

JOHN VENEZIA PARK TENNIS AND PICKLEBALL FACILITY AGREEMENT

This Venezia Park Tennis and Pickleball Facility Agreement (“Agreement”), effective April _____, 2016, is made between Life Time Fitness (“Life Time”) and the City of Colorado Springs, a home rule city and Colorado municipal corporation. Life Time and City may be referred to in this Agreement individually as “Party” or collectively, the “Parties”.

I. RECITALS:

WHEREAS, the City, by and through its Department of Parks, Recreation and Cultural Services, is responsible for the development and management of facilities and programs at the John Venezia Community Park (“Venezia Park”); and

WHEREAS, the City wishes to partner with a willing organization to establish a Tennis and Pickleball Facility (“Facility”) at Venezia Park and City desires to develop, construct, and offer the Facility to the public; and

WHEREAS, Life Time has expressed a willingness to assist in the establishment of the Facility, contribute funds for the construction of the Facility and operate programs at the Facility for public use regardless of Life Time membership status; and

WHEREAS, the estimated \$1 million to be used for construction of the Facility will construct improvements that are permanent in nature and will be wholly owned by the City of Colorado Springs, thereby increasing the Park’s overall value and functionality to the City and the community as a whole; and

WHEREAS, the City recognizes the public benefit provided by this partnership which makes it possible for the City to develop and operate the Facility for public use on a timeline that is earlier than would have been previously possible with available City funds and staffing.

NOW, THEREFORE, in consideration of the recitals above and the mutual covenants and agreements below, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

1. Services. City shall provide to Life Time use of and access to the Facility for the purpose of implementing, managing, operating and directing tennis and pickleball programs and activities for the public at the Facility. The Facility shall include office space, restrooms, electricity, water and a secure equipment storage area. In addition, the Parties intend that there will be six (6) tennis courts and four (4) pickle ball courts. Permitted programs and activities include but are not limited to court usage, court rental, instruction, tournament play and scheduling of social events. Life Time shall also be permitted to sell merchandise through a Pro Shop at the Facility in accord with the provisions of this Agreement.

2. Operations.

- a. Annual Hours. In cooperation with the City, Life Time will provide and administer tennis and pickleball programming including instruction and/or classroom instruction. Subject to the terms of this Agreement, Life Time shall be the exclusive manager and operator of the Facility. Hours of operation shall be conducted within the standard hours of operation for Venezia Park. At least one (1) tennis court and one (1) pickleball court shall be kept available for public open play at all times. If courts are not reserved or scheduled, they will be considered open for public play at no charge.
- b. Supplies. Life Time agrees to supply all court teaching supplies including but not limited to, balls, racquets, nets, hoppers, baskets, targets, prizes, gifts, awards, and other items deemed necessary by Life Time in relation to tennis and pickleball programming.
- c. Registration. Life Time agrees to register all participants and collect all payments related to activities and merchandise purchases at the Facility. Accessibility to courts and participation in all events and programs shall be available to the general public and participants registering for events shall not be required to be members of Life Time Fitness to participate. With regard to accessibility to courts and programs at the Facility, no preference shall be given to current Life Time members.
- d. Improvements and Machinery. Life Time shall provide all point of sale, furniture and machinery necessary to manage and operate the Facility including its Pro Shop. To the extent that City staffing is needed or desired to conduct City business at the Facility, City shall be responsible for providing all equipment necessary to conduct City business.
- e. Monthly Accounting. Life Time shall submit to the City, an accurate monthly report accounting for all revenues collected and expenses incurred at the Facility on or before the 20th day of each month.
- f. Revenue Sharing. Life Time shall pay City a monthly amount which shall be equal to five percent of the gross revenue collected for all activities provided at the Facility. Additionally, Life Time agrees to pay a monthly amount that shall be equal to five percent of gross revenue collected for all merchandise sold at the Facility. Full payment shall be remitted to City on a monthly basis on or before the twentieth (20th) day of each following month.
- g. Marketing, Promotional and Communication Activities. Life Time shall provide all marketing and promotional activities for the Facility at its sole expense. City agrees to coordinate with Life Time to inform the Public of special events, contact information and concerning communication of Facility information to the public. All marketing and promotional materials intended to be used in connection with operation of the Facility or programs at the Facility, shall be submitted to City for review and approval at least forty five (45) days prior to their intended use. City shall review and either approve or disapprove all materials within ten (10) business days of receipt. Marketing and promotional materials shall not be used by Life Time for the Facility without prior City approval, which approval shall not be unreasonably delayed or withheld.
- h. Special Events. Life Time may conduct special events at the Facility. Life Time shall submit to City a schedule of proposed special events on the first Monday of each new year for upcoming events during the calendar year. If a special event is proposed

to be added during the course of the calendar year, the special event request shall be submitted at least thirty (30) days in advance of the proposed event; and 90 days in advance of the proposed event if alcohol is intended to be served. The Parks Department reserves the right to coordinate other events associated with Friends or partner organizations directly.

- i. Annual Plan and Price List. Life Time shall provide an Annual Plan to City for the upcoming fiscal year, by the prior February 1st. The Annual Plan shall include a preliminary operating budget, showing expenses and gross revenues for the Facility for the prior year and estimates for the next fiscal year. The Annual Plan shall include a proposed price list for goods and a fee schedule for services to be provided to the public. The fee schedule shall be subject to prior City approval. The Annual Plan shall also include a list of all third-party contracts or agreements related to the Facility and a marketing and promotion plan for the Facility reporting the activities undertaken during the current year, and projections for the ensuing fiscal year.

3. Personnel.

- a. Life Time Responsibility for Screening, Employment and Training. Life Time shall be responsible for the screening, employment and training of all of Life Time's employees and volunteers, including, but not limited to its tennis and pickleball instructors.
- b. Background Checks. Life Time agrees to perform a Colorado Bureau of Investigations or Federal Bureau of Investigations background check at its expense on all Life Time employees and volunteers in compliance with state law. Life Time shall furnish a copy of the background check for any employee or volunteer upon City's request. Workers found to have a conviction for a criminal offense for drug use, violent offenses, child abuse, domestic violence, sexual abuse or any criminal offense that is categorized as a felony shall not be permitted to provide services under this Agreement.
- c. Supervision of Participants. Life Time and all Life Time tennis instructors and other Life Time employees or volunteers shall be responsible for the supervision of the program participants and shall insure the safe and respectful use of the Facility by all persons accessing the Facility as a part of this Agreement. Life Time agrees to ensure that at least two (2) adult Life Time employees or volunteers are present at all times during any activities with minors.
- d. Removal of Employees. The City may restrict or prohibit any Life Time employees, instructors, or volunteers from utilizing the Facility following any abusive, disrespectful or detrimental behavior. Additionally, Life Time agrees to notify the City of any arrest or conviction related to any Life Time instructors, other employees or volunteers. Any arrest or conviction may be considered detrimental behavior based upon the specific circumstances and may constitute grounds for removal.
- e. Non-discrimination. Life Time shall not discriminate against any participant, employee, volunteer, or applicant for employment or volunteerism because of

disability, race, creed, color, sex, sexual orientation, religion, age, national origin, ancestry, or veteran status. Life Time will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, sex, or national origin.

4. Fiscal Obligations, Insurance, Records and Waiver Requirements

- a. Insurance Requirements. Life Time shall, at its own expense, obtain and keep in force during the term of this Agreement a policy of combined single limit, public liability, bodily injury and property damages insurance insuring Life Time against any liability arising out of the use of the Facility by Life Time and its participants, instructors, employees, officers, agents, contractors, representatives, and invitees. Such insurance shall be a combined single limit policy in an amount no less than one million (\$1,000,000) dollars, with an aggregate limit of two million (\$2,000,000) dollars, shall name the City as an additional insured and contain a waiver of subrogation claims against the City. The monetary limits of the insurance policy shall not limit the liability of Life Time or provide a mechanism for City contribution in the case of any injuries.
- b. Workers' Compensation. Life Time shall obtain and keep in force during the term of the Agreement a policy of Workers' Compensation insurance that complies with Colorado state law and covers all Chapter employees and volunteers who work at the Facility.
- c. Public Records
 - i. City including specifically the City Auditor, shall have the right, subject to reasonable written notice, to conduct a review of Life Time's records related to this Agreement. Life Time shall cooperate fully with City in the conduct of the audit and provide City access to all reports, data, schedules, etc. which may be required to conduct the audit. If, upon audit of Life Time's records, it is determined that Life Time is not operating within the requirements of this Agreement, the City may terminate the Agreement.
 - ii. The Parties acknowledge and understand that this Agreement is subject to the requirements of the Colorado Open Records Act ("CORA"), Colorado Revised Statutes §§ 24-72-202 et seq. and that City may be required by law to publically release a copy of this Agreement or of any records made, maintained or kept by the Parties upon request pursuant to that law. In the event a CORA request is submitted to City for such records, the Parties agree to cooperate to gather the records within the time period identified by law which is presumed to be three working days. Life Time agrees to clearly mark any records containing material that Life Time considers to be a trade

secret or confidential to enable City to properly protect the marked records or to allow Life Time the opportunity to object to release of the records before a court of competent jurisdiction.

- d. Liability Waivers. Life Time will obtain a liability waiver, approved by the Office of the City Attorney, signed by each participant in programming offered by Life Time pursuant to this Agreement and the participant's parent or guardian. Life Time will provide the City a copy of each liability waiver within thirty (30) days of receipt and will maintain and make available to the City each original form for the term of the Agreement upon request.
 - e. Facility Construction, Operations and Maintenance. Facility construction, operations and maintenance are subject to the following terms:
 - i. Construction: Life Time agrees to contribute up to \$1 million to be placed in a gift trust account, expressly for the purpose of constructing tennis and pickleball facilities at Venezia Park. This financial contribution shall be remitted to the City by April 15, 2016.
 - ii. Ownership of all improvements and property shall be and remain in the name of the City. City shall provide the Facility in "as is" condition.
 - iii. Operations: City shall provide and pay for all utilities, except for internet service, necessary to provide the services at Facility.
 - iv. Maintenance: Life Time shall keep the Facility free of trash, debris, and water and maintain the overall cleanliness of the Facility, including its restrooms. Life Time shall install, adjust, remove and maintain the Facility's nets and windscreens. City shall provide at its sole cost all repairs and general Facility maintenance during the term of this Agreement that are not the result of actions caused by the negligence of Life Time or its employees or volunteers if any. City's repair and maintenance responsibilities shall include, providing appropriate bins for trash and recycle materials, lawn care around the Facility such as watering, cutting, and leaf removal, snow plowing and snow removal, light replacement, plumbing, building wear, electrical and fence maintenance. Except for emergency maintenance events, Life Time agrees to notify City within twenty four (24) hours of any maintenance needs of the Facility. In the case of an emergency, Life Time shall notify City immediately of the maintenance need to protect the Facility asset.
 - v. City agrees to consider providing additional Venezia Park areas for tennis or pickleball related events upon request from Life Time on a case by case basis. A request for use of additional areas shall constitute a special event and Life Time agrees to abide by all City special event requirements. City may approve, deny or condition a request for use of additional Park areas in its sole discretion. Consideration of a request will depend on other activities taking place within Venezia Park.
5. Term. Subject to the provisions contained herein, this Agreement shall become effective

on April , 2016 and shall terminate on January 1, 2021. The Agreement may be extended for four (4) additional five (5) year terms upon the written agreement of the Parties. The Parties agree to evaluate the Agreement at the end of each term prior to any decision to extend the Agreement.

6. Termination. This Agreement shall be subject to the following termination provisions.

- a. Default or Sale of Facility. City may terminate this Agreement effective immediately upon Life Time's dissolution or in the event the Facility is in part or in whole sold, the use of the Facility is materially altered (including but not limited to a repurposing of the operations of part or all of the Facility), or operations of the Facility are transferred to another entity.
- b. Mutual Agreement. Upon mutual agreement, Life Time and the City may terminate this Agreement for any reason. If either party desires to initiate mutual termination, it shall give thirty (30) days written notice to the other party and that party, in its discretion, may agree to the mutual termination at an agreed upon date in the future.
- c. Termination by Either Party for Cause. In the event that Life Time or the City substantially fails to honor its contractual commitments, the non-defaulting party may terminate this Agreement for cause upon thirty (30) days written notice. Notice of termination for cause shall specify the manner in which the defaulting party has failed to perform its contractual undertakings. The defaulting party shall have fifteen (15) days to respond to the notice of termination and, in addition, shall have fifteen (15) days to cure the conduct giving rise to the notice of termination. If the non-defaulting party reasonably determines that the defaulting party has satisfactorily implemented corrective action, the notice of termination shall be withdrawn.

7. Indemnification. Life Time shall indemnify, defend and hold harmless the City from and against any and all claims, demands or causes of action for injury or death to person or damage to property (including all costs and reasonable attorneys' fees incurred in defending any claim, demand or cause of action), to the extent arising out of or resulting from an act or failure to act constituting negligence, bad faith, willful neglect or knowing and intentional breach by Life Time or its personnel or agents in the course of performance under this Agreement.

8. Appropriation of Funds. Notwithstanding paragraph 6 of this Agreement, in accord with the City Charter, performance of the City's obligations under this Agreement is expressly subject

to appropriations of funds by the City Council. In the event funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then the City may immediately terminate this Agreement without compensation to Life Time.

9. General Provisions.

- a. Amendments. This Agreement may be amended only in writing and must be signed by both the parties.
- b. Entire Agreement. This Agreement, any attached exhibits, and future amendments constitute the entire understanding and agreement of the parties and supersedes any prior written or oral agreement pertaining to the subject matter of the Agreement.
- c. Compliance with Terms. Failure to insist upon strict compliance with any of the terms of this Agreement (by way of waiver or breach) by either party shall not be deemed to be a continuous waiver in the event of any future breach or waiver of any condition.
- d. Severability. If any portions of this Agreement shall, for any reason, be invalid or unenforceable, such portions shall be ineffective only to the extent of any such invalidity or unenforceability, and the remaining portion or portions shall nevertheless be valid, enforceable and of full force and effect; provided, however, that if the invalid provision is material to the overall purpose and operation of this Agreement, then this Agreement shall terminate.
- e. Assignment/Delegation. Neither party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other party.
- f. Governing Law. This Agreement shall be construed in accord with the laws of the State of Colorado and the City Charter, City Code, ordinances, rules and regulations of the City. Exclusive jurisdiction for any matter arising from this Agreement shall be in the El Paso County District Court for Colorado's Fourth Judicial District.
- g. Headings. The headings or captions contained in this Agreement are for convenience and reference only and do not in any way modify, interpret or construe the intention of the parties or affect any of its provisions.
- h. Independent Contractor. In the performance of the obligations under this Agreement, the Parties agree that Life Time is at all times acting and performing as an independent contractor. The City shall neither have, nor exercise, any control or direction over the manner and means by which Life Time performs its obligations, except as otherwise stated in this Agreement. Life Time understands and agrees that its employees are not City employees. Life Time is solely

responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation for benefit to its employees under this Agreement. Further, it is expressly understood and agreed that Life Time's employees are not entitled to any City payroll, insurance, unemployment, workers' compensation, retirement, or any other benefits.

- i. No Third Party Beneficiaries. It is specifically agreed between the Parties that this Agreement is not intended by any of its terms, provisions, or conditions to create in the public or any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Agreement to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Agreement. In requiring Life Time to procure insurance under this Agreement, the City specifically does not waive or intend to waive any protection, immunity, or other provision of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, as now written or amended in the future.

- j. Notices. All notices, requests, demands and other communication regarding this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery if delivered personally, or (b) on the next business day if sent by overnight national courier service, or (c) on the third business day after being mailed (registered or certified mail, postage prepaid, return receipt requested) addressed as follows:

If to Life Time:

Name:
Title:
Address:_____

If to City of Colorado Springs:

Name: Kim King
Title: Recreation and Administration Manager
1401 Recreation Way
Colorado Springs, CO 80905

With a copy to:

Office of the City Attorney
P.O. Box 510-MC1575
Colorado Springs, CO 80901-1575

Or to such other address as any Party may have furnished to the other in writing.

IN WITNESS WHEREOF, the Parties hereto have executed the foregoing Agreement as of the date first set above.

Life Time Fitness- Colorado Springs

By: _____
Title

City of Colorado Springs

By: _____
Karen Palus
Director Parks, Recreation and Cultural Services

Approved as to Form
Office of the City Attorney