

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
CITY OF PENSACOLA, FLORIDA AND
GULF COAST TENNIS GROUP LLC**

This Professional Services Agreement ("Agreement") is entered into this ____ day of _____, 2022 by and between the City of Pensacola, Florida, a municipal corporation of the State of Florida ("City") and Gulf Coast Tennis Group LLC a Florida limited liability company ("Provider") for professional tennis operations and management services at City's Roger Scott Tennis Center; (hereinafter, each a "Party" and collectively the "Parties").

In consideration of the mutual covenants and promises herein contained, Provider and City agree as follows:

TERMS:

I. RECITALS:

The recitals are true and correct and are hereby incorporated into and made a part of Agreement.

II. TERM:

The term of Agreement shall be three (3) years, commencing on Effective Date.

III. SCOPE OF SERVICE

- A. Provider agrees to provide Services as specifically described, and under the special terms and conditions set forth in this Agreement.
- B. Provider represents and warrants to City that:

1. it possesses all qualifications, licenses and expertise required for the performance of the Services;
2. it is not delinquent in the payment of any sums due to City, including payment of permit fees, occupational licenses, etc., nor in the performance of any obligations to City;
3. all personnel assigned to perform Services are and shall be, at all times during the term, fully qualified and trained to perform the tasks assigned to each; and
4. Services will be performed in the manner, at such times, and for the budgeted amounts described herein.

- C. Provider represents and warrants to City that all of its personnel who provide or may provide Services have completed and satisfied:
1. All background checks and other requirements in accordance with Florida Statutes, in particular FS 943.0438, and that all requirements have been timely and properly enforced. In addition, while engaging in activities upon City property and City owned facilities, the Provider shall not employ or utilize the volunteer services of any person who has been convicted of or pled guilty or nolo contendere to or has had an adjudication withheld of any of the following charges: a sexual offense, child abuse, contributing to the delinquency of a minor, or abuse of an elderly or vulnerable person.
 2. Policies are in place and enforced to ensure there is no discrimination to Provider participants, their families, caretakers, guardians, or observers based upon race, creed, religion, national origin, disability, or sex.
 3. Provider agrees to bear any and all costs associated with acquiring the required background screenings.
- D. Provider represents and warrants that all front desk personnel assigned to perform Services shall have, wear, and display proper identification during the performance of Services and that no identification shall be issued prior to the successful completion of background screening requirements.
- E. Provider represents and warrants that Provider shall not offer professional tennis instruction at any other location within Escambia and Santa Rosa Counties during the term of Agreement unless expressly authorized by Director of Parks and Recreation.
- F. Provider agrees and warrants that
1. any and all personnel providing Services related to Agreement shall be paid through Provider, and
 2. any and all liabilities regarding payment to or use of such personnel for any of the Services related to Agreement shall be borne solely by Provider.
- G. Provider agrees and warrants that neither Provider nor any of its personnel shall perform any work other than that listed in this agreement unless duly authorized by Provider or Provider's designated representative. Provider shall not be paid
1. for any work performed outside the Scope of Services for Agreement, or
 2. for any work performed by any of Provider's personnel not otherwise previously authorized in writing.

H. Provider shall develop and implement a comprehensive operation and management plan to perform, deliver and carry out, in a professional manner, the types of projects and services that meet the programmatic requirements of Tennis Facilities in accordance with the terms of Agreement, which shall at a minimum, include the following:

1. OPERATION AND MANAGEMENT

Provider shall develop and implement a comprehensive operation and management plan to perform, deliver, and carry out, in a professional manner, the types of projects and services that meet the programmatic requirements of tennis facilities in accordance with the terms of Agreement, which shall at a minimum, include the following:

a. Maintain at a minimum the following hours of operation:

Monday-Thursday	8:00 am to 9:00 pm
Friday	8:00 am to 7:00 pm
Saturday	8:00 am to 5:00 pm
Sunday	12:00 pm to 5:00 pm

The center will close for the following holidays: New Year's Day, Easter, Memorial Day, July 4, Thanksgiving, Christmas Eve, and Christmas Day. The center is open until noon on New Year's Eve.

The Parks and Recreation department reserves the right to require that the center and its entire amenities be open for special events and programs or closed for a period of time for maintenance.

- b. Provide individual and group tennis lessons and instruction;
- c. Junior tennis program, including but not limited to, lessons, matches, tournaments, league play, and clinics, will be vital to the success of Provider;
- d. Clinics for adults and youth, as well as summer clinics/camps for youth shall be provided for the summer months;
- e. Tennis instruction for beginners, intermediate, and advanced tennis players;
- f. Coordinate activities and events for users of Tennis Facilities. This shall include, but not be limited to the establishment of leagues, round robins, socials, and tournaments;
- g. A high performance academy/tennis training program to provide high-intensity training for professional and/or junior players;

- h. Provide staff for day-to-day operations, including, but not be limited to, answering telephones, assisting with program registrations, interacting with patrons of Tennis Facility, membership sales, customer service, tennis fees collection, records maintenance, daily court maintenance, etc.;
- i. Provide all equipment and furnishings needed to successfully operate and manage RSTC that are not provided by the City. The Provider will be responsible to provide their own computerized tracking system to ensure that they are able to meet all equipment requirements in this agreement. All functions shall be performed via this tracking system.
- j. Market Tennis Facilities to the general public locally, regionally, and nationally to recruit players and tournaments to the center,
- k. Recruit, train, supervise, certify, and pay instructors;
- l. Provide an instructor program that balances the importance of quality lessons with league play and tournament activity;
- m. Provide all memberships, certifications, and licenses needed to be properly registered to practice the profession, including USTA memberships, applicable certifications, and liquor license, and any others deemed necessary by the Parks and Recreation Director.
- n. Offer private tennis lessons for which Provider shall charge rates comparable to those charged for tennis pros at public facilities in the area. Provider shall maintain a delicate balance of court time for lessons as required and must be coordinated around the needs for leagues, tournaments, open play, clinics, etc. The Director of Parks and Recreation reserves the right to approve the court usage schedule;
- o. Adhere to membership, daily rates, and court rental fees at the established rates under the annual Approved Annual Budget document that is published on the City's website. The Provider may offer classes, programs, clinics, etc. not listed with fees set by the Provider.
- p. Adhere to a schedule of City-sponsored Tournaments as follows: Pensacola Futures Championship, Senior Games, Wheelchair Tennis Tournament, and any other City-sponsored events/activities/camps;
- q. May, offer food and beverage operation that may include a variety of sports drinks, sodas, teas, water. Provider will also include a variety of beer and wine. All revenues and costs associated with food and beverages remain with/are the responsibility of the Provider. Vending machines located on

site are part of the City-wide Parks and Recreation vending program. All proceeds from the vending machines will remain with the City.

- r. While a fully operational pro-shop is not required, amenities such as racquet re-stringing and basic tennis equipment must be provided for purchase.
- s. Any of the aforementioned requirements under this section shall be subject to any changes at the discretion of, and only upon approval by Parks and Recreation Director or Mayor.

2. MAINTENANCE

- a. Provide for janitorial services and supplies, and all routine maintenance (sweeping, pressure washing of courts, net repair/ replacement, clay upkeep, and equipment along with all other routine internal and external cleaning);
- b. Prepare an itemized weekly and monthly cleaning schedule that may be monitored by City staff. Some minor equipment will be available at the start, however, this equipment has a short shelf life and it will be the responsibility of Provider to replace it as needed;
- c. City will retain ownership of Tennis Facility and will be responsible for major internal/external repairs to the clubhouse, electrical systems, HVAC, facility, fences, lights, grounds/landscaping, canopies, parking lot, plumbing, irrigation, City-owned personal property, repairs to courts, windscreens, etc.;
- d. Coordinate any and all repairs or maintenance with City via the work order process;
- e. Identify prospective, potential, and existing maintenance issues, submit them to Building Maintenance, and follow-up on the work orders as needed;
- f. Ensure, by regular upkeep and/or timely repairs, that all equipment needed to provide all services under the Agreement is available and in good-working order and shall ensure that at no time will service be adversely affected due to inoperable, damaged, substandard, and/or defective equipment;
- g. Not allow areas to become dirty, a nuisance, hazard, annoyance, inconvenience or become detrimental to the public's health or safety, by maintaining the Tennis Facility on a daily basis. The Director of Parks and Recreation reserves the right to direct Provider in a manner to improve these areas;

- h. Accept Tennis Facilities in an “as is” condition, with any and all defects, if any, latent and patent, as provided under Agreement;
- i. Maintain Tennis Facility in the same or better condition throughout the term of Agreement;
- j. Make no changes, alterations, or improvements to the electrical service, plumbing systems, mechanical equipment, floors, walls, ceiling, counters, doors, without prior written approval from City;
- k. City shall make repairs to the electrical service, plumbing system, mechanical equipment, flooring, and painting walls and ceilings when necessary; as determined by the City;
- l. Provide reasonable advance notice when requesting routine maintenance items to be done by City;
- m. Refrain from adding additional electrical equipment may be added which would increase the total electrical service load at the facilities, without City approval;
- n. Report daytime emergencies and request routine maintenance through City;
- o. Routinely power wash hard courts, walkways, and court drains;
- p. Maintain clay courts in optimum playing condition. The city will provide clay every 12-18 months to assist in satisfying this requirement;
- q. Replace worn lines, nets and all other tennis-related Tennis Facility equipment as needed in order to maintain optimum condition of equipment. City will provide capital items or other related equipment at its discretion to improve the service and appearance of Tennis Facility. These items may be requested by Provider, but are not guaranteed;
- r. Report landscape-related issues to park maintenance;
- s. Assist Parks and Recreation with managing court-related matters at Armstrong Park, Bayview Park, and Hollice T. Williams Park, including net repair, court repair advice, etc. All costs associated with these courts will be the responsibility of the Parks and Recreation department;
- t. Submit reports to Parks and Recreation department and Parks and Recreation Board as required under Agreement, as needed and on a routine basis;

- u. Work with Parks and Recreation staff to ensure that Tennis Facility is maintained to the highest standards possible;
- v. Any of the aforementioned requirements under this section shall be subject to any changes at the discretion of, and only upon approval by Parks and Recreation Director.

IV. COMPENSATION:

- A. In consideration of the operation, management, maintenance and programming of Tennis Facilities under Agreement, City and Provider agree upon the following as appropriate consideration for the rights and services provided for in Agreement.
- B. The total amount of compensation payable by Provider to City shall be an annual fee ("Annual Fee") of One Hundred Twenty Five Thousand Dollars and No/Cents (\$125,000) and an additional Three Thousand Eight Hundred and Forty Dollars (\$3,840) for the pro-shop plus applicable Florida sales tax, for a total annual fee of One Hundred Twenty-eight thousand eight hundred and forty dollars (\$128,840.00) plus sales tax (if applicable), with payments to be made monthly calculated on a pro-rata basis during the term of Agreement.
- C. Annual Fee shall be due and payable on or before the first day of each calendar month during the term of Agreement and remitted to the City of Pensacola Treasury Department, P.O. Box 12910, City of Pensacola, Florida 32521, along with penalty and interest due until paid in full in accordance with the Pensacola City Code.
- D. Provider agrees that upon Expiration Date, all accrued pre-paid membership fees shall be due and owing by Provider to City. Upon Expiration Date, City and Provider shall determine the amount of pre-paid membership fees due and owing to the City and Provider shall remit the balance due to City within forty-five (45) days of Expiration Date.

V. TENNIS FACILITIES:

- A. City shall grant to Provider, non-exclusive rights to occupy and use Tennis Facilities for the purposes described herein under Agreement and in accordance with the following limitations:
 - 1. Provider shall be permitted to enter and occupy the area at any time year-round to perform Services required under Agreement.

2. Provider agrees and warrants that Provider shall be permitted to use Tennis Facilities solely for the purposes of performing Services as required under Agreement and shall not use Tennis Facilities, nor permit any other person or entity to use Tennis Facilities for any purposes not authorized by Agreement.
3. Provider agrees and acknowledges that City is owner of Premises and Tennis Facilities and that Agreement is not meant to nor does it convey or grant any entitlements or property rights, title or interest in or to Premises or to Tennis Facilities to Provider by virtue of such right to use or occupy Premises or Tennis Facilities.
4. Except as specifically provided in Agreement, Provider acknowledges that City, its agents and personnel and other persons acting on behalf of City, have made no representation or warranty of any kind in connection with any matter relating to the physical condition, value, fitness, use or zoning of Tennis Facilities or Premises upon which Provider has relied directly or indirectly for any purposes, except as specifically set forth in Agreement.
5. Provider agrees and warrants that Provider has examined any and all items of City personal property, including City equipment, inventory, furnishings and supplies located at or on Tennis Facilities and used thereon in accordance with Agreement, and more particularly those certain items of City personal property which are specifically described and listed and Provider accepts all such items of City personal property in their present condition as is. City personal property includes – eight bar chairs, two maintenance carts, 36 court benches, 139 outside chairs, eight umpire chairs, eight six foot tables, 16 outside tables, two hand-held blowers, four inside chairs, one small table, two televisions, three computers, 19 court water coolers with stands, two ice machines, 44 court score keepers, five 16 foot bleachers, two ten row bleachers, four electric water fountains, one set of marquis letters, one golf cart, four ladders, tools for clay court maintenance, one lawn mower, one barbeque grill, six clay court foot baths, eight ladies room lockers, two two-drawer filing cabinets, one five drawer filing cabinet, one full-sized refrigerator, and one small-sized refrigerator.
6. Provider agrees and warrants that Provider shall maintain all City personal property in good operating condition and shall report to the City any dangerous condition immediately, or any disrepair within one business day.
7. Provider agrees and warrants that all City personal property shall remain property of City and shall not be removed for any reason or at anytime whatsoever.
8. City personal property notwithstanding, Provider agrees and warrants that Provider will provide all of Provider owned equipment, furnishings and supplies pursuant to this Agreement.

9. Provider agrees and warrants that Provider shall provide and utilize Provider owned computerized tracking system required in connection with the provision of services under Agreement.
 10. Provider agrees and warrants that upon expiration or early termination of Agreement, Provider shall surrender Tennis Facilities, including all items of City personal property, to City in substantially the same condition as such Tennis Facilities and such items of City personal property were in on Effective Date.
- B. City reserves to itself the right of access in, over, under and through Tennis Facilities to perform its maintenance obligations and other obligations under Agreement, and in furtherance of the following:
1. City may enter and utilize Tennis Facilities at any time for purposes of providing all maintenance and repair of Tennis Facilities and Premises as necessary and required for the continuous, uninterrupted and effective provision of Services under Agreement.
 2. City may enter and utilize Tennis Facilities at any time for purposes of installing or maintaining improvements necessary for the health, safety and welfare of the public or for any other public purpose. In this regard, Provider understands and agrees that City shall bear no responsibility or liability for disruption or interference with Provider's use of Tennis Facilities, but City will make reasonable efforts to minimize such interference.

VI. OWNERSHIP OF DOCUMENTS:

Provider understands and agrees that any information, document, report or any other material whatsoever, and specifically including all data and information that is stored on any computer utilized by Provider to provide services under Agreement, regardless of whether such computers are owned by City or Provider, such information to be provided in a format required by City, and or which is otherwise obtained or prepared by Provider pursuant to or under the terms of Agreement, is and shall at all times remain the property of City. Provider understands and agrees that Provider is subject to and shall comply with Florida Statute 119, Public Records Act, as required herein in Agreement, and agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of Director of Parks and Recreation, which may be withheld or conditioned by Director of Parks and Recreation in his or her sole discretion. Provider is permitted to make and to maintain duplicate copies of the files, records, documents, etc. if Provider determines copies of such records are necessary and required subsequent to the termination of Agreement for Provider to comply with federal, state or local law or regulations, however, in no way shall the confidentiality as permitted by applicable law be breached. City shall maintain and retain ownership of any and all documents that result upon the completion of the work and Services under Agreement.

VII. AUDIT AND INSPECTION RIGHTS:

- A. City may, at reasonable times, and for a period of up to three (3) years following the termination of Agreement and all other pending matters are closed, audit, or cause to be audited, those books and records of Provider which are related to Provider's performance under Agreement.
- B. Provider agrees to provide access to the City or to any of its duly authorized representatives, to any books, documents, papers, and records of Provider which are directly pertinent to Agreement, for the purpose of audit, examination, excerpts, and transcripts.
- C. Provider agrees to maintain all such books and records at its principal place of business for a period of three (3) years after termination of Agreement per Florida General Records Retention Schedule, and all other pending matters are closed. Provider's failure to adhere to, or refuse to comply with, this condition shall result in the immediate cancellation of Agreement by the City.
- D. City may, at reasonable times during the term hereof, inspect Provider's work and perform such tests, as City deems reasonably necessary, to determine whether the goods or services required to be provided by Provider under Agreement conform to the terms hereof and/or the terms. Provider shall make available to City all reasonable access and assistance to facilitate the performance of tests or inspections by City representatives.

VIII. FLORIDA PUBLIC RECORDS COMPLIANCE REQUIREMENTS:

The parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, Florida Statutes, and obligations respecting termination of a contract for failure to provide public access to public records. The parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment "A" attached hereto and incorporated by reference. Further, all documents shall be retained per the State of Florida General Records Schedule GS1-SL for State and Local Government Agencies, available online.

IX. COMPLIANCE WITH FEDERAL STATE AND LOCAL LAWS:

Provider understands that agreements with local governments are subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, record keeping, etc. City and Provider agree to comply with and observe all such

applicable federal, state and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

Provider further agrees to include in all of Provider's agreements with any personnel for any Services related to Agreement this provision requiring personnel to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

This Contract is governed and construed in accordance with laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions or proceedings arising out of the Contract. Venue for any claim, actions or proceedings arising out of this Contract shall be Escambia County, Florida.

X. CITY'S TERMINATION RIGHTS:

- A. The City, acting by and through its Mayor, shall have the right to terminate Agreement, in its sole discretion, at any time, by giving written notice to Provider at least five (5) business days prior to the effective date of such termination. In such event, the Provider shall remit all revenues collected less any expenses that have been incurred since that date. In no event shall the City be liable to Provider for any additional compensation and expenses incurred, other than that provided herein, or for any consequential or incidental damages.

- B. Mayor shall have the right to terminate Agreement, without notice or liability to Provider, upon the occurrence of an event of a material default hereunder. In such event, the City shall not be obligated to pay any amounts to Provider or services rendered by Provider after Provider's receipt of the notice of termination.

XI. INSURANCE:

A. General

Before starting and until termination of work for, or on behalf of the City, the Provider shall procure and maintain insurance of the types and limits specified.

The term City, as is used in this section, is defined to mean the City of Pensacola, itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents.

B. Coverage

Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to the City, for the City's

protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements.

C. Worker's Compensation

The Provider shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation as legally required. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person – accident, \$100,000 each person – disease, \$500,000 aggregate – disease.

D. Commercial General, Automobile and Umbrella Liability Coverages

The Provider shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability and Business Auto policies filed by the Insurance Services Office. The City of Pensacola shall be an Additional Insured and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this Contract. The City shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required. If the required limits of liability afforded should become impaired by reason of any claim, then the Provider agrees to have such limits of \$1,000,000 per occurrence, reinstated under the policy.

1. Commercial General Liability

Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations (including pollution related claims), independent contractors, and property damage resulting from, collapse or underground (c,u) exposures. The coverage shall be written on occurrence-type basis.

2. Business Auto Policy

Business Auto Policy coverage must be provided, including bodily injury and property damage arising out of operation, maintenance or use of owned, non-owned and hired automobiles and employee non-ownership use.

3. Umbrella Liability Insurance

Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

E. Certificates of Insurance

Required insurance shall be documented in the Certificates of Insurance which provide that the City shall be notified at least thirty (30) days in advance of cancellation, non-renewal or adverse change or restriction in coverage. The City shall be named as an Additional Insured and this contract shall be listed. If required by the City, the Provider shall furnish copies of the Provider's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the City, an ACORD 25. Any wording in a Certificate which would make notification of cancellation, adverse change or restriction in coverage to the City an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. If on an ACORD 25 or similar form, the words "endeavor to" and "but failure..." shall be deleted so that the sentence ends with the word "left" or signed endorsements for the cancellation clauses MUST accompany Certificate(s) of Insurance. The Provider shall replace any canceled, adversely changed, restricted or non-renewed policies with the new policies acceptable to the City and shall file with the City, Certificate of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the City, the Provider shall, upon instructions of the City, cease all operations under the Contract until directed by the City in writing, to resume operations.

F. Insurance of the Provider primary

The Provider required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the Provider's coverage. The Provider's policies of coverage will be considered primary as relates to all provisions of the contract.

G. Loss Control and Safety

The Provider shall retain control over its employees, agents, servants, and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the Provider shall not be deemed to be an agent of the City. Precaution shall be exercised at all times by the Provider for the protection of all persons, including employees and property. The Provider shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

H. Hold Harmless

The Provider shall indemnify and hold harmless the City of Pensacola, its officers and employees, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Provider and persons employed or utilized by the Provider in the performance of this contract. The Provider's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

I. Pay on Behalf of the City

The Provider agrees to pay on behalf of the City, as well as provide a legal defense for the City, both of which will be done only if and when requested by the City, for all claims as described in the Hold Harmless paragraph. Such payment on the behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.

XII. NONDISCRIMINATION:

Provider represents to the City that Provider does not and will not engage in discrimination to the youth, their families, caretakers, guardians or observers on the basis of race, color, religion, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity). Provider further covenants that no otherwise qualified individual shall, solely by any of the foregoing reasons be excluded from participation in, be denied services, or subject to discrimination under any provision of Agreement.

XIII. ASSIGNMENT:

Agreement shall not be assigned by Provider, in whole or in part, and Provider shall not assign any part of its operations, without the prior written consent of the City, which may be withheld or conditioned, in the City's sole discretion through the Mayor.

XIV. NOTICES:

All notices or other communications required under Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

TO PROVIDER:

TO THE CITY:

Mayor
222 W. Main Street
Pensacola, Florida 32502
(850) 435-1625

WITH COPIES TO:

Director, Department of Parks and Recreation
222 W. Main Street
Pensacola, Florida 32502
(850) 435-5679

Risk Manager, Department of Risk Management
222 W. Main Street
Pensacola, Florida 32502
(850) 435-1613

XV. DEFAULT AND REMEDIES:

- A. Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the parties shall be in Escambia County, Florida. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.
- B. Title and paragraph headings are for convenient reference and are not a part of Agreement.
- C. No waiver or breach of any provision of Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
- D. Should any provision, paragraph, sentence, word or phrase contained in Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Pensacola, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then the same shall be deemed severable, and in either event, the remaining terms and provisions of Agreement shall remain unmodified and in full force and effect or limitation of its use.
- E. Provider shall comply with all applicable laws, rules and regulations in the performance of Agreement, including but not limited to, licensure and certifications required by law for professional service providers.
- F. Agreement constitutes the sole and entire agreement between the parties hereto. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

XVI. SUCCESSORS AND ASSIGNS:

Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.

XVII. INDEPENDENT PROVIDERS:

The Provider shall perform all work and services described in, and in accordance with, the Contract. The Provider warrants that all equipment, materials, and workmanship furnished, whether furnished by Provider or its subcontractors or sub-suppliers, will comply with the Contract and any City specifications, drawings, and other descriptions supplied or adopted. The Provider further warrants that the supplies and workmanship will be new, fit, and sufficient for the purpose for which they are intended, of good materials, design, and workmanship, and free from defects or failure. The City or its duly authorized representative shall at all times have full opportunity to inspect the materials to be furnished and the work to be done under this Contract. The Provider shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations pertaining to the performance of this Contract. The Provider is responsible for and shall indemnify the City against all damage or loss caused by fire, theft, or otherwise to materials, tools, equipment, and consumables left on City property by the Provider.

XVIII. CONTINGENCY CLAUSE:

Funding for Agreement is contingent on the availability of funds and continued authorization for program activities and Agreement is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days written notice.

XIX. FORCE MAJEURE:

A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sinkhole, other natural disasters, epidemic, pandemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either party is delayed in the performance of any act or obligation pursuant to or required by Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such party is actually delayed by such Force Majeure Event. The party seeking delay in performance shall give notice to the other party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other party to overcome any delay that has resulted.

XX. CITY NOT LIABLE FOR DELAYS:

Provider hereby understands and agrees that in no event shall the City be liable for, or responsible to Provider or any personnel, or to any other person, firm, or entity for or on account of, any stoppages or delay(s) in work herein provided for, or any damages whatsoever related thereto, because of any injunction or other legal or equitable

proceedings or on account of any delay(s) for any cause over which the City has no control.

XXI. USE OF NAME:

Provider understands and agrees that the City is not engaged in research for advertising, sales promotion, or other publicity purposes. Provider is allowed, within the limited scope of normal and customary marketing and promotion of its work, to use the general results of Services under Agreement and the name of the City. The Provider agrees to protect any confidential information provided by the City and will not release information of a specific nature without prior written consent of the Mayor in accordance with Florida state statutes.

XXII. NO CONFLICT OF INTEREST:

Pursuant to Chapter 112, Florida Statutes and Pensacola City Code Chapter 2-6, Sections 2-6-1 through 2-6-4 regarding conflicts of interest, Provider hereby certifies to City that no individual member of Provider, employee, or personnel under Agreement, nor any immediate family member of any of the same is also a member of any board, commission, or agency of the City. Provider hereby represents and warrants to the City that throughout the term of Agreement, Provider and its personnel will abide by this prohibition of the City Code.

XXIII. NO THIRD-PARTY BENEFICIARY:

No persons other than the Provider and the City (and their successors and assigns) shall have any rights whatsoever under Agreement.

XXIV. SURVIVAL:

All obligations (including but not limited to indemnity and obligations to defend and hold harmless) and rights of any party arising during or attributable to the period prior to expiration or earlier termination of Agreement shall survive such expiration or earlier termination.

XXV. MANDATORY USE OF E-VERIFY SYSTEM:

In compliance with the provisions of F.S. 448.095, the parties to this contract and any subcontractors engaged in the performance of this contract hereby certify that they have registered with and shall use the E-Verify system of the United States Department of Homeland Security to verify the work authorization status of all newly hired employees, within the meaning of the statute.

XXVI. REQUEST FOR REBATE REVIEW:

The City has determined that it is in the best interest of the citizens to provide for renovations of the existing facilities located at the Roger Scott Tennis Center. Planned improvements include the replacement of the existing 18 hard courts and with 12 post-tension concrete tennis courts and 6 clay tennis courts (herein referred to as "Project"). The City understands that such renovations will have a significant impact on the Provider's ability to provide services and the City will work with the provider to ensure such impacts are minimized to the best of the City's ability.

In addition, to offset the negative impact to the Provider's revenues, the City will provide a rebate upon request from the Provider after Project completion. The rebate would be based on the number of days any one court is closed for construction and would offset the \$125,000 Annual Fee required to be paid under this agreement. The rebate would come into effect should any one court be closed for construction for more than seven consecutive days due to Project construction. The rebate shall equal \$12.23 per day per closed court. The \$12.23 daily rebate is calculated by taking the \$125,000 Annual Fee dividing it by 28 courts and then dividing it by 365 days ($\$125,000 / 28 / 365 = \12.23). In no event shall the rebate exceed the \$125,000 Annual Fee.

The Provider will be responsible for keeping a calendar showing what Courts were closed due to construction and the total number of days eligible for the rebate. Such calendars shall be submitted to the City's Parks and Recreation department on a monthly basis for review and sign-off. Within 60 days following the end of the calendar year in which the Project was completed, the Provider must submit to the City's Finance Director, a copy of the monthly calendars signed by the Parks and Recreation department and a written request for the rebate documenting, per Court, the total number of days the Court was closed (as determined above) and the total amount of rebate being requested. Upon approval of the rebate request, the City's Finance department will offset the monthly invoice associated with the annual fee until such rebate has been exhausted.

Review for rebate will only occur if all conditions described herein have been met.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

PROVIDER

Gulf Coast Tennis Group
(Provider's Name)

By [Signature]
Member

Brock Sakey
(Printed Member's Name)

By [Signature]
Member

Patrick Bateman
(Printed Member's Name)

CITY OF PENSACOLA

Mayor, Grover Robinson, IV

City Clerk, Ericka L. Burnett

Approved As To Substance:
[Signature]
Parks and Recreation Director

Legal in form and valid as drawn:

Charles V. Peppler, City Attorney

Attachment "A"

PUBLIC RECORDS: Provider shall comply with Chapter 119, Florida Statutes. Specifically, Provider shall:

- A. Keep and maintain public records required by the City to perform the service.
- B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if Provider does not transfer the records to the City.
- D. Upon completion of the Contract, transfer, at no cost, to the City, all public records in possession of Provider or keep and maintain public records required by the City to perform the service. If Provider transfers all public records to the City upon completion of the Contract, Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Provider keeps and maintains public records upon completion of the Contract, Provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Provider to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Contract by the City.

IF PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE PUBLIC RECORDS COORDINATOR AT:

**THE OFFICE OF THE CITY CLERK, (850) 435-1715
PUBLICRECORDS@CITYOFPENSACOLA.COM
222 WEST MAIN STREET, PENSACOLA, FL 32502**

INSURANCE AND INDEMNIFICATION Attachment "B"

GENERAL

The term City, as is used in this section, is defined to mean the City of Pensacola, itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents.

COVERAGE

Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to the City, for the City's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements.

Worker's Compensation

The Lessee shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation as legally required. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person – accident, \$100,000 each person – disease, \$500,000 aggregate – disease.

If Lessee qualifies as exempt by the Florida Department of Workers Compensation, a certificate of exemption is acceptable for this requirement.

Commercial General Liability Coverage

The Lessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability filed by the Insurance Services Office. **The City of Pensacola shall be an Additional Insured** and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this Contract. The City shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence for liability must be provided. If the required limits of liability afforded should become impaired by reason of any claim, then the Lessee agrees to have such limits of \$1,000,000 per occurrence, reinstated under the policy.

Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations (including pollution related claims), independent lessees, and property damage resulting

from, collapse or underground (c,u) exposures. The coverage shall be written on occurrence-type basis.

CERTIFICATES OF INSURANCE

Required insurance shall be documented in the Certificates of Insurance which provide that the City shall be notified at least thirty (30) days in advance of cancellation, non-renewal or adverse change or restriction in coverage. **The City shall be named as an Additional Insured** and this contract shall be listed. If required by the City, the Lessee shall furnish copies of the Lessee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the City, an ACORD 25. **Any wording in a Certificate which would make notification of cancellation, adverse change or restriction in coverage to the City an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee.** If on an ACORD 25 or similar form, the words "endeavor to" and "but failure..." shall be deleted so that the sentence ends with the word "left" or signed endorsements for the cancellation clauses MUST accompany Certificate(s) of Insurance. The Lessee shall replace any canceled, adversely changed, restricted or non-renewed policies with the new policies acceptable to the City and shall file with the City, Certificate of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the City, the Lessee shall, upon instructions of the City, cease all operations under the Contract until directed by the City in writing, to resume operations.

INSURANCE OF THE LESSEE PRIMARY

The Lessee required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the Lessee's coverage. The Lessee's policies of coverage will be considered primary as relates to all provisions of the contract.

LOSS CONTROL AND SAFETY

The Lessee shall retain control over its employees, agents, servants, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the Lessee shall not be deemed to be an agent of the City. Precaution shall be exercised at all times by the Lessee for the protection of all persons, including employees and property. The Lessee shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

HOLD HARMLESS

The Lessee shall indemnify and hold harmless the City of Pensacola, its officers and employees, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Lessee and persons employed or utilized by the Lessee in the performance of this contract. The Lessee's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

PAY ON BEHALF OF THE CITY

The Lessee agrees to pay on behalf of the City, as well as provide a legal defense for the City, both of which will be done only if and when requested by the City, for all claims as described in the Hold Harmless paragraph. Such payment on the behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be the City's exclusive remedy.

GOVERNING LAW AND VENUE

This Contract is governed and construed in accordance with laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions or proceedings arising out of the Contract. Venue for any claim, actions or proceedings arising out of this Contract shall be Escambia County, Florida.