agrees to contact Recreation Services three (3) days prior to the first class meeting to verify class enrollment. If fewer than the minimum students have enrolled for the course, class status will be determined by the Contractor and the designated Recreation Services Representative.
4. Compensation. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of terms as herein indicated:

Payment Rate**: 75% of receipts (resident rate only).

 - A. Contractor shall be compensated based on enrollment totals at the end of the session. Recreation Services is not responsible for compensating Contractors participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.
of class meetings 3, 6
Minimum Participants 3, 4
Maximum Participants 8, 16
 - B. Should Contractor modify dates, times, or are tardy to a class more than two (2) times in a given session, resulting in changes to the schedule as listed in the Activity Guide, Contractors final compensation shall be reduced by 10%.
 - C. In the event of a class cancellation by the Contractor resulting in a make-up class, the Contractor payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up class.
 - D. Should Recreation Services be the cause of any class cancellation (i.e. scheduling conflict of facility or lack of building accessibility) the Contractor shall be compensated for missed or re-scheduled class(es).
 - E. In the case that the class does not reach the stated minimum prior to the first class meeting and the class has not been previously canceled, the Contractor agrees that he/she will attend the first class meeting without compensation. If, after the first class meeting the stated minimum enrollment is still not reached, Recreation Services may, at its discretion cancel the class or if said class is not canceled, Contractor may elect to cancel the

class or conduct the class with a reduced class minimum. In the later case, compensation will be adjusted by Recreation Services.

F. Payment is for professional services and not as an hourly wage. City will not withhold such sum any amount for federal or state income taxes. All instructors must complete a W-9 form.

5. Licenses and Permits; Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license be included with the original signed contract.
6. Insurance. Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of the Workers' compensation laws of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City and therefore will not be covered under the City's Compensation Fund. Additionally, City will not obtain unemployment insurance for the Independent Contractor. Therefore, CITY's insurance company will not defend or pay out claims brought against an Independent contractor of City. Contractor understands that as an Independent Contractor, he/she is responsible for his/her own insurance and liability coverage. Contractor initials
7. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.
8. Contractor grants full permission to the City of Milpitas for use of his/her name and photographs, videographs, motion pictures or recordings for any publicity and promotion purposes without obligation or liability to contractor.
9. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agrees to fulfill all fingerprint/background checks prior to first class. Independent Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Recreation Services representative. The Independent Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.
10. Entire Agreement. This Agreement represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.
11. Indemnification. Contractor hereby indemnifies and holds harmless and releases and discharges the City of Milpitas, its officers, agents, employees, and volunteers from any and all liability for any injuries to persons or property suffered by any persons (including but not limited to contractor, contractor's employees or students) arising from or connected with this Agreement or Contractor's activities pursuant to this Agreement. Therefore, Contractor evaluated the inherent risks involved in operating his/her activity and has sufficient insurance coverage. Contractor initials
12. Governing Law. The laws of the State of California shall govern this Agreement.

Compliance with Applicable Laws. Contractor shall comply with all laws applicable to the performance of the work hereunder.

Noncompliance and Equal Opportunity. Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in the provision or any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

9-1-08

CONTRACTOR SIGNATURE

DATE 9-1-08

Recreation Services

RECREATION SERVICES REPRESENTATIVE
DATE Sept 3, 2008