

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

**TENNIS DIRECTOR AGREEMENT
CITY OF GREENSBORO
TENNIS FACILITIES**

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2014, by and between MIKE BELANGIA, d/b/a Triad Tennis Management, hereinafter referred to as "TTM", and the CITY OF GREENSBORO, hereinafter referred to as the "CITY".

WITNESSETH:

THAT, WHEREAS, the City of Greensboro desires to contract with a private firm for the operation of designated tennis complexes and programs; and

WHEREAS, the City of Greensboro desires to host multiple recreational and competitive tournaments and programs for all age groups; and

WHEREAS, the City of Greensboro desires to promote the sport of tennis through the provision of a comprehensive and inclusive set of programs and facilities;

WHEREAS, TTM has demonstrated prior experience and performance in providing such services and has submitted a response to provide such services in accordance with the following exhibit and attachments, which are attached hereto and incorporated herein:

Attachment A: Triad Tennis Management's Submitted Fee Schedule

Attachment B: Listing of Primary Tennis Facilities

WHEREAS, and the CITY wishes to retain TTM to perform such services again;

NOW, THEREFORE, in consideration of the mutual covenants contained herein by and between the parties, it is hereby mutually agreed as follows:

1. Term. The initial term of this Agreement ("Initial Term") shall commence on January 1, 2014 and shall be for a period of ten (10) years. Thereafter, the Agreement shall automatically be renewed for additional successive three (3) year terms (each a "Renewal Term") until one party provides to the other party written notice of their intent not to renew the Agreement at least one year prior to the end of the Initial Term or the Renewal Term (as the case may be). The Initial Term and any Renewal Terms are collectively referred to herein as the "Term."
2. TTM shall organize, direct and publicize the City's tennis instructional program at the City's primary tennis facilities (Attachment B), and other locations provided said locations are mutually agreed upon by TTM and the City.
3. TTM shall have the right, at its sole expense, to hire and pay additional staff as needed and to resolve all disputes or problems that may arise from the performance of TTM employees and subcontractors as long as such resolution is in accordance with the rules and regulations of the City of Greensboro Parks and Recreation Department and the City of Greensboro. Additionally,

TTM shall handle all problems associated with the tennis program in accordance with the rules and regulations of the City of Greensboro Parks and Recreation Department.

4. TTM shall offer tennis services including private lessons, clinics, camps, tennis tournaments and new tennis programs at the City's primary tennis facilities during mutually agreed upon operating hours.
5. On weekdays, TTM will have the privilege of conducting private tennis clinics/instruction at the tennis facilities listed on Attachment B (all of the foregoing being hereinafter referred to as the "Tennis Sites"). The City will not share in the proceeds received from above described clinics/instruction provided by instructors associated with TTM. Lessons are to be conducted within scheduled hours of operation of the Tennis Sites. When not in use for TTM scheduled activities, the public school sites shall be available for free play by the public.

SERVICES RENDERED

In consideration of the monetary payment hereinafter described, Triad Tennis Management will provide Tennis Complex Management and Program Services for Greensboro Parks and Recreation Department.

This Agreement is intended by the parties hereto to be the final expression of their Agreement and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made. The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

SCOPE OF WORK

- TTM shall operate the primary tennis facilities under the jurisdiction of the Greensboro Parks & Recreation Department (Attachment B) which shall include the operation and maintenance of the tennis courts, pro shops and other tennis related operations as approved by the City.
- TTM's rights do not extend to any space or facilities not listed in Appendix B. TTM, at its own expense, may rent additional space for program or event use separate and apart from this agreement.
- The management company may also provide programming at secondary tennis facilities with prior approval of the Greensboro Parks & Recreation Department.
- The management company will ensure facilities are professional in appearance, are equipped with modern amenities, have well-maintained playing surfaces, are user friendly and remain clean, safe and inviting at all times.
- Services shall include those customarily associated with the operation of a public tennis sites including but not limited to:

Instructional Programming (Instruction, Clinics, Camps)

- Provide, promote and instruct lessons in the game of tennis by certified and licensed tennis professionals through individual and group lessons, clinics and camps. Instructional options should provide tennis patrons with a choice of instructor levels and associated fees which commensurate with the instructor's qualifications.

- TTM shall promote the sport of tennis through outreach efforts to attract, grow and retain new participants. Target markets should include but not be limited to age 10 and under participants as well as individuals with special needs.
- TTM shall provide Greensboro Parks and Recreation Programs with free instructional lessons to after school and camp participants at no cost to the City on an annual basis.
- TTM shall offer demonstrations and instruction on all aspects of the game of tennis in promotion of the Parks and Recreation Department's tennis facilities during special events hosted by the City.
- The schedules of lessons to be offered are to be planned jointly by the City and TTM. Lessons, clinics and camps are to be offered throughout the year within the regular hours of operation of the Tennis Sites. TTM shall retain all lesson fees as part of its compensation as Tennis Director and shall be responsible for paying all staff hired by it to discharge the duties of this contract.
- All fees shall be set by TTM separate and apart from this agreement, and are subject to review and approval by the City.

USTA League Management

- TTM shall promote and organize USTA Adult League and USTA Junior team programs for all ages and skill levels throughout the year.

Tournament Hosting

- TTM shall solicit, organize and direct multiple USTA sanctioned and non-sanctioned local, state and national tournaments annually. TTM shall work with community partners as necessary to acquire such events.
- The City of Greensboro is known as "Tournament Town" and the Parks and Recreation Department seeks to continue that tradition through hosting tournaments which attract national and international visitors to the City.

Pro Shop

- TTM shall operate tennis pro shops at staffed tennis sites to include racket stringing services, equipment and accessory sales.
- TTM shall retain all profits from such sales as part of its compensation as Tennis Director.
- TTM shall not be permitted to vend food and beverage products, or receive profits extending from vending and game machines which shall be under the exclusive control of the City.

MANAGEMENT COMPANY STANDARDS:

Operational Plan

- TTM shall, upon written request by the City, provide a functional operating plan which describes the operating policies and procedures to be employed by the management company. The operating plan shall at a minimum include staffing levels, maintenance plan, maintenance procedures, operating procedures, program offerings and risk management plan. TTM shall update their operational plan on an annual basis and provide to the City an updated copy upon request.
- Operational hours, schedules and court rentals shall be agreed upon jointly by TTM and the City separate and apart from this agreement on an annual basis.
- TTM shall operate all staffed tennis facilities (Latham Park, Memorial, Simkins Indoor Sports Pavilion and Spencer Love Tennis Centers) as determined by established professional tennis management best practices and the City, to include having contracted staff on site during all operational hours to handle day to day operations and customer concerns.

- TTM shall maintain the public school tennis facilities included as part of the primary tennis facilities (Appendix B). Maintenance shall include regular cleaning and removal of debris and trash from the courts, spot cleaning of spills, and minor repairs such as net replacement. TTM shall also provide routine court inspection to ensure nets, net posts, windscreens, fencing and lights are in good repair prior to use for TTM programming, and provide a recommendation to the CITY of repairs which are needed.
- TTM shall provide all maintenance services required herein in a workmanlike and professional manner; shall conform to professional and industry standards; shall keep all areas in a clean, orderly and safe condition; and satisfactory to the City at all times. TTM agrees to be bound by all applicable Federal, State and Municipal laws, ordinances and regulations to the same extent as if said requirements were expressly written herein.

Personnel

- TTM must provide to the City upon written request a proposed staffing plan, including sub-contractors for maintenance, if any, detailing the number of employees, man-hours, shift schedules, and job tasks for each staff member during all hours of operation. This plan must include coverage of the entire service area for all services required pursuant to this proposal. TTM must provide an adequate number of employees and man-hours, as agreed upon with the City, in order to complete the services provided for herein to the City.
- TTM's and sub-contractor's employees shall be clean, courteous, qualified, efficient and neat at all times. TTM or sub-contractor shall not employ any person or persons whose behavior would reflect poorly on TTM and City of Greensboro. TTM agrees to promptly remove from service any employee or sub contractor's employee whose conduct the City determines to be detrimental to the best interests of the City.
- All employees shall wear clean uniforms at all times. Uniforms shall consist of shirts, pants, appropriate footwear, and cold/wet weather gear (when necessary). Uniforms shall identify TTM employees and sub-contractors by name/logo and make it easy for patrons to identify employees and sub contractors.
- TTM is responsible for obtaining a national background check for all employees and sub-contractor's employees on an annual basis. TTM must use the minimum disqualification criteria as determined by the City. TTM must, upon written request by the City, provide written verification stating background checks are conducted annually to the City of Greensboro Parks and Recreation Department Athletic Superintendent. The City may review background check documentation upon request.
- The contractor represents and covenants the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). In this E-Verify Compliance section, "contractor," "its subcontractors," and "comply" shall have the meanings intended by NCGS 160A-20.1(b). The City is relying on this section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

Maintenance Equipment/Supplies

- TTM shall be responsible for performing routine janitorial type maintenance of the buildings, facilities, courts, machinery and grounds as determined by the City which includes but is not limited to Windscreens, Nets, Restrooms, Litter Control, Courts and Pro Shop/Office Cleanliness.
- TTM shall be responsible for pre-season, daily, weekly and annual court maintenance as recommended by the manufacturer's maintenance manual for each type of court surface.

- The City will conduct routine maintenance inspections by City personnel or City approved outside independent certified tennis court builder/manufacture to ensure courts are being maintained at levels consistent with industry standards. TTM will be responsible for taking corrective actions to correct identified deficiencies within a reasonable amount of time based on industry standards for such repairs, or immediately corrective action shall be taken by TTM when it addresses safety related concerns.
- TTM will require designated staff to attend industry standard training on court maintenance at a minimum of every three (3) years as mandated by the City and as required to maintain professional certifications. TTM shall bear all costs associated with training for TTM staff and contracted employees and shall provide evidence of training completion to the City upon request.
- TTM shall bear all labor costs of operating and furnishing tennis court maintenance services at its own expense and shall pay all costs connected with the fulfillment of this contract.
- The City shall provide for major maintenance for the Tennis Sites as budgeted each fiscal year including all court material and supplies, court maintenance equipment, nets, utilities, mowing and trash collection from the Tennis Sites.
- TTM accepts court conditions present at the execution of this contract and understands that court conditions may change over the course of the agreement necessitating changes to availability and program schedules. The City shall not be obligated to make any major court repairs and may close courts at its sole discretion if conditions require. Court repairs and resurfacing shall occur only to the extent allowable through the City budget each fiscal year.
- TTM will be required to supply and furnish at its sole cost and expense any and all supplies necessary to properly maintain the tennis center building(s), restrooms and related facilities at all primary tennis facilities, excluding Simkins Indoor Sports Pavilion, and the surrounding areas to include toilet paper, paper towels, soap, trash bags and disinfectant/sanitizing chemicals.
- TTM shall provide the designated City staff, a list of all cleaning solvents, solutions, agents, chemicals, detergents, and any other fluids or materials used in the provision of the maintenance services, and their corresponding OSHA Material Safety Data Sheets, where applicable.
- TTM shall implement an environmentally sensitive and sustainable maintenance program to include recycling, water conservation and use of EcoLogo or Green Seal products for all Daily Use Chemicals.

Communication Plan

- TTM shall, upon written request by the City, submit to the City a communication plan addressing the method of communicating routine, scheduled, and emergency maintenance and repair activities which may impact the operation of the tennis facilities. All communications shall be directed to the Athletics Superintendent or his/her designee.
- TTM shall, upon written request by the City, submit to the City a plan for communicating all accidents/incidents which occur at tennis facilities to the Athletics Superintendent or his/her designee.
- TTM shall, upon written request by the City, submit to the City a plan for marketing the tennis facilities and programs to residents and visitors to maximize participation in Tennis programs.
- TTM shall, upon written request by the City, submit to the City a plan for communicating court locations, availability, courtesy protocols, proper/improper use of the courts and contact information for patrons when court issues arise. The City of Greensboro reserves the right to limit or prohibit any type of signage, messaging, promotional material, displays or any other messaging at tennis facilities under its jurisdiction.

Safety Regulations

- TTM and its sub-contractors, if any, shall adhere to the Occupational Safety and Health Administration (OSHA's) most recently published Safety and Health Regulations and general Occupational Safety and Health Standards, where applicable.
- It shall be the responsibility of TTM to comply with all codes, rules, regulations, laws, and ordinances applicable to the management and operation of a public tennis facility/program. TTM shall submit to the City a risk management plan to address facility and program safety and responses to emergency situations.

QUALITY CONTROL/QUALITY ASSURANCE (QC/QA)

The goal of the City is to improve the actual and perceived maintenance and playability of the tennis courts through a continuous quality improvement program driven by TTM'S QC/QA management plan.

- QC/QA Management Plan
 - TTM shall submit a detailed plan outlining the quality management procedures and responsibilities for the workmanlike and professional performance of the key maintenance and repair processes associated with this contract. TTM shall describe how it will measure quality and performance thresholds for work performed under this contract. The mutually agreed QC/QA management plan will be subject to annual review and input by the City.
- Quality Control Plan
 - TTM shall list all sub-contractors and suppliers and describe the system that it will use to manage, control, and document its own, sub-contractors' and suppliers' activities to comply with all contract requirements.
- Quality Assurance Plan
 - TTM shall identify what specific activities shall be monitored; describe the performance standards and measures associated with these activities that will be used to determine if the work performed by personnel or by the sub-contractor's personnel meets the requirements and intent of the contract; and provide a format for reporting the results of the QC plan as part of a monthly activity report.

REPORTING REQUIREMENTS

Monthly Activity Report

- TTM shall provide a monthly activity report which shall be submitted to the City by the 10th day of each month.
- The monthly report may include, but is not necessarily limited to, the following information: a comprehensive break-down of court usage, clinics, camps, tournaments, league participation and other performance measures as determined by the City; work plan that adequately addresses Continuous Quality Improvement goals as indicated in the management company's QC/QA management plan; and a complaint, suggestion, concern and compliment log indicating the date/time, participant feedback, participant contact information if provided and action taken by the management company to resolve the situation.
- The City reserves the right to add, delete or modify the data collected in order to adequately monitor performance of the management company.

Tournament Reports

- TTM shall, upon written request by the City, provide an annual list of all tournaments scheduled as mutually agreed upon by the City and TTM.
- TTM in cooperation with the City and the Greensboro Visitors and Convention Bureau, shall collect economic impact data for all tournaments hosted in Greensboro and shall submit that data to the Athletics Superintendent or his/her designee no later than 14 days after the conclusion of each tournament.

Accident/Incident Reports

- TTM shall submit a completed accident/incident report within 24 hours for any accident/incident that occurs at a tennis facility.
- TTM'S director shall report any major situations requiring POLICE, FIRE or EMS to the Athletics Superintendent or his/her designee as soon as the situation is safe and he/she is able to do so without compromising care for a victim.

Annual Report

- TTM shall provide to the City's designee an annual report with the following:
 - Proposed hours of operation for all facilities for the upcoming fiscal year.
 - Proposed fees for all programs including league play, camps, clinics, private instruction, merchandise sales.
 - Goals for the upcoming fiscal year.
 - Maintenance summary log for the previous year.
 - Planned maintenance for the upcoming year.
 - All proposed hours, fees and maintenance activities must be approved by the City.

COMPENSATION

In consideration of the City's appointment of TTM as the Tennis Director for the designated Tennis Sites, TTM shall pay a fixed annual fee to the City during the Term in the amount of Sixty Five Thousand Dollars (\$65,000) annually through equal monthly payments. During the term of this agreement should additional courts be constructed at Spencer Love tennis complex which results in the number of tennis courts at the complex exceeding 18, TTM understands that its fixed annual fee will increase and TTM agrees to work collaboratively with the City to assign a new fixed annual fee at that time, provided, however, that in no event shall the annual fee be increased by more than \$500 per court for the number of courts in excess of 18 courts located at Spencer Love.

TTM shall have the opportunity to contribute to a maintenance/capital improvement fund maintained by the City in exchange for the reduction of TTM's annual fee at the rate of one (\$1) dollar of reduction of the fixed annual fee for every two (\$2) dollars contributed by TTM toward the maintenance/capital improvement fund. The maximum annual reduction of TTM's annual fee will be twenty thousand (\$20,000) dollars. The amount to be deducted for each calendar year will be based on the total contributions by TTM during the preceding calendar year. The City will determine how best to utilize such maintenance/capital improvement funds in connection with the maintenance of and/or capital improvements to the Tennis Sites, with input from TTM.

CAPITAL IMPROVEMENTS

TTM shall pay to the City One Hundred Seventy Five Thousand Dollars (\$175,000) to be used for a court expansion project at Spencer Love Tennis Center within thirty (30) days after the initiation of this Agreement.

The implementation of all additional capital improvements made to the Tennis Sites shall be in the sole discretion of the City. Should the City choose to make improvements to these Sites, and should TTM wish to contribute to the cost of such improvements, such arrangements shall be made under a separate agreement.

ADVERTISING

The City and TTM will work jointly to advertise and permit advertising of tennis programs and services available at the Tennis Sites. TTM agrees to use City advertising outlets and publications as part of all marketing efforts. Should TTM utilize a third party for advertising, the City shall pre-approve all advertising copy. TTM shall pay the cost of all advertising charged by third parties.

TTM will be allowed to advertise and display tennis products for sale in all pro shops located on Tennis Sites as well as tennis stringing and repair services. TTM will have the right to sell sponsorships subject to review/rejection by the City. TTM shall be permitted to keep revenue from sale of sponsorships for any tournament. The City also retains the right to sell sponsorships at tennis facilities. TTM sponsors shall not conflict with any of the sponsorships obtained by the City.

AUDIT

The City reserves the right, at its sole discretion and upon reasonable written notice to TTM, to audit all financial records of TTM created with regard to the discharge of this agreement. Such audit shall be conducted by the Internal Audit Department of the City of Greensboro. TTM will cooperate with the auditors and provide reasonable access to any and all documents required to complete the audit. TTM agrees to incorporate and abide by all recommendations of the auditors after each review.

SUBCONTRACTING REQUIREMENTS

a) Assignment to Subcontractors

TTM shall assign no subcontracting work without written pre-approval of the City. In the event that subcontracting is pre-approved by the city, TTM shall ensure that steps are taken in accordance with the City's Equal Opportunity Program(s) and federal subcontracting policy to assure equal opportunity to subcontractors.

b) Equal Opportunity

It is City policy to provide equal opportunity in the award of contracts to small, minority, and women's business firms. Accordingly, affirmative steps must be taken to assure that small, minority, and women's businesses are utilized when possible as sources of supplies, equipment, construction and services.

c) Affirmative MWBE Steps

- i. Include qualified small, minority and women's businesses on solicitation lists.
- ii. Assure that small, minority and women's businesses are solicited whenever they are potential sources.
- iii. When economically feasible and where the requirement permits, divide total requirements into smaller tasks or quantities so as to permit maximum small, minority and women's business participation.
- iv. Where the requirement permits, establishing delivery schedules which will encourage participation by small, minority and women's business.
- v. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

CHANGES TO AGREEMENT

a) Amendment

This agreement may be modified only in writing, and signed by the parties in interest at the time of such modification.

b) Severance

Should any part of this Contract be declared unenforceable, all remaining sections remain in force to the maximum extent practicable.

c) Default

A. Events of Default. The following events shall be deemed to be Events of Default by TTM under this agreement:

(1) If TTM shall fail to pay any scheduled annual fee payment required herein within ten (10) days of the date when due, and shall not cure such failure within ten (10) days after receipt from the City of written notice of such failure;

(2) If TTM shall fail to comply with any material term, provision or covenant of this agreement, other than the payment of rent, and shall not cure such failure within thirty (30) days after receipt by TTM of written notice of such failure; provided that where fulfillment of such obligation requires activity over a period of time in excess of thirty (30) days and TTM shall have promptly, following receipt of such notice, commenced to perform whatever may be required to cure the particular default and continues such performance diligently, said time limit shall be extended for so long as may be required to cure the default.

(3) If TTM shall become insolvent, or shall make a transfer in fraud of its creditors, or shall make an assignment for the benefit of its creditors; and

(4) Transfer of the majority controlling interest of TTM to persons other than those who are in control at the time of the execution of this agreement without approval by the City, which shall not be withheld unreasonably.

B. City's Remedies. Upon the happening of any Event of Default, and expiration of any applicable period for curing the same, City may, by written notice given to TTM, at any time after such Event of

Default, terminate the agreement effective as of the date of such Event of Default, or may institute an action against TTM to recover any actual loss sustained by City as a result of such Event of Default.

C. Surrender of Premises. Upon any termination of the agreement term, whether by lapse of time or otherwise, TTM shall promptly surrender possession and vacate the Premises.

D. Damages. If City shall elect to terminate the agreement because an Event of default has occurred, City shall be entitled to recover all sums due from TTM up to the date of such termination and such damages as may accrue by reason of TTM's default hereunder.

E. Not Exclusive. No remedy herein or otherwise conferred upon or reserved to City or TTM shall be considered exclusive of any other remedy, but the same shall be in addition to every other remedy given hereunder, or now, or hereafter existing at law or in equity or by statute. No delay or omission of TTM or City to exercise any right or power conferred or created under the terms of this Agreement, or shall be construed to be a waiver of any such right or power or acquiescence thereto.

F. Attorneys' Fees. If City incurs any expenses, including court costs and reasonable attorney's fees, as a result of an Event of Default by TTM under this agreement, then such expenses shall be reimbursed by TTM if the City prevails, whether or not such default is subsequently cured.

G. Waiver. A waiver by City of any default by TTM of any covenant, condition, agreement or Event of Default under this Agreement shall not be construed to be a waiver of any subsequent default, and no delay or omission by City to exercise any right or power, shall be construed to be a waiver of any such default or acquiescence thereto.

d. Waiver

A. General. Any waiver by the City of any breach of any one (1) or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of the City to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or stopping the City from enforcing the full provisions.

B. No Waiver of Remedies. No delay, failure, or omission of the City to re-enter the Premises or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.

C. No Additional Notice. No notice to the TTM shall be required to restore or revive "time of the essence" after the waiver by the City of any default.

D. Right Not Exhausted By Exercise. No option, right, power, remedy or privilege of the City shall be construed as being exhausted by the exercise in one (1) or more instances. The rights, powers, options, privileges and remedies given the City by this Agreement shall be cumulative.

f) Assignment and Subletting.

TTM may assign its overall rights, benefits, obligations and duties under this Agreement to a corporation or limited liability company which is either owned or managed primarily by Mike Belangia, without the consent

or approval of the City, but it may not otherwise assign or transfer its overall obligation or duties under this Agreement without the prior written consent of the City.

g) Condemnation.

In the event, during the Agreement Term, the entire Premises are acquired by the exercise of the power of eminent domain, this Agreement shall terminate at the time possession must be surrendered and the TTM shall be relieved of all future payments and obligations provided for herein.

In the event, during the Agreement Term, only a portion of the Premises is acquired by the exercise of the power of eminent domain, and the Premises as thus affected cannot reasonably be used by the TTM, then this Agreement shall be terminable by TTM by serving written notice upon the City, and when so terminated, TTM shall be relieved of all future rental payments and obligations provided for herein.

In either of said events, City and TTM, as their interests appear under the Agreement shall be entitled to the proceeds arising out of any such acquisition of the Premises or portion thereof under the power of eminent domain. Nothing contained herein shall in any way limit or diminish City's right to recover for loss or diminished value to its fee simple ownership of the Premises. Provided, further, that nothing herein shall be construed so as to prevent the TTM from making a claim for a separate award for any relocation expenses, for such losses as it may sustain in connection with the equipment which is the property of TTM until the expiration or termination of the Agreement and any losses or diminishment to its agreement-hold interest. Provided, further that the TTM shall be entitled to any amount specifically designated for such losses which it may sustain in either of said events whether such an amount shall be a separate award in itself or shall be only a part of a single award.

h. Environmental Representations Warranties and Indemnity

TTM shall not cause or permit any hazardous wastes, hazardous substances, toxic substances or related materials (collectively, "Hazardous Materials") to be used, generated, stored, or disposed of on, under or about, or transported to or from the Premises (collectively "Hazardous Materials Activities") except in compliance with all applicable federal, state and local laws, regulations, ordinances and orders governing such Hazardous Materials or Hazardous Materials Activities, which compliance shall be at TTM's sole expense. Additionally, TTM shall not cause or permit any Hazardous Materials to be disposed of on, under or about the Premises without the express prior written consent of the City, which may be withheld for any reason.

TTM shall be responsible for all reporting or notification obligations of an owner, operator or person in control of petroleum products or Hazardous Materials under any applicable federal, state or local law, regulation, ordinance or order.

City shall not be liable to TTM or to any other party for any Hazardous Materials Activities conducted or permitted on, under or about the Premises by TTM or by TTM's employees, agents, contractors, licensees, or invitees. TTM shall indemnify, defend with counsel reasonably acceptable to City and hold City harmless from any claims, damages, fines, penalties, losses, judgments, costs and liabilities arising out of or related to any Hazardous Materials Activities conducted or permitted on, or under or about the Premises by Lessee's employees, agents contractors, licensees, or invitees, regardless of whether City shall have consented to, approved of, participated in or had notice of such Hazardous Materials Activities. The provisions of this paragraph shall survive the expiration or termination of this agreement.

i) Non-Appropriation Clause

This contract is subject to the City Council appropriating sufficient funds each fiscal year, and this contract shall be terminated for non-appropriation on the date that City Council fails to appropriate such funds. Contractor will not be entitled to any damages or loss of profits for termination for such non-appropriation, but Contractor shall be entitled to receive from the City (a) payment for services rendered prior to the date City Council fails appropriate such funds and (b) any amounts due to Contractor under section j of this Agreement in the event the City terminates this Agreement following the Commencement Date of this Agreement but before the end of the Initial Term.

j) Termination

Should TTM fail to comply with the material terms of this contract, TTM, upon actual notice of the default, shall be given a remedial period for a specified number of days (but in no event less than 20 days) to remedy the default as detailed within this agreement. Should TTM fail to remedy the default, the City may elect to terminate the agreement upon the expiration of the remedial period. In addition, the City reserves the right to terminate this agreement immediately should the health, safety or welfare of the tennis program participants be placed in jeopardy or the conduct of Mike Belangia or TTM materially affect the public trust and reputation of the City.

If the City terminates this Agreement following the Commencement Date of January 1, 2014 but before the end of the Initial Term, the City shall pay TTM a convenience termination fee equal to the sum of \$175,000 reduced by 1/120th of such amount for each month which has elapsed following the Commencement Date and including the month in which the termination date occurs, provided that the \$175,000 investment detailed in the "Capital Improvements" section has been provided to the CITY. Upon any termination pursuant to this Section, the City shall also be paid all amounts due under this Agreement but not yet paid as of the date of termination.

STANDARD PROVISIONS

a) Relationship

The Parties in this contract agree that TTM is a business enterprise and that the relationship created by this contract is that of a client and independent contractor. TTM and any employees and/or subcontractor is not an employee of the City of Greensboro and is not entitled to the benefits by employer to its employees, including, but not limited to, group insurance and pension plan.

b) Supervision and Inspection

In the performance of the work contemplated in this agreement, TTM is an independent contractor with the authority to control and direct the performance of the details of the services that are the subject of this contract. However, the work contemplated in this agreement must meet the approval of the City (which shall not be unreasonably withheld) and shall be subject to the City's general rights of inspection and direction to secure the satisfactory completion thereof.

c) Payment of Taxes

TTM assumes full responsibility for the payment of all assessments, payroll taxes, or contributions, whether State or Federal, as to all employees engaged in the performance of work under this contract. In addition, TTM agrees to pay any and all gross receipts, compensation, transaction, sales, uses, or other taxes and assessments of whatever nature and kind levied or assessed as a consequence of the work performed or on the compensation paid under this contract.

d) Non-discrimination

TTM agrees that in the performance of these services that it will not discriminate in its hiring, employment, contracting practices or provision of services with reference to political affiliation, genetic information, sexual orientation, age, sex, race, color, religion, national origin, handicap or disability.

e) Interest of Triad Tennis Management

TTM covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. TTM further covenants that in the performance of this Agreement no person having any such interest shall be employed.

k) Conflict of Interest Policy

Consultant has reviewed the City's Conflict of Interest Policy, Section B-22 of the City's Personnel Policies, and agrees to comply with this policy. The City's Conflict of Interest Policy is attached to this Agreement as Exhibit 1.

l) Maintain and Provide Required Legal Documents

- i. TTM agrees to maintain as current all applicable insurance, licenses and certifications required by law and any additional requirements specified by the City. A City Privilege License is required of all businesses contracted by the City unless such businesses are approved by the Centralized Contracting Division for a waiver. Waivers shall be granted only to businesses performing work exclusively outside of the City limits. Work performed includes solicitation and service support.
- ii. Evidence of Insurance, license and certification requirements shall be provided to the City's Centralized Contracting Division upon contract award and subsequently made available to the City for inspection at any time upon request of the City.

m) Governing Law

This agreement is made under, and in all respects, shall be interpreted, construed, and governed by an in accordance with the laws of the State of North Carolina. Venue for any legal action resulting from this Agreement shall lie in Guilford County, North Carolina.

n) Compliance with Applicable Law

Any term or condition of the Contract which by operation or existence is in conflict with applicable local, state, or federal law shall be rendered void and inoperative. City and TTM agree to accept the remaining terms and conditions.

o) Indemnification

TTM does hereby agree to indemnify and save harmless the City of Greensboro, its officers, agents and employees against all claims, actions, lawsuits and demands, including reasonable attorney fees, made by anyone for any damages, loss or injury of any kind, including environmental, which may arise as a result of TTM's negligence in performing work pursuant to this agreement.

p) Confidentiality

The Recipient, City, will not disclose to any third party, or make any use of the Discloser's, TTM's Confidential Information except as required by the North Carolina Public Records Act. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. The obligations hereunder will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Recipient's receipt of that item. However, The City's obligations to maintain software as confidential will survive in perpetuity. "Discloser" means the party providing Confidential Information to the Recipient. "Recipient" means the party receiving Confidential Information from the Discloser. "Confidential Information" means non-public information of a party to this Agreement that is identified as or would be reasonably understood to be confidential and/or proprietary and is marked "confidential" and meets the requirements of North Carolina General Statutes 132-1.2. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; or (iv) is independently developed by the Recipient without access to Confidential Information.

Pursuant to the North Carolina Public Records Act, trade secrets or confidential information as defined by the North Carolina Public Records Act that are identified as such prior to disclosure to the Recipient is not public information and will not be released to the public by the Recipient except as set out below. Recipient will notify Discloser of any public records request, and if Discloser objects to Recipient disclosing any of the records responsive to the request, Discloser will notify the Recipient in writing within forty-eight (48) hours. If so notified, Recipient will not disclose the records until ordered to do so by a court of competent jurisdiction, and Discloser will enter an appearance as a party in-interest and defend Recipient in any claim, suit, mediation, litigation, or arbitration proceeding concerning the release of the records to which Discloser objected. Discloser will indemnify, save harmless, and pay any and all attorney's fees incurred by Recipient, and any attorney's fees Recipient is ordered to pay to any person(s) or organization(s) as a result of Discloser's objection to the release of the public records. Discloser will also indemnify, save harmless, and pay any and all claims for damages, court costs, or other fees Recipient incurs as a result of Discloser's objection to the release of the records requested pursuant to the North Carolina Public Records Act.

q) Insurance Requirements

i. Workers Compensation Requirements

TTM does hereby agree to maintain coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include employers liability with a limit of \$3,000,000 for each accident, and up to a \$3,000,000 limit for each employee, and with a \$3,000,000 aggregate.

ii. Commercial General Liability Requirements

TTM shall maintain minimum limits of \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability, with a \$2,000,000 aggregate limit. This shall include premises and/or operations, independent contractors, products and/or completed operations, broad form

property damage and explosion, collapse and underground damage coverage, sudden and accidental pollution losses, and a contractual liability endorsement.

iii. Business Auto Policy Requirements

TTM shall maintain minimum limits of \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include: owned vehicles, hired and non-owned vehicles and employee non-ownership.

iv. Special Requirements

The City of Greensboro is to be named as additional insured on the Commercial General Liability policy. Current, valid insurance policies meeting the above requirements shall be maintained for the duration of the project. Renewed policies under this contract shall be sent thirty (30) days prior to any expiration date to:

City of Greensboro Centralized Contracting Division
PO Box 3136
Greensboro, NC 27402-3136

Policies of Insurance on an Acord 25 (8/84) or similar for meeting the required insurance provisions shall be forwarded to the City of Greensboro Centralized Contracting Division. Wording on the Policy of Insurance which states that no liability shall be imposed upon the company for failure to provide such notice is not acceptable. Original policies or certified copies of policies may be required by the City at any time.

Contractor shall not assign any part of this contract to other contractors or subcontractors without pre-approval of the City; in which case, it shall be the responsibility of the Contractor to insure that all subcontractors comply with the same insurance requirements that Contractor is required to meet.

The Contractor will also secure its general liability insurance from an A rated insurance company acceptable to the City. The Contractor will provide a Certificate of Liability statement that states, City of Greensboro is added as an additional insured as evidenced by the endorsement attached to this certificate. The Contractor will also provide a copy of the additional insured endorsement to the City upon request for execution of this Agreement. In the event the Contractor fails to maintain and keep in force for the duration of this Contract the insurance required herein, the City may cancel and terminate this contract after written notice and opportunity to TTM to cure.

ATTACHMENT A

Greensboro City Tennis Fee Schedule

Casual Court Fee (outdoor)

- \$3 person/1 ½ hours City Resident
- \$4 person/1 ½ hours Non Resident

Casual Court Fee (indoor)

- \$6 person/1 ½ hours City Resident
- \$8 person/1 ½ hours Non Resident

USTA Court Fees

- \$5 person/match

City Leagues (outdoor)

- \$6.50 person/day

City Leagues (indoor)

- \$9.50 person/day

ATTACHMENT B

PRIMARY TENNIS FACILITIES

- Latham Park (Tennis Courts & building)
- Memorial Tennis Center (Tennis Courts & building)
- Simkins Indoor Sports Pavilion at Barber Park (Tennis Courts & 1 pro-shop office)
- Spencer Love Tennis Center (Tennis Courts & Tennis building)

- Dudley High School (Tennis Courts)
- Grimsley High School (Tennis Courts)
- Page High School (Tennis Courts)
- Smith High School (Tennis Courts)
- Hester Park (Tennis Courts & Tennis building)

EXHIBIT 1

CONFLICT OF INTEREST

Number: B-22
Revision: 0
Effective Date: 6-15-10

1.0 POLICY

It is the policy of the City of Greensboro to prohibit its officers, employees, or agents from participating in the selection, award, or administration of any contract where a conflict of interest is involved or may exist, whether real or apparent.

2.0 PURPOSE

It is essential for the City of Greensboro's officers, employees, and agents to remain free from all conflicts of interest, whether real or apparent, in order for the City to maintain the public trust of its citizens. Additionally, Section 4.131 of the City Charter and North Carolina State law prohibits City officers, employees, and agents from voting upon or otherwise participating in the selection, award, or administration of contracts in which they have a direct or indirect financial interest.

As a condition of receiving federal and state grant funds, the City is required to have a Conflict of Interest policy that specifies certain conditions that necessitates a finding that a conflict of interest exists. This policy addresses these concerns and complies with all applicable federal and state conflict of interest laws.

3.0 SCOPE

This policy applies to all City officers, employees, or agents as well as sub-grantees or sub-recipients of any federal or state funds received from the City. No officer, employee or agent of the City, and no sub-grantee or sub-recipient of any federal or state funds from the City shall participate in the selection or in the award or administration of a contract supported by federal, state, or city funds if a conflict of interest, real or apparent, would be involved. Such a conflict of interest would arise when any of the following persons or entities has a financial or other interest in the firm selected for the award:

- (i) The employee, officer, agent
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, anyone listed in (i) through (iii) above.

The grantee's or sub-grantee's officers, employees or agents will not solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements except as may be allowed in the City's **Gift Policy, B-20**.

4.0 DEFINITIONS

- 4.1 **Officer** - An individual who is elected to or appointed to serve or represent the City of Greensboro, other than an employee or independent contractor of the City.
- 4.2 **Employee** - Those individuals who are employed at will by the City of Greensboro for remuneration, whether full time or part time, benefited or non-benefited, and are charged with implementing City policies and City Council goals and objectives.
- 4.3 **Agent** - Those individuals or companies who are authorized to act on behalf of the City and who provide services or products, whether contractual or not.

5.0 ORGANIZATIONAL RULES

- 5.1 In order for the City to maintain the public trust of the citizens it serves, it is essential for the officers, employees, and agents of the City of Greensboro to remain free from all conflicts of interest, whether real or apparent.

6.0 PROCEDURES

- 6.1 If any officer, employee, or agent of the City has a potential conflict of interest in the selection, award, or administration of any contract supported by federal, state, or city funds in violation of this policy or has knowledge that another officer, employee, or agent of the City has a potential conflict of interest in the selection, award, or administration of any contract supported by federal, state, or city funds in violation of this policy, that person is required to report to their immediate supervisor or other management official in their reporting relationship all of the facts and circumstances concerning the conflict in as much detail as possible. This report should identify (i) the party or parties involved, (ii) the contract involved (iii) the nature of the conflict, and (iv) any other relevant facts and circumstances concerning the conflict.

If any officer, employee, or agent of a sub-grantee or sub-recipient of any federal, state, or city funds has a potential conflict of interest in the selection, award, or administration of any contract supported by federal, state, or city funds in violation of this policy or has knowledge that another officer, employee, or agent of a sub-grantee or sub-recipient of any federal, state, or city funds has a potential conflict of interest in the selection, award, or administration of any contract supported by federal, state, or city funds in violation of this policy, that person is required to report to their immediate supervisor or other management official in their reporting relationship and the City's contact person for that particular grant all of the facts and circumstances concerning the conflict in as much detail as possible. This report should identify (i) the party or parties involved, (ii) the contract involved, (iii) the nature of the conflict, and (iv) any other relevant facts and circumstances concerning the conflict.

- 6.2 Any management official who receives information related to a potential conflict of interest as described in Section 6.1 above shall promptly, thoroughly and impartially investigate the complaint. The management official shall consult with the Human Resources Department to determine whether a conflict of interest exists in the particular situation, how to respond to the situation, and whether any disciplinary action is indicated.

- 6.3 Any violation of this policy will subject the officer, employee, or agent to disciplinary action up to and including dismissal from employment and may also subject the offender to criminal prosecution and/or civil penalties under North Carolina State law and Federal law.

- 6.4 It is the responsibility of each employee to be aware of and adhere to the tenants of this

Conflict of Interest policy. City officers, employees, and agents are also responsible for ensuring their subordinates remain abreast of this policy in all dealings they might be involved with as it pertains to the selection, award, or administration of a contract supported by federal, state, or City funds.

7.0 HUMAN RESOURCES CONTACT

Human Resources Director

8.0 APPENDIX and APPENDICES

None



City of Greensboro Contract Signature Sheet

Mike Belanga
Print name of individual/d/b/a (name of business)

[Signature]
Signature of individual

Date: 5/8/14

[Signature]
Witness (not city employee)

Date: 5/8/14

[Signature]
Recommended by: (P&R Employee Name)
[Signature]
Parks and Recreation Division Manager

Date: _____

Date: 5/13/14

Parks and Recreation Director

Date: _____

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Contracts greater than \$1,000

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act

City Manager
(Only required if contract is \$20,000 or greater)

Finance Officer

Approved as to form:

Attest:

City Attorney

City Clerk
(Only required if contract is greater than \$1,000)

Date: _____