

SERVICES AGREEMENT FOR MANAGEMENT OF THE FORT KING TENNIS CENTER

THIS SERVICES AGREEMENT FOR MANAGEMENT OF THE FORT KING TENNIS CENTER ("Agreement") is entered into by and between the CITY OF OCALA, a Florida municipal corporation ("City"), and JASON WEISS VENTURES, INC., a for-profit corporation duly organized and authorized to do business in the State of Florida (EIN: 80-0003140) ("Contractor").

RECITALS:

WHEREAS, the City of Ocala owns the Fort King Tennis Center located at 3301 East Fort King Street, Ocala, Florida 34470, which includes two (2) hard surface courts and twelve (12) Har-Tru clay courts, a clubhouse, gazebo, and other related facilities for the use and benefit of its citizens (the "Tennis Center"); and

WHEREAS, the City of Ocala desires to utilize the services of a qualified management firm, organization, or individual to provide day-to-day operations, maintenance, and management services for the Tennis Center (the "Services"); and

WHEREAS, on July 8, 2019, City issued a Request for Proposals ("RFP") for the provision of operations, maintenance, and management services for the Fort King Tennis Center, RFQ No.: REC/190417 (the "Solicitation"); and

WHEREAS, a total of three (3) firms responded to the Solicitation and, after consideration of price and other evaluation factors set forth in the Solicitation, the bid submitted by Jason Weiss Ventures, Inc., was found to be the highest ranked proposal as scored by City; and

WHEREAS, Jason Weiss Ventures, Inc., was chosen as the intended awardee to provide the Services at the Tennis Center; and

WHEREAS, Contractor certifies that Contractor is qualified and possesses the required licensure, certifications, and skills to perform the Services required at the Tennis Center.

NOW THEREFORE, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Contractor agree as follows:

TERMS OF AGREEMENT:

1. **RECITALS.** City and Contractor hereby represent, warrant, and agree the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire understanding between City and Contractor shall include only: (a) this Agreement; (b) those documents listed in this section as Exhibits to this Agreement; and (c) the City's Solicitation for the Services and the proposal submitted by Contractor in response to same (the

"Solicitation Documents"). Each of these documents are incorporated herein by reference for all purposes.

If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement and all of its Exhibits shall be given precedence to resolve any identified inconsistency.

A. **Exhibits to Agreement.** The Exhibits to this Agreement are as follows:

Exhibit A: Scope of Work (A-1 through A-13)

3. **SCOPE OF SERVICES.** Contractor shall be responsible for the operation, management, maintenance, and programming of the Tennis Center and shall provide all labor, materials, supplies, equipment, supervision, and all other things necessary for Contractor to perform its obligations under this Agreement as set forth in the attached **Exhibit A - Scope of Work** and the Solicitation Documents. The Scope of Work and associated pricing under this Agreement may only be adjusted by written amendment executed by both parties.

4. **COMPENSATION AND REVENUE SHARE.**

A. **Contractor Compensation.** For its services hereunder, Contractor shall be compensated as follows:

(1) Merchandise, Equipment and Supply Sales. Contractor shall have the exclusive right to sell and rent tennis related merchandise, equipment and supplies at the Tennis Center pro shop/clubhouse and to retain **ONE HUNDRED PERCENT (100%)** of all revenue derived from such sales. Contractor shall be solely responsible for the payment of all sales tax on goods or services sold or otherwise provided by Contractor.

(2) Membership Fees. Contractor shall have the right to retain **ONE HUNDRED PERCENT (100%)** of all revenue derived from annual and daily permit fees ("Memberships") collected from use of the Tennis Center by the public up to the first **ONE HUNDRED NINETY (190)** memberships. Thereafter, all revenue collected by Contractor for memberships above **ONE HUNDRED NINETY (190)** shall be divided between Contractor and City with **FIFTY PERCENT (50%)** of the membership fee being paid to Contractor and **FIFTY PERCENT (50%)** of the membership fee being paid to City. Contractor shall not have the right to waive the payment of any membership fees or other proceeds without the express written consent of the City Project Manager.

(3) Other Tennis Center Fees and Charges. Contractor shall have the right to retain **ONE HUNDRED PERCENT (100%)** of all revenue derived from court reservation fees, league play fees, tournament fees, social event fees, and fees from all other activities

conducted for a fee at the Tennis Center which are not in conflict with any of the terms or conditions of this Agreement.

- (4) Receipts for Merchandise, Equipment, and Supply Sales. All sales and other transactions for merchandise, equipment, and supplies shall be recorded on cash register tape, sales slips, or via other generally accepted accounting methods. All tapes, slips, and receipts shall be properly dated, labeled, categorized, and retained for any audit reviews as set forth in Section 27 of this Agreement.
- (5) Monthly Reporting of Memberships and Other Tennis Center Fees and Charges. By the fifteenth (15th) day of each month, Contractor shall provide a monthly financial report to the City containing the number of paid memberships, court reservation fees, league play fees, tournament fees, social event fees, and fees from all other activities conducted for a fee at the Tennis Center during the preceding calendar month. The monthly reporting shall be submitted to the City Recreation and Parks Director, City Project Manager, or other City designee along with the payment of any membership revenue collected by Contractor which may be due and owing to the City pursuant to Paragraph 4(A)(3) above. All records required under this section shall be properly dated, labeled, categorized and retained for any audit reviews as set forth in Section 27 of this Agreement.
- (6) Payments or Advances Made by City. Any sums or expenses paid or obligations assumed by City for which Contractor has agreed to pay, reimburse, or assume pursuant to the terms of this Agreement shall be repaid to City by Contractor by the first of the calendar month following the date of such advance, payment, or assumption unless otherwise specifically provided for in this Agreement.
- (7) No Other Consideration. Except as expressly provided for herein, City shall not pay any other form or style of compensation or consideration to Contractor.

B. Revenue Share.

- (1) The City shall be entitled to **FIFTY PERCENT (50%)** of all revenue collected by Contractor for memberships fees collected over and above the first **ONE HUNDRED NINETY (190)** memberships.

- C. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Contractor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Contractor be authorized to use City's Tax Exemption Number for securing any

merchandise, supplies, or materials listed herein.

5. **TERM.** The term of this Agreement shall commence on FEBRUARY 1, 2020 (the "Effective Date") and shall continue for a term of FIVE (5) years, through and including JANUARY 31, 2025, unless terminated earlier as provided for herein. This Agreement may be renewed for up to ONE (1) additional FIVE-YEAR (5-YEAR) period upon the mutual written consent of both parties.

6. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Document, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.
 - A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Contractor to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Contractor written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:
 - (1) Contractor fails to timely and properly perform any of the services or material obligations set forth in the Agreement or Contract Documents;
 - (2) Contractor fails to maintain the Tennis Center in good condition as set forth in Exhibit A - Scope of Service;
 - (3) Contractor fails to operate the Tennis Center in accordance with the standards and measures set forth in Exhibit A – Scope of Service;
 - (4) Contractor becomes insolvent, files for bankruptcy protection, is placed into receivership, or is liquidated;
 - (5) Contractor fails to make progress in Contractor's performance under the Agreement and/or otherwise gives City reason to believe Contractor cannot or will not perform to the requirements of the Agreement.

 - B. **Contractor's Opportunity to Cure Default.** City may, in its sole discretion, provide Contractor with an opportunity to cure the violations set forth in City's notice of default to Contractor. Contractor shall commence to cure the violations immediately and shall

diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Contractor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.

C. **City's Remedies Upon Contractor Default.** In the event Contractor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:

- (1) City shall be entitled to terminate this Agreement without further notice;
- (2) City shall be entitled to hire another contractor to complete the required work in accordance with the needs of City; and
- (3) City shall be entitled to recover from Contractor all damages, costs, and attorney's fees arising from Contractor's default prior to termination.

D. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The City Project Manager shall provide written notice of the termination. Upon receipt of the notice, Contractor shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies in connection with its performance under this Agreement. Contractor shall be entitled to receive compensation solely for: (1) all services rendered in conformity with this Agreement prior the date of termination; and/or (2) such other costs incurred by Contractor as permitted under this Agreement and approved by City.

7. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.

The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.

When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Contractor performance shall be extended for a number of days equal to the duration of the force majeure. Contractor shall be entitled to an extension of time only and, in no event, shall Contractor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.

8. **EVALUATION OF OPERATIONS.** City and Contractor agree to meet at least monthly to review Tennis Center performance measures including operations, maintenance, and utilization.
- A. On or before the fifteenth (15th) day of each month, Contractor shall deliver to the City Project Manager a monthly reporting which shall set forth the following information:
 - (1) Routine and non-routine completed maintenance issues and tasks.
 - (2) Condition of courts, functioning status of the irrigation system, and other issues effecting play conditions or services provided at the Tennis Center.
 - (3) Summary of court reservations, league play, tournaments, clinics and membership totals.
 - B. Upon reasonable notice (which may be verbal), the City Project Manager or other designee shall have the right, at any time during normal business hours, to review all of Contractor's books and records related to the operation of the Tennis Center including, but not limited to, operating statements, ledgers, income statements, balance sheets, and accounts payable.
 - C. The City shall have the right to inspect the Tennis Center facilities at any time for the purpose of ensuring Contractor's compliance with the terms of this Agreement. City shall promptly provide to Contractor written notification of any compliance or performance issues discovered through said inspection.
 - D. The City Project Manager shall decide all questions regarding the quality, acceptability, and/or fitness of services performed and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Contractor in its Proposal. The authority vested in the City Project Manager pursuant to this paragraph shall be confined to the direction or

specification of what is to be performed under this Agreement and shall not extend to the actual execution of the work.

- E. Neither the City Project Manager's review of Contractor's work, nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, procedures or safety precautions or programs incident to Contractor's furnishing and performing the work.
9. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Contractor's performance. Any such evaluation will become public record.
10. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any Contractor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of **ONE (1)** year and bid debarment for a period of up to **THREE (3)** years for serious contract failures.
11. **CONTRACTOR REPRESENTATIONS.** Contractor expressly represents that:
- A. Contractor has read and is fully familiar with all the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Contractor under this Agreement.
 - B. Contractor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Contractor in the Contract Documents, and that the City's written resolution of same is acceptable to Contractor.
 - C. Contractor has had an opportunity to visit, has visited, or has had an opportunity to examine and ask questions regarding the sites upon which the work is to be performed and is satisfied with the site conditions which may affect cost, progress, and performance of the work, as observable or determinable by Contractor's own investigation.
 - D. Contractor is satisfied with the site conditions that may affect cost, progress, and performance of the work, as observable or determinable by Contractor's own investigation.
 - E. Contractor is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
 - F. Contractor is certified through the United States Professional Tennis Association (Level 1 Professional) and/or the United States Professional Tennis Registry (Professional Level).

- G. **Public Entity Crimes.** Contractor represents that neither Contractor, its parent corporations, subsidiaries, members, shareholders, partners, officers, directors or executives, nor any of its affiliates, contractors, suppliers, subcontractors, or consultants under this Agreement have been placed on the convicted Contractor list following a conviction of a public entity crime. Contractor understands a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Contractor further understands that any person or affiliate who has been placed on the convicted Contractor list following a conviction for a public entity crime: (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted Contractor list.
12. **CONTRACTOR RESPONSIBILITIES.** In addition to those responsibilities set forth in the Scope of Work and elsewhere in this Agreement, the following provisions are the responsibility of the Contractor:
- A. Contractor shall competently and efficiently provide, supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
 - B. Contractor shall be solely responsible for the means, methods, techniques, sequences, or procedures of construction and safety precautions or programs incident thereto.
 - C. Contractor shall be responsible to see that the work provided complies accurately with the terms of the Agreement and the intent thereof.
 - D. Contractor shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement.
 - E. Contractor shall at all times during the term of this Agreement, and at its own expense, be and remain a member in good standing of the United States Professional Tennis Association (Level 1 Professional) and/or the United states Professional Tennis Registry (Professional Level).

- F. Contractor shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Contractor and City may otherwise agree in writing.
13. **RIGHT OF ACCESS AND OTHER WORK PERFORMED BY THIRD-PARTIES.** City may perform additional work related to the Tennis Center itself or have additional work performed by utility service companies or other third-parties. Contractor shall afford utility service companies, third-parties, and/or City employees reasonable opportunity for the introduction and storage of materials and equipment and the execution of work.
14. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Contractor shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:
- A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal and advertising injury; and
 - B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for products and completed operations.
 - C. Coverage for contractual liability is also required.
 - D. City, a political subdivision of the State of Florida, and its officials, employees, and volunteers shall be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage regarding liability arising out of activities performed by or on behalf of Contractor. The coverage shall contain no special limitation on the scope of protection afforded to City, its officials, employees, or volunteers.
15. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Contractor shall procure and maintain, for the life of this Agreement, Workers' Compensation insurance and employer's liability insurance in amounts required by applicable statutes. Contractor shall ensure any and all subcontractors have coverage as required by applicable statutes. City requires policies under this section to be endorsed to waive the insurer's right to subrogate against City and its officials, employees, volunteers by including a Waiver of Our Right to Recover from Others Endorsement (WC 00 03 13). Exceptions and exemptions may be allowed by City's HR/Risk Director, so long as they are in accordance with Florida Statute.

16. MISCELLANEOUS INSURANCE PROVISIONS.

- A. **Insurance Requirements.** These insurance requirements shall not relieve or limit the liability of Contractor. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Contractor's interests or liabilities but are merely minimums. No insurance is provided by the City under this contract to cover Contractor. **No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided.** Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.
- B. **Deductibles.** Contractor is responsible for the amount of any deductible or self-insured retention. Contractor's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by City.
- C. **Certificates of Insurance.** Contractor shall provide a Certificate of insurance, issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating* of at least an A, showing the "City of Ocala" as an Additional Insured. Shown on the certificate at the certificate holder should be: **City of Ocala, Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, FL 34471.** Renewal certificates must also be forwarded to the Contracting Department prior to the policy expiration. **TEN (10)** days written notice must be provided to the City in the event of cancellation.
- *Non-rated insurers must be pre-approved by the City Risk Manager.
- D. **Failure to Maintain Coverage.** In the event Contractor fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Contractor under this Agreement, Contractor shall be considered to be in default of this Agreement.
- E. **Severability of Interests.** Contractor shall arrange for its liability insurance to include General Liability, Business Automobile Liability, and Excess/Umbrella Insurance, or to be endorsed to include a severability of interests/cross liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.

17. **INDEMNITY.** Contractor shall indemnify, defend, save, and hold harmless City, its elected officials, employees and volunteers from any and all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials,

employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, damage to property or personal injury to third persons, including death, during the term of this Agreement arising out of, incidental to, or in any way connected with Contractor's performance of services under this Agreement, any act, omission, default, or negligence of the Contractor in the provision of services under this Agreement, or any act or omission of any of Contractor's patrons, guests, or invitees at the Tennis Center. Contractor agrees to pay all claims and losses and shall defend all suits, in the name of the City, its elected officials, employees, and volunteers and shall pay all costs, judgments, and attorneys' fees which may issue thereon. City reserves the right to select its own legal counsel to conduct any defense in any such proceedings and all costs and fees associated therewith shall be the responsibility of the Contractor under this provision. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise.

18. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
19. **SAFETY/ENVIRONMENTAL.** Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. Contractor shall make an effort to detect hazardous conditions and shall take prompt action where necessary to avoid accident, injury or property damage. EPA, DEP, OSHA and all other applicable safety laws and ordinances shall be followed as well as American National Standards Institute Safety Standards. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - A. All employees on the work and other persons that may be affected thereby;
 - B. All work, materials and equipment to be incorporated therein, whether in storage on or off the site; and
 - C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.
 - D. All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Contractor.

Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as the work is completed and accepted by City.

20. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.
21. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Contractor or any other persons or organizations having a direct contract with Contractor, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Contractor or any other persons or organizations having a direct contract with Contractor, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any Contractor, subcontractor, or of any of their agents or employees, nor shall it create any obligation on the part of City or its representatives to pay or to seek the payment of any monies to any subcontractor or other person or organization, except as may otherwise be required by law.
22. **INDEPENDENT CONTRACTOR STATUS.** Contractor acknowledges and agrees that under this Agreement, Contractor and any agent or employee of Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Contractor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Contractor nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Contractor in its performance of its obligations under this Agreement.

23. **ACCESS TO FACILITIES.** City shall provide Contractor with access to all City facilities as is reasonably necessary for Contractor to perform its obligations under this Agreement.
24. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
25. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Contractor under this Agreement be abandoned, or should Contractor become insolvent, or if Contractor shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional contractors for the performance of work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager. The City Project Manager's certification as to the amount of such liability shall be final and conclusive.
26. **PUBLIC RECORDS.** The Contractor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, the Contractor shall:
- A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency 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 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 completion of the contract if the Contractor does not transfer the records to the public agency.
 - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public

agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-Mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

27. **AUDIT.** Contractor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
- A. City shall have the right to audit or authorize audits of Contractor's books, records, and accounts relevant to its operation and maintenance of the Tennis Center. If any audit performed by City discloses an under-reporting of gross receipts, Contractor shall pay to City any amounts due under this Agreement within fifteen (15) calendar days of written notice by City.
 - B. Contractor shall provide the name and telephone number of Contractor's accounting manager who has a thorough knowledge of the accounting system as it pertains to this Agreement and who will assist City with its audit. Contractor will also allow interview of past and present employees who were involved in the financial or operational activities of Contractor as part of the audit.
 - C. Contractor agrees to provide appropriate work space to conduct the audit and free access to office and equipment needed to conduct the audit. Contractor will also make the requested original books and records available within ten (10) working days from the date of request by City or City's representative and will freely lend its own assistance in conducting the audit.
28. **PUBLICITY.** Contractor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.

29. **E-VERIFY.** In accordance with Executive Order 11-116, Contractor shall utilize the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to utilize the E-Verify system for any employees they may hire during the term of this Agreement.
30. **CONFLICT OF INTEREST.** Contractor is required to have disclosed, with the submission of their bid, the name of any officer, director, or agent who may be employed by the City. Contractor shall further disclose the name of any City employee who owns, directly or indirectly, any interest in Contractor's business or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of
31. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
32. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
33. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Vendor:

Jason Weiss Ventures, Inc.
Jason Weiss, President
5445 SE 44th Avenue
Ocala, Florida 34480
PH: 352-229-2655
Email: jyice@yahoo.com

If to City of Ocala:

Tiffany L. Kimball, Contracting Officer
City of Ocala, City Hall
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
PH: 352-629-8366
FAX: 352-690-2025
E-mail: tkimball@ocalafl.org

Copy to:

Patrick G. Gilligan, Esquire
Gilligan, Gooding, Franjola & Batsel, P.A.
1531 SE 36th Avenue
Ocala, Florida 34471
PH: 352-867-7707
FAX: 352-867-0237
E-mail: pgilligan@ocalalaw.com

34. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

35. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY

IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

36. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
37. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
38. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
39. **MUTUALITY OF NEGOTIATION.** Contractor and City acknowledge that this Agreement is a result of negotiations between Contractor and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
40. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
41. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any

provision give any third persons any right of subrogation or action over or against any party to this Agreement.

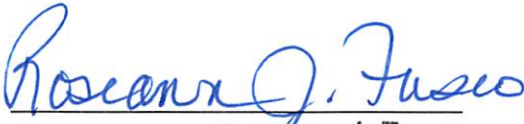
42. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
43. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
44. **ELECTRONIC SIGNATURE(S).** Contractor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
45. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
46. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on the 5 day of February, 2020.

ATTEST:

CITY OF OCALA



~~Angel B. Jacobs~~ Roseann J. Fusco
~~City Clerk~~ Deputy City Clerk



Jay Musleh
City Council President

Approved as to form and legality:

JASON WEISS VENTURES, INC.



Robert W. Batsel, Jr.
Assistant City Attorney



Jason Weiss
President



ACCEPTED BY CITY COUNCIL
February 4, 2020
DATE
OFFICE OF THE CITY CLERK

Exhibit A – Scope of Work

The Contractor shall be responsible for the operation, management, maintenance, and programming of the Fort King Tennis Center and, except as otherwise noted herein, shall provide all labor, materials, supplies, equipment, supervision, and all other things necessary to perform its obligations under the Agreement.

The Contractor will, at a minimum, provide the below listed services:

1. Tennis professional services including individual and group lessons for all ages.
2. Coordination of tennis leagues and tournaments.
3. Operation of the clubhouse including staffing of facility during all operating hours. Contractor shall supervise all of the Contractor's working personnel and tennis professionals at the tennis courts seven (7) days a week. The Contractor will make work assignments necessary to operate the Center according to City standards and shall make seasonal or other required labor adjustments as needed to meet the service or maintenance demands without additional cost to the City.
4. Assumption of costs associated with the operation and routine maintenance of the center. Areas of operation and maintenance include but are not limited to: routine maintenance of all equipment, courts, fences, nets, walkways, windscreens and clubhouse.
5. Routine services including racquet stringing, merchandise sales, etc.
6. Routine daily custodial services of all buildings and grounds in interior courtyard, court maintenance and litter control in parking lot.
7. Attendance at meetings to keep the City informed of operating and maintenance issues and status.
8. Coordination with the City staff in setting of fees and establishment of operating policies.
9. Coordination with the Tourist Development Council on solicitation and operation of tournaments with likely economic impact.
10. Propose and execute corrective actions in an expeditious manner to bring and maintain play conditions of the tennis facility to the standards reflected in this agreement. Contractor shall perform all normal functions, which are essential to providing quality playing conditions and ancillary services for a quality tennis facility.

Exhibit A – Scope of Work

11. Contractor is responsible, at its own cost, for both materials and labor for the immediate repair of any damage to City property that is caused by the Contractor or by and through the Contractor's negligence. Any needed repairs shall be made in a timely manner and shall restore the damaged area/facility to the original condition or better.
12. Contractor shall attend all City review meetings and planned meetings with patron groups and/or City staff, or elected officials as required or requested.

The City will:

1. Provide and coordinate the labor for replacement of the exterior court lighting.
2. Be responsible for hard court and clay court resurfacing at intervals determined by the City.
3. Maintain the building (including roof, AC and other general services provided under the City facilities maintenance operations) that exceed \$2,500.00 per occurrence and parking lot structure (but not routine clean-up of trash in parking lot).
4. Provide and maintain the court maintenance machine.
5. Allow Contractor to utilize the maintenance shed located at the Tennis Center to work out of and store equipment and supplies used solely for the maintenance of the Tennis Center.
6. Provide grounds maintenance services inside and outside of fenced area as follows:
 - a) Mowing and landscaping.
 - b) Grounds irrigation systems.
 - c) Clay court irrigation system repairs that exceed \$2,500.00 per occurrence.
7. To extent that it is available, City shall arrange for inmate labor to assist with annual top dressing, when scheduled.
8. Infrastructure Repair/Capital Improvements:
 - a) City shall provide upgrades required to maintain the useful life of the infrastructure; including lighting, irrigation systems, fences, courts, parking lots and buildings. This shall include clay and hard-court resurfacing (but not annual top dressing), irrigation retrofits or upgrades (but not routine repairs).
 - b) Infrastructure improvements shall be made at the sole discretion of the City and City does not make any representation or guarantees to Contractor as to timing or scheduling of said upgrades.

Exhibit A – Scope of Work

9. Meet with Contractor monthly (or at other appropriate intervals) to review monthly reports and progress.
10. Provide additional court material (Har Tru Green Clay) needed to maintain quality playing conditions after Contractor has met his limit and not to exceed 34,000 pounds per year or \$7,000.

REVENUE MANAGEMENT

1. Contractor shall have exclusive right of merchandising, selling, renting and repairing tennis equipment and supplies at the pro shop/clubhouse at the Fort King Tennis Center.
2. Contractor shall coordinate with City in determining the fees charged for memberships, daily court fees, leagues and concessions.

ADVERTISING

Unless approved by the City, no advertising of any kind or description, bill or poster, whether printed or painted, or by the use of any other method or application legible to human sight, shall appear on any building, structure, fence, canopy, post or sign, except valid and authorized legal notices required to be placed thereon, and except as may be specifically authorized in writing by the City. Sponsor banners are exempt but must be kept to a minimum and for an appropriate timeframe (i.e. tournament sponsors). All verbiage on banners is subject to the approval of the City Recreation and Parks Director or Designee.

VANDALISM

Contractor shall be responsible for any repair or replacement necessitated due to acts of vandalism. Contractor shall take all precautions to secure the facility, including clubhouse, to prevent or minimize acts of vandalism.

EXPERTISE; TRADE SECRETS; NON-COMPETE

The service to be rendered by Contractor under this agreement requires special training, skill and experience, and this contract is entered into for the purpose of obtaining such services for the City.

Exhibit A – Scope of Work

1. Expertise: Contractor shall be a certified through the United States Professional Tennis Association (Level I Professional) or the United States Professional Tennis Registry (Professional Level).
2. Trade Secrets: Contractor acknowledges that any information that may be furnished to Contractor concerning City's business, prices, customers, tennis students, leads, prospects, holdings, investments, transactions, and other confidential matters constitutes valuable, special, and unique assets and trade secrets of City's business. Contractor will not, during or after the term of the engagement under this Agreement, disclose any such information to any other person or entity for any reason or purpose. All files, books, records, documents, drawings, specifications, and similar items relating to the business of the City, whether prepared by the Contractor or otherwise coming into the Contractor's possession: shall remain the exclusive property of the City; shall not be removed from the premises of the City under any circumstances whatsoever without the prior written consent of the City; and shall be immediately returned to the City by the Contractor on termination of this Agreement by either party.
3. Non-Compete:
 - A. The following provisions shall apply only if Contractor terminates this Agreement without cause or if City terminates this Agreement with cause. They shall not apply if Contractor terminates this Agreement with cause or if City terminates this Agreement without cause.
 - B. Contractor agrees that for a period of one year from the date of termination of this Agreement, Contractor shall not engage in the following activities in Marion County, Florida:
 - i. Engage in the business of a tennis professional or tennis instructor, or otherwise engage in competition with City;
 - ii. Accept employment from, or serve as a tennis instructor, employee, independent contractor or representative for, any competitor of City; accept a position as any officer, director, or shareholder of any corporation or other entity engaged in competition with City; hold any interest, whether legal or equitable, in any business entity engaged in competition with City; or otherwise directly or indirectly own, manage, operate, join in, control, or participate in the ownership, management, operation, or control of, or be connected with in any manner, any competitor of City;

Exhibit A – Scope of Work

- iii. Make known to any person, firm, or corporation the names or addresses of any of the existing or potential tennis students of City or any other information pertaining to them; or
 - iv. Call on, solicit, take away, or attempt to call on, solicit, take away or provide tennis instruction or lessons to (regardless of whether Contractor or the student solicited such instruction) any of the existing or potential tennis students of City to whom Contractor provided tennis instruction or lessons, or with whom the Contractor dealt or became acquainted, during the term of this Agreement, either for the benefit of the Contractor or for any other person, firm, or corporation.
- C. Contractor agrees that for purposes of this paragraph, any business or entity that engages in the business of providing tennis instruction, lessons or coaching is a competitor of City.
- i. Contractor agrees that should Contractor violate the terms of this Agreement, City will suffer immediate and irreparable harm, and that City shall be entitled to temporary and permanent injunctive relief to enjoin Contractor from continued violation of this Agreement.
 - ii. This Agreement shall be binding upon Contractor regardless of by whom this Agreement is terminated; the cause, or lack of cause, for such termination; or whether Contractor has any claims against City.
 - iii. Contractor acknowledges that the effectiveness of this Agreement for any period of time constitutes sufficient consideration for this Agreement, and that City is relying upon this acknowledgment and Agreement in continuing this Agreement for such time.

MONTHLY REPORT

Contractor shall meet with the City to review Contractor's monthly report which shall include the following information:

1. Routine and non-routine completed maintenance issues and tasks. The monthly report shall cover the conditions of courts, functioning status of the irrigation system and other issues affecting play conditions or the services provided at the Tennis Center.
2. Summary of court reservations, league play, tournaments, clinics and memberships totals.

Exhibit A – Scope of Work

3. The Monthly Report shall be delivered to the City's Recreation and Parks Director or Designee.

TENNIS MANAGEMENT SERVICES

1. Tennis Lessons/Programming:

- A. Contractor shall serve as a consultant on the programming of all municipal tennis courts; and shall have exclusive privilege of providing tennis instruction at the Fort King Tennis Center and other municipal courts, either personally or by such assistants as he may designate.
- B. Contractor shall provide private and group tennis instruction for adults and children.
- C. Contractor shall not utilize more than one-third (1/3) of available courts at any facility (Fort King or public park courts) at any given time. The only exception to this would be during the summer to accommodate Tennis & Swim Summer Camp at Jervey Gantt Park. Other than as specified in paragraph 4 below, Contractor shall ensure that courts at Fort King Tennis Center are available first for individual and league play and shall only utilize additional courts for private lessons when they are not otherwise reserved by players.
- D. Contractor shall have first right to use two (2) clay tennis courts at the Fort King Tennis Center for the purpose of giving tennis lessons by himself or any assistant professional. When these courts are not scheduled for lessons, they shall be available for player use.
- E. Contractor shall provide after-school and evening programs including junior lessons, pee wee and match play programs both at the Fort King Tennis Center and in cooperation with the Recreation and Parks Department at public courts to provide tennis programming throughout the park system.
- F. Contractor shall provide adult and junior tournaments. At a minimum, Contractor shall hold two (2) junior tournaments (USTA sanctioned or not) and two (2) adult tournaments annually. As a guideline, Contractor must follow all USTA recommendations and/or policies in regard to on site tournament officials; and must appoint an Assistant Tournament Director who will be on site throughout the duration of the tournaments.
- G. Contractor shall cooperate with the Gainesville-Ocala Womens' Tennis League

Exhibit A – Scope of Work

- coordinator to provide the annual league for adult women.
- H. Contractor shall cooperate with the USTA league coordinator to provide USTA leagues for all levels of play at the Fort King Tennis Center.
 - I. Contractor shall continue to add to the "menu" of programs offered to keep up with current trends (i.e. cardio tennis, quick start tennis, etc.)
2. Clubhouse/Facility Operations/Revenue Management:
- A. Contractor shall devote his full time, attention and best efforts to the City of Ocala Tennis program including the Fort King Tennis Center. Contractor shall personally supervise the Tennis Center operations through a routine and consistence presence during operating hours. Contractor shall be held personally accountable for the actions of his subordinate personnel and sub- contractors and the professional conduct of same.
 - B. Contractor shall ensure that the Fort King Tennis Center is staffed and open for operations in accordance with designated operating hours. The schedule of operating hours shall conform to the requirement of the City and must have approval of the Recreation and Parks Director or designee. Holiday closings are subject to the approval of the Recreation and Parks Director.
 - C. Contractor shall coordinate with the City to establish operating policies including procedures for taking court reservations.
 - D. Contractor shall maintain court reservation sheets for the duration of this agreement and shall make same available to City upon request.
 - E. Contractor shall ensure that the clubhouse, gazebo, maintenance sheds, restrooms and gates are properly secured and locked upon closing of the Tennis Center at the end of each day and/or at any time that the center is not staffed.
 - F. Contractor shall order all operating equipment and supplies utilized or sold by Contractor at the Fort King Tennis Center in the name of and for the account of Contractor and shall pay all charges for such equipment and supplies. Contractor is not authorized to make purchases in the name of the City of Ocala or the Fort King Tennis Center and shall not at any time misrepresent himself as an agent for City.

Exhibit A – Scope of Work

3. Maintenance:

- A. Contractor shall employ maintenance personnel and provide all supplies and tools necessary to provide high quality maintenance of the tennis courts, clubhouse, gazebo, maintenance buildings and restrooms at the Fort King Tennis Center. Contractor shall make decisions throughout the day regarding appropriate maintenance protocol and direct Contractor's staff as appropriate.
- B. Custodial: Contractor shall coordinate all custodial services including provision of supplies for same required to maintain the Fort King Tennis Center as a high-quality tennis facility. Appropriate custodial protocol is of a type and frequency that it will ensure that facilities are clean and sanitary throughout the day (not just at opening).
- C. Court Irrigation: Contractor shall be responsible for irrigating the courts in the manner required to maintain a quality and safe playing surface.
 - i. Courts should minimally be irrigated mid-day and in the evening at closing.
 - ii. Contractor shall weekly check spray patterns for all irrigation heads and make adjustments as necessary to ensure complete coverage of the courts as needed to avoid dry spots.
 - iii. Routine irrigation repairs such as adjustment of head heights, nozzles, spray patterns, timing, minor breaks, etc. shall be the responsibility of Contractor.
 - iv. Contractor shall notify City staff immediately of any irrigation issues that require more than routine attention.
 - v. Contractor shall not make any non-routine adjustments to the irrigation system without approval by the City of Ocala.
- D. Clay Courts: Contractor shall provide routine maintenance of courts including, but not limited to annual top dressing and other services outlined below.
 - i. Clay courts (weather permitting) shall be maintained three times each day, including sweeping courts and cleaning lines.
 - ii. The direction of sweeping must be changed daily to allow for even distribution of court material and must include corners of fences to prevent buildup of material and algae.
 - iii. Routine court maintenance includes inspection for and removal of weeds, grass and algae.
 - iv. Rake and scarify courts as needed to prevent compaction and "hard pan".
 - v. Contractor shall provide and install, annually, the proper amount of court

Exhibit A – Scope of Work

material necessary to provide a safe, quality playable surface for twelve clay courts which is approximately 34,000 pounds of Har Tru Green Clay. At its sole discretion, the City shall provide additional court material, (Har Tru Green Clay), annually, on the condition the Contractor has met the court material quantity requirement as specified in this Agreement.

- vi. Patch courts as needed.
 - vii. Ensure that the proper amount of court material is kept around line tapes to ensure a safe playing surface. Line tapes must be level with the playing surface.
 - viii. Provide replacement nets, windscreens, line tapes and any other routine appurtenances that are customary to the operation and maintenance of a quality tennis facility as needed. Torn nets and windscreens must be replaced. Nets must be kept at the proper height required by USTA. Windscreens must be kept tight and straight with zip ties trimmed and replaced as needed.
 - ix. Fences must be inspected and maintained to ensure they are properly secured at the bottom and top. Replace ties as needed to ensure fence is secure and no gaps are created.
- E. Hard Courts: Contractor shall provide routine maintenance of courts including, but not limited to services outlined below.
- i. Remove debris (leaves, sand, dirt, clay court material, etc.) from courts with a blower as needed, but no less than weekly.
 - ii. Never allow benches, tables, etc. to be dragged along the courts as this will damage the surface.
 - iii. Provide replacement nets, windscreens, line tapes and any other routine appurtenances that are customary to the operation and maintenance of a quality tennis facility as needed. Torn nets and windscreens must be replaced. Nets must be kept at the proper height required by USTA. Windscreens must be kept tight and straight with zip ties trimmed and replaced as needed.
 - iv. Fences must be inspected and maintained to ensure they are properly secured at the bottom and top. Replace ties as needed to ensure fence is secure and no gaps are created.

Exhibit A – Scope of Work

- F. During the course of the day, any trash or debris both within the tennis facility and the parking lot must be picked up by Contractor. All trash shall be disposed of by Contractor in the dumpster at the site. Any trash left on the ground when mowing contractor comes is Contractor's responsibility to have picked it up.
- G. Contractor shall be responsible for ensuring that patrons and employees respect the facilities at all times. Failure of Contractor to control the actions of patrons and employees; and which results in damage to the facility shall be the Contractor's sole responsibility.

EVALUATION OF OPERATIONS

- 1. The City Recreation and Parks Director or Designee shall, on a frequent basis or as necessary, inspect the facility for purposes of ensuring Contractor's compliance with the scope of services. In conducting such inspection and evaluation, the City representative shall promptly thereafter provide Contractor a copy of a written statement regarding any compliance or performance issues. The City shall act reasonably and in good faith in making the determination of whether the Contractor has met the standards identified in the scope of services for the applicable areas being evaluated.
- 2. The City Recreation and Parks Director or Designee's notice of compliance or performance issues shall upon Contractor's receipt, constitute a Notice of Deficiency with respect to the deficient item(s).
- 3. Within one (1) week after receipt of the Notice of Deficiency, the City and the Contractor shall meet to review the deficiency item(s), including the corrective actions the Contractor intends to take to correct the deficiency item(s), and the time schedule for completion of corrective action. The proposed corrective action and the time schedule shall be approved by the Recreation and Parks Director or Designee. When a deficient item has been satisfactorily corrected, the Contractor shall notify the Recreation and Parks Director or Designee.

PERSONNEL

- 1. The Contractor shall employ qualified personnel skilled in the teaching of tennis and/or otherwise to work in the clubhouse or to provide maintenance services. All tennis teaching assistants must have appropriate certifications in accordance with the level of teaching instruction they are providing, and their levels of expertise shall not be misrepresented.

Exhibit A – Scope of Work

2. All employees and sub-contractors must pass a criminal and sexual predator background screening, and drug testing similar to that required of City employees. All employees shall be indoctrinated and trained in the schedules, philosophies, customer service and public relations concerns of the City. Contractor's personnel shall conduct all work operations while dealing with the public in a courteous manner.
3. Contractor's employees with maintenance responsibilities shall be trained in the proper method of cleaning, handling and operation of maintenance equipment and supplies.
4. Contractor's employees and sub-contractors providing services under this Agreement shall wear clothing appropriate for a professional, high quality tennis facility. Not-shirts, flip flops or ill-fitting clothes are permitted. Tennis attire is preferred for teaching/coaching professionals and collared shirts for clubhouse personnel. The logo, seal, or name of the City shall not be used without permission of the City.
5. The Contractor shall maintain a sufficient number of personnel at all times to accomplish, on schedule, all work under this contract. The Contractor shall submit a listing of personnel and sub-contractor names, their qualifications, and the types of positions each employee fill with updates of changes reported no later than a weekly basis. During all working hours, and during execution of the work, the Contractor shall give the job personal supervision or shall have on the job a responsible and competent representative with authority to speak and act for the Contractor in his absence.
6. Contractor's Labor and Wage Rates. There shall be paid to each craft or type of worker employed by Contractor or subcontractor engaged in the work under this Agreement, not less than the legal wage rate, including legal holiday and overtime rates, as required by law. Contractor will comply with all applicable labor and employment provisions and shall indemnify and hold the City harmless from any and all claims, demands, losses or damages made as a result, whether direct or indirect, of Contractor's employment of personnel pursuant to this Agreement, whether as an employee, or as an independent contractor. Contractor shall pay the salary and commissions to employees in a timely manner and shall make all appropriate payroll deductions, if any, imposed by law.
7. The Recreation and Parks Director or Designee reserves the right to direct the Contractor to relocate away from any City directed operation, or from interfacing with its employees at work, any employee who materially or repeatedly violates any term of this Agreement or who is wanton, negligent, or discourteous in the performance of his duties. The Recreation and Parks Director shall coordinate with Contractor before

Exhibit A – Scope of Work

exercising this right but reserves the right to demand employee leave immediately under extreme situations if Contractor is not available.

EQUIPMENT/UTILITIES

1. City shall provide, at its sole expense, the clay court maintenance equipment. Currently labeled 14-013. Contractor shall provide all other necessary equipment to perform all work required by this Agreement.
2. In the event of termination of this Agreement by the City with or without cause, the City will not be responsible for any equipment purchased by the Contractor for use at the facility.
3. Contractor will follow all manufacturer's guidelines in the utilization and routine maintenance of equipment and shall notify City immediately if corrective maintenance is needed on 14-013.
4. Contractor will be responsible for providing phone lines, computer lines, office furniture, computers, and fax lines; etc. To the extent possible the Contractor shall continue to utilize the existing phone number for the tennis facility.
5. Contractor will be responsible for all costs for utilities to the Fort King Tennis Center.

EQUIPMENT EMERGENCY MAINTENANCE

1. In the event that the City at any time determines that any portion of the facility is in immediate jeopardy of sustaining some type of serious harm due to a maintenance failure on the part of the Contractor, and the Contractor is unable to immediately respond, the City may utilize their own work force or contracted services to go perform such tasks as are necessary to prevent such serious harm from taking place. The cost of such preventative maintenance incurred by the City shall be itemized by the City and submitted to the Contractor for payment by Contractor within thirty (30) days of receipt of said itemized invoice.
2. Contractor shall provide the City with names and telephone numbers of the Contractor and at least one (1) other qualified employee who can be called by the City or its representatives when emergency maintenance conditions occur during hours when Contractor's normal work force is not present and/or present employees are not knowledgeable enough to make decisions regarding the services required. Such designated Contractor employees will have full power and authority to take

Exhibit A – Scope of Work

all actions on behalf of Contractor required to address the emergency, including the expenditure of all required funds.

FACILITY TEMPORARILY OUT OF PLAY

1. Whenever play must be temporarily suspended at the facility due to inclement weather conditions, the decision of when to allow play to resume will be made exclusively by the Contractor.
2. The Contractor shall notify the Recreation and Parks Director or Designee whenever the facility will be out of play for one day or more for required maintenance. Said maintenance should be scheduled, approved and patrons advised well in advance to avoid inconveniences to the public.