

# Agreement

Version given with the Request for Proposal Leederville  
Tennis Club  
[insert date]

## Leederville Tennis Club Inc - maintenance of tennis courts & surrounds

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Leederville Tennis Club

Successful tenderer

# Contents

## Table of contents

<b>1</b>	<b>Definitions and interpretation</b>	<b>2</b>
1.1	Definitions .....	2
1.2	Interpretation .....	3
1.3	Interpretation of inclusive expressions .....	4
1.4	Business Day .....	4
1.5	Agreement components .....	4
<b>2</b>	<b>Appointment and Term</b>	<b>4</b>
2.1	Appointment .....	4
2.2	Term .....	4
2.3	Extension of Term .....	4
<b>3</b>	<b>Performance and Standard of Services</b>	<b>4</b>
3.1	Performance .....	4
3.2	Standard of Services .....	5
<b>4</b>	<b>Utility Area, Access, utilities and materials and equipment</b>	<b>5</b>
4.1	Utility Area .....	5
4.2	Access .....	5
4.3	Utilities and materials .....	5
4.4	Contractors equipment .....	6
<b>5</b>	<b>Other Contractor obligations</b>	<b>6</b>
5.1	Occupational health and safety .....	6
5.2	Security .....	6
5.3	Personnel .....	6
5.4	Groundsman .....	6
<b>6</b>	<b>Meeting of Representatives</b>	<b>6</b>
<b>7</b>	<b>Annual fee and budget</b>	<b>7</b>
7.1	Annual Fee .....	7
7.2	CPI adjustments to the Annual fee .....	7
7.3	Invoice .....	7
7.4	Budget .....	7
<b>8</b>	<b>Insurances</b>	<b>8</b>
8.1	Insurances .....	8
8.2	Terms of policy .....	8
8.3	Contractor to notify the LTC of potential claims .....	8
8.4	Evidence of insurance .....	8
8.5	Failure of Contractor to insure .....	8
<b>9</b>	<b>Assignment and subcontracting</b>	<b>9</b>
9.1	Assignment .....	9
9.2	Subcontracting .....	9
<b>10</b>	<b>Suspension</b>	<b>9</b>
10.1	LTC may suspend Services .....	9
10.2	Recommencement of Services .....	9

# Contents

<b>11</b>	<b>Default and termination</b>	<b>9</b>
<b>12</b>	<b>Goods and Services tax</b>	<b>10</b>
<b>13</b>	<b>Notices</b>	<b>10</b>
	13.1 How and where Notices may be sent .....	10
	13.2 When Notices are taken to have been given and received .....	10
<b>14</b>	<b>General</b>	<b>11</b>
	14.1 Further action to be taken at each party's own expense .....	11
	14.2 Variation .....	11
	14.3 Entire Agreement .....	11
	<b>Schedule 1</b>	
	<b>Notice details</b>	<b>12</b>
	<b>Schedule 2</b>	
	<b>Description of Services</b>	<b>13</b>
	<b>Signing page</b>	<b>14</b>

## Leederville Tennis Club Inc - maintenance of tennis courts & surrounds

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Date ►

Between the parties

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**Leederville Tennis Club Inc**

Bourke Street Leederville Western Australia 6007 & PO Box 229,  
Leederville Western Australia 6903

**(LTC)**

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**Successful tenderer**

of

**(Contractor)**

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**Recitals**

- 1 LTC is managing the Courts and their surrounds at Bourke Street Leederville, Western Australia, 6007.
  - 2 The Contractor has agreed to provide the necessary services to maintain the tennis courts and surrounds in the manner set out in this agreement.
  - 3 The parties now set out the terms of their agreement.
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The parties agree as follows:

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# 1 Definitions and interpretation

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## 1.1 Definitions

The meanings of the terms used in this agreement are set out below.

Term	Meaning
<b>Additional Costs</b>	the costs payable by LTC under clause 4.3(b).
<b>Annual Fee</b>	the annual fee referred to in clause 7.1(a), as adjusted under clause 7.2.
<b>Business Day</b>	a day other than a Saturday, Sunday or a public holiday in Perth Western Australia.
<b>Commencement Date</b>	[Date to be inserted]
<b>CPI</b>	the index published by the Australian Bureau of Statistics as the Consumer Price Index for Perth for all groups or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician.
<b>Courts</b>	the 10 grass tennis courts
<b>Grass Courts</b>	the 10 grass courts at the Premises.
<b>Groundsman</b>	the person referred to in clause 5.4.
<b>LTC</b>	Leederville Tennis Club Incorporated (ABN 33 661 881 651).
<b>Premises</b>	the land, buildings and tennis courts at Bourke Street, Leederville Western Australia.
<b>Plant and Equipment</b>	all machines, plant, equipment, tools and other things which are required to carry out the Services.

<b>Term</b>	<b>Meaning</b>
<b>Plan</b>	the plan in <b>Error! Reference source not found..</b>
<b>Representative</b>	the persons nominated as a party's representative to attend meetings referred to in clause 6.
<b>Services</b>	the maintenance of the Courts and their Surrounds as set out in Schedule 2.
<b>Surrounds</b>	Club entry, banks, gardens & surrounds
<b>Term</b>	the period referred to in clause 2.2.
<b>Termination Date</b>	[3] years after the Commencement Date
<b>Utility Area</b>	the Shed and area immediately behind the club house.

## 1.2 Interpretation

In this agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.
- (d) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (e) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.
- (f) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (g) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (h) A reference to a party to a document includes that party's successors and permitted assignees.

- (i) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.

### **1.3 Interpretation of inclusive expressions**

Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### **1.4 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### **1.5 Agreement components**

This agreement includes any schedule.

## **2 Appointment and Term**

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### **2.1 Appointment**

LTC appoints the Contractor and the Contractor accepts its appointment to provide to LTC the Services during the Term in accordance with the terms and conditions of this agreement.

### **2.2 Term**

The Term commences on the Commencement Date and ends on the Termination Date unless terminated earlier under this agreement.

### **2.3 Extension of Term**

At least 3 months prior to the Termination Date, the parties will meet and attempt to agree the terms of an extension to the Term. If agreement is not reached by the Termination Date, then this agreement will end on the Termination Date unless otherwise agreed by the parties.

## **3 Performance and Standard of Services**

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### **3.1 Performance**

The Contractor must provide the Services during the Term strictly in accordance with:

- (a) the service requirements and obligations inset out in Schedule 2;
- (b) all laws and authorisations required to carry out the Services; and
- (c) all directions given by LTC in relation to the performance of the Services.

### 3.2 Standard of Services

- (a) The Contractor must perform the Services with the degree of skill, care and diligence required to keep the Surrounds in presentable condition and Grass Courts in a healthy condition to a standard which is commensurate with tournament, league and social play.
- (b) The Contractor represents to the LTC that it has the requisite skill, experience and ability to perform the Services in accordance with this agreement. The Contractor acknowledges that LTC has entered into this agreement in reliance on this representation.

## 4 Utility Area, Access, utilities and materials and equipment

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### 4.1 Utility Area

- (a) During the Term, the Contractor has the non-exclusive right to use the Shed and the rear of the club house area for the purposes which are directly connected to the Services.
- (b) The Contractor must keep the Utility Area in a neat and tidy condition and free from rubbish.

### 4.2 Access

Subject to this agreement, LTC will give the Contractor access to the Courts at the times it may reasonably require to provide the Services.

### 4.3 Utilities and materials

- (a) LTC will provide all water and power required by the Contractor to provide the Services at no cost to the Contractor.
- (b) LTC will provide the following at the cost of LTC:
  - (1) soil for top dressing;
  - (2) third party costs, such as waste removal, as approved by LTC;
  - (3) chemicals for the treatment of the Grass Courts and surrounds, e.g. fertilizer and sprays;
  - plants for garden beds & banks;
  - (4) materials directly associated with the maintenance of the Courts such as sprinkler system (including pump, control and distribution and sprinkler system wearing parts);
  - (5) materials associated with the operation of the Courts such as nets, net posts, tie downs, net sticks, signs, and fencing.
- (c) The Contractor is to provide at its cost all utilities (other than those provided by LTC) and materials required by it to provide the Services.
- (d) upon the request of LTC, provide a Material Safety Data Sheet (**MSDS**) for any dangerous goods or hazardous substances being used to perform the Services.



#### **4.4 Contractors equipment**

- (a) The Contractor is to provide at its expense all Plant and Equipment required by it to provide the Services including the Plant and Equipment listed in Schedule 2.
- (b) The Contractor must keep the Plant and Equipment in good repair, order and condition and fit for the purpose of providing the Services.

### **5 Other Contractor obligations**

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#### **5.1 Occupational health and safety**

- (a) The Contractor must ensure that at all times it has in place an occupational health and safety policy which complies with all Worksafe WA requirements and that all persons engaged by the Contractor in relation to the Services are aware of and comply with that policy.
- (b) The Contractor must provide to LTC a copy of its occupational health and safety policy.
- (c) A copy of the policy must be provided within 2 days of a notice given by LTC to the Contractor to provide a copy of the policy.

#### **5.2 Security**

If required, the Contractor will be provided with keys and/or codes for access to the Courts and club house and must ensure that when all work is finished for the day all gates/doors opened are closed and locked unless otherwise directed by LTC.

#### **5.3 Personnel**

The Contractor must engage in the performance of the Services persons of good character who hold all necessary licences to operate the Plant and Equipment and who have been properly trained to perform the tasks allocated to them.

#### **5.4 Groundsman**

- (a) The Contractor must ensure that at all times the Services are supervised by a Groundsman who is properly qualified and trained to supervise the Services.
- (b) The Groundsman must be groundsman will be required to be present at the Courts according to an agreed schedule and on call in the event of an unforeseen adverse event.
- (c) The Contractor may only replace the Groundsman with a person approved by LTC's Representative.

### **6 Meeting of Representatives**

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- (a) Each party will appoint a person to act as its representative at all meetings between the parties.

- (b) The parties will have their Representatives meet at least weekly to discuss issues which an attendee may have in relation to the Services and to agree the actions and the due date of the further action required to resolve those issues.
- (c) If the Representatives are unable to agree the type of further action and the due date for completion of the further action is at the sole discretion of LTC.

## 7 Annual fee and budget

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### 7.1 Annual Fee

- (a) LTC will pay to the Contractor an annual fee of \$                      comprising:
  - (1) \$                      per Grass Court per annum; and
  - (2) \$                      for Surrounds per annum.
- (b) The Annual Fee is payable by 12 equal consecutive instalments, the first instalment to be made on day being one month following the Commencement Date.
- (c) The Annual Fee will cover all costs and expenses incurred by the Contractor in complying with its obligations under this agreement except for Additional Costs.

### 7.2 CPI adjustments to the Annual fee

The Annual Fee is to be adjusted each year on 1 June by multiplying the Annual Fee as at 1 June by the CPI published on 31 March immediately prior to the date of adjustment and divided by the CPI last published on 31 March of the previous year. The first adjustment is to be made on 1 June 2020.

### 7.3 Invoice

- (a) The Contractor must submit to LTC an invoice by the 7th of each month which sets out the work done and any agreed Additional Costs incurred during the prior relevant month upon provision of evidence of such costs.
- (b) The invoice is to be paid within 7 days of receipt by LTC but LTC may withhold payment of any items in respect of which LTC has advised the Contractor are disputed by it or LTC requires more information.
- (c) As soon as possible the Representatives will meet and use their best endeavours to resolve the matters in dispute. LTC must pay money it has withheld once the dispute is resolved or the additional information has been provided by the Contractor.

### 7.4 Budget

- (a) Before 31 August 2019 and each 31 August thereafter during the Term, the Contractor must give to LTC an annual budget (for the period 1 October to 30 September next) setting out a reasonable estimate of the Additional Costs to be incurred to carry out the Services for the immediately following year.
- (b) The Contractor must not incur the Additional Costs set out in the budget until the Representatives have agreed the changes for the Additional Costs in the budget.

- (c) Until the new budget is agreed by the parties, the Contractor will provide the Services and incur the Additional Costs as previously approved by LTC.

## **8 Insurances**

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### **8.1 Insurances**

The Contactor must effect and maintain the following insurances during the Term:

- (a) A public liability policy covering the parties respective rights, interests and liabilities to third parties including the liability of the Contractor to LTC in an amount not less than \$50,000,000;
- (b) workers compensation or employers' liability covering claims and statutory liability relating to any death, accident, illness or injury of any person employed or engaged by the Contractor on or in connection with the Services up to an amount no less than twenty million dollars (\$20,000,000) for any one event;
- (c) a motor vehicle third party insurance policy in respect of legal liability arising out of the death or injury of any person as required by law or any property damage caused by motor vehicles used in providing the Services with an indemnity limit of at least ten million dollars (\$10,000,000) for any one occurrence.

### **8.2 Terms of policy**

Each policy taken under clauses 8.1(a) and 8.1(c) must be:

- (a) with a reputable insurer as approved by LTC;
- (b) in terms satisfactory to LTC; and
- (c) in the joint names of LTC and the Contractor.

### **8.3 Contractor to notify the LTC of potential claims**

- (a) The Contractor must, as soon as practicable, notify LTC in writing of the occurrence of any event that may give rise to a claim under any policy of insurance effected or maintained under this agreement.
- (b) The Contractor must keep LTC informed of all subsequent action and developments concerning the claim.

### **8.4 Evidence of insurance**

Whenever so requested by LTC in writing, the Contractor must, within 10 Business Days provide, or procure provision of, evidence, to LTC's reasonable satisfaction, that the Contractor or its subcontractors or assignees (as applicable) has obtained and maintained the insurances required under clauses 8.1 in accordance with this agreement.

### **8.5 Failure of Contractor to insure**

If the Contractor does not effect or maintain any of the insurances specified in clause 8.1; or provide evidence of insurance as required by clause 8.4, or if LTC does not approve of the terms of an insurance policy, LTC may at the Contractor's cost:

- (a) effect and maintain that insurance;

- (b) pay the necessary premiums; and
  - (c) recover from the Contractor the amount paid under clause 8.5(b) or otherwise in accordance with this agreement,
- until the Contractor has complied with its obligations under this clause 8.

## 9 Assignment and subcontracting

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### 9.1 Assignment

The Contractor must not assign, novate or otherwise transfer any or all of its rights or obligations under this agreement without the prior written consent of LTC (which consent may be given or withheld or given subject to conditions at LTC's absolute discretion).

### 9.2 Subcontracting

The Contractor must not subcontract any part of the Services without the prior written consent of LTC (which consent may be given or withheld or given subject to conditions at LTC's absolute discretion).

## 10 Suspension

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### 10.1 LTC may suspend Services

- (a) Subject to clause 10.1(c), LTC may immediately suspend the performance of any or all of the Services at any time by giving 48 hours written notice to the Contractor.
- (b) The notice must specify what Services are to be suspended and for what period.
- (c) In the case of an emergency, LTC is not required to give 48 hours' notice under clause 10.1(a).

### 10.2 Recommencement of Services

- (a) If LTC suspends any of the Services under clause 10.1, LTC may at any time give the Contractor a written notice to resume performing the suspended Services.
- (b) The Contractor must resume performing those Services as soon as practicable after the date of the notice and in any event no later than 24 hours after the notice was received by the Contractor.

## 11 Default and termination

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- (a) If the Contractor is in default under this agreement, LTC may give the Contractor a written notice specifying the default and requiring the Contractor to remedy the default more than 21 days from the date of the notice.

- (b) If the default is not remedied within the period specified in the notice issued under clause 11(a), this agreement may be terminated by LTC by giving to the Contractor 7 Business Days written notice of termination.

## 12 Goods and Services tax

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- (a) This clause 12 only applies if LTC is required to pay GST under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) In this clause 12, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- (c) The amounts payable for a supply under the terms of this agreement are exclusive of any GST which may be payable by virtue of such supplies being taxable supplies for GST purposes.
- (d) If a party (in this clause 12, the **Supplier**) is liable for GST on any supply made by it to another party under this agreement (in this clause 12, the **Recipient**), the Recipient must pay to the Supplier an amount equal to that GST in addition to any other amount payable for the supply.
- (e) If for any reason (including an adjustment event occurring) the amount paid by the Recipient under clause 12(d) is greater than the correct amount of GST payable at law by the supplier on the supply, the amount paid by the Recipient must be adjusted and refunded accordingly and a complying GST adjustment note issued.
- (f) The Supplier shall issue the Recipient with relevant tax invoices.

## 13 Notices

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### 13.1 How and where Notices may be sent

A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email as set out in Schedule 1 or as otherwise specified by a party by Notice.

### 13.2 When Notices are taken to have been given and received

- (a) A Notice sent by post is regarded as given and received on the third Business Day following the date of postage.
- (b) A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.
- (c) A Notice sent in electronic form when the sender receives confirmation on its server that the message has been transmitted:
  - (1) if it is transmitted by 5.00 pm (in Western Australia) on a Business Day – on that Business Day; or

- (2) if it is transmitted after 5.00 pm (in Western Australia) on a Business Day, or on a day that is not a Business Day – on the next Business Day.

## 14 General

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### 14.1 Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this agreement and the transactions contemplated by it.

### 14.2 Variation

A variation of any term of this agreement must be in writing and signed by the parties.

### 14.3 Entire Agreement

This agreement states all the express terms of this agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

# Schedule 1

## Notice details

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### **Leederville Tennis Club**

Address	Bourke Street Leederville Western Australia 6007 PO Box 229, Leederville Western Australia 6903
Attention	Club Secretary
Phone	0420 415 855
Email	club.secretary@leedervilletennisclub.com.au

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### **Successful tenderer**

Address
Attention
Phone
Fax
Email

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## Schedule 2

### Description of Services

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Note to Tenderers: the information provided in Section 3 of the RFP will be inserted in this Schedule.



## Signing page

Executed as an agreement

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Signed by  
**Leederville Tennis Club**  
by

*sign here* ► \_\_\_\_\_  
President

*sign here* ► \_\_\_\_\_  
Secretary

*print name* \_\_\_\_\_

*print name* \_\_\_\_\_

Signed by  
**Successful tenderer**  
by

*sign here* ► \_\_\_\_\_  
Company Secretary/Director

*sign here* ► \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

*print name* \_\_\_\_\_