



**AGENDA**  
**FLOWER MOUND PARKS BOARD**  
**REGULAR MEETING**  
**FEBRUARY 7, 2019**  
**FLOWER MOUND TOWN HALL**  
**2121 CROSS TIMBERS ROAD**  
**FLOWER MOUND, TEXAS**

**6:30 P.M.**

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AN AGENDA INFORMATION PACKET IS AVAILABLE FOR PUBLIC INSPECTION  
ONLINE AT [WWW.FLOWER-MOUND.COM/AGENDA/AGENDA.PHP](http://WWW.FLOWER-MOUND.COM/AGENDA/AGENDA.PHP)  
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***All pagers and cell phones must be turned off in the Council Chambers.***

**A. CALL REGULAR MEETING TO ORDER**

**B. INVOCATION**

**C. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND TO THE TEXAS FLAG**  
*"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."*

**D. PRESENTATIONS**

- As prescribed in the Youth Sports Facility Agreement, a report will be given by the FMYFA, of the association's operations in regards to youth football.

**E. PUBLIC COMMENTS**

Please fill out an "Appearance before Parks Board" form in order to address the Board, and turn the form in prior to Public Comments to Administrative Secretary Jade Olson. Speakers are normally limited to three minutes. Time limits can be adjusted by the Chair to accommodate more or fewer speakers.

The purpose of this item is to allow the public an opportunity to address the Parks Board on issues that are not the subject of a public hearing. Any item requiring a Public Hearing will allow the public to speak at the time that item appears on this agenda as indicated as a "Public Hearing". Parks Board members may not deliberate and may only cite facts or current policy in response to public comments. Issues regarding daily operational or administrative matters should first be dealt with at the administrative level by calling the Parks and Recreation Division at 972.874.6300 during business hours.

**F. DIRECTOR'S REPORT**

- Update and status report related to Parks and Recreation issues.

**G. CONSENT AGENDA – Consent Items**

This agenda consists of non-controversial or "housekeeping" items required by law. Items may be removed from the Consent Agenda by any Board member by making such request prior to a motion and vote on the Consent Agenda.

1. Consider approval of the minutes from a regular meeting of the Parks Board held on December 6, 2018.

**H. REGULAR ITEMS**

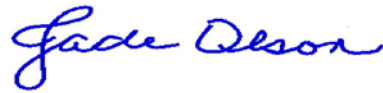
2. Consider recommending approval for Town Manager consideration a Contractual Services Agreement with Bad Dawg Tennis, to provide the services of Tennis Professional from March 1, 2019 through February 29, 2020, with renewal for up to four additional one year terms.

**I. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS**

- The next regular meeting of the Parks Board is scheduled for March 7, 2019.

**J. ADJOURN REGULAR MEETING**

I do hereby certify that the Notice of Meeting was posted on the bulletin board in Town Hall of the Town of Flower Mound, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time: February 4, 2019 at 5:00 P.M. at least 72 hours prior to the scheduled time of said meeting.



**Jade Olson, Administrative Secretary**

The Flower Mound Town Hall and Council Chambers are wheelchair accessible. Requests for accommodations or interpretative services must be made at least 48 hours prior to this meeting by contacting Jade Olson, Administrative Secretary at (972) 874-6425.



## PARK BOARD AGENDA ITEM NO. 1

### CONSENT ITEM

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**DATE:** February 7, 2019

**FROM:** Jade Olson, Administrative Secretary

**ITEM:** Consider approval of the minutes from a regular meeting of the Parks Board held on December 6, 2018.

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**BACKGROUND INFORMATION:** The Parks Board held a regular meeting December 6, 2018.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES/OPTIONS:** N/A

**FISCAL IMPACT:** N/A

**LEGAL REVIEW:** N/A

**ATTACHMENTS:**

1. Draft minutes from the December 6, 2018 Regular Meeting of the Park Board

**DRAFT MOTION:** Move to approve as presented in the agenda caption.

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**THE TOWN OF FLOWER MOUND PARKS BOARD REGULAR MEETING HELD ON THE 6<sup>th</sup> DAY OF DECEMBER 2018, IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:30 P.M.**

The Parks Board met in a regular session with the following members present:

Gloria Jones	Place 1 – Chair
Allen Pichon	Place 2
Teresa Thomason	Place 3 – Vice Chair
Rick Kenyon	Place 4
Jodi Seay	Place 5
Mark Mayer	Place 6
Andrew Cummings	Place 8 – Alternate
Jennifer Romaszewski	Place 9 – Alternate
Dale Olson	Place 10 – Alternate

The following Board members were not in attendance:

Ike Winfield	Place 7
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The following members of Town Staff were in attendance:

Chuck Jennings	Director of Parks and Recreation
Mark Long	Recreation Superintendent
Clayton Litton	Parks Superintendent
Kari Biddix	Park Development Manager
John Habern	Park, Trails and Landscape Specialist
Jade Olson	Administrative Secretary

- A. CALL REGULAR MEETING TO ORDER – 6:30 P.M.**
- B. INVOCATION – Russ McNamer**
- C. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND THE TEXAS FLAG**
- D. PRESENTATIONS**

Kari Biddix, Park Development Manager, updated the Board Members with improvement plans for Rheudasil Park in regards to the approved Master Plan.

**E. PUBLIC COMMENTS**

Sarah Joseph, 1721 Milford Dr., represented the Flower Mound High School Environmental Sciences class that is participating in Lexus Eco Challenge. Their primary focus is reducing greenhouse gases. The group is interested in implementing a lime bike and scooter system along the Pink Evening Primrose Trail.

Paula Cao, 3301 Seaton Ct. asked if fishing is allowed at Rheudasil Park. Chuck Jennings informed him that the pond will be reopened after the Kid Fish in June.

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Erick Kluthe, 2328 Whitman Ln, wanted to know if there are plans to move the lights on Lake Forest at Rheudasil Park. He also asked if security such as camera or police presence could be enhanced. Chuck Jennings said exact placement of the lights has not been decided yet.

**F. DIRECTOR'S REPORT**

**Chuck Jennings, Director of Parks and Recreation** had the following announcements:

- The new Town Hall Ribbon Cutting Ceremony on December 17, 2018
- The Hound Mound received solar lights and cameras
- New signage at Spring Lake Park
- Mowing has been suspended for the season
- Christmas Party at Gloria Jones's house
- On December 18 the headliner will be announced for the Independence Fest

**Mark Long, Recreation Superintendent** gave an update on:

- The Christmas Parade and Tree Lighting Ceremony
- The winter and spring Activity Guide
- The Town's tennis professional submitted his intent to terminate his contract in October
- Tennis courts at Glenwick/Westchester park being resurfaced
- The CAC gym closed to refinish the floor
- The SIM events at the Senior Center
- Twin Cove Park reopening December 14
- Kati Mize was introduced as the new Twin Coves Park Manager.

**Kari Biddix, Park Development Manager** gave an update on CIP Projects:

- The current CIP projects are Bella Lago Master Plan, Canyon Falls Park, and Rheudasil Park.
- Projects in construction are Pink Evening Primrose trail segment one and Heritage Park Phase IV.

**G. CONSENT AGENDA**

1. **Consider approval of minutes from a regular meeting of the Parks Board held on November 1, 2018.**

**Board Deliberation**

Board member Pichon moved to approve as presented in the agenda caption. Vice Chair Thomason seconded the motion.

**VOTE ON THE MOTION**

**AYES:** Pichon, Kenyon, Seay, Thomason, Mayer, Romaszewski  
**NAYS:** None

**H. REGULAR ITEMS**

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**2. Consider recommending approval for Town Council consideration the renaming of Leonard Johns Community Park as Helen and Leonard Johns Community Park.**

**Staff Presentation**

Chuck Jennings – Director of Parks and Recreation

**Board Deliberation**

Board member Kenyon moved to approve as presented in the agenda caption. Board member Thomason seconded the motion.

**VOTE ON THE MOTION**

**AYES: Romaszewski, Mayer, Thomason, Seay, Kenyon, Pichon**

**NAYS: None**

**3. Consider recommending approval for Town Manager consideration an agreement with the Chimney Rock Home Owner’s Association allowing for a fence and gate to be placed across the Town’s public equestrian easement located within their development.**

**Staff Presentation**

Chuck Jennings – Director of Parks and Recreation

**Board Deliberation**

Board member Pichon moved to approve as presented in the agenda caption. Board member Thomason seconded the motion.

**VOTE ON THE MOTION**

**AYES: Pichon, Kenyon, Seay, Thomason, Mayer, Romaszewski**

**NAYS: None**

**I. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS**

- The next Parks Board Special Meeting is scheduled for January 3, 2019.

**J. ADJOURNMENT**

Board Member Thomason made a motion to adjourn the meeting. Board member Seay seconded the motion.

Chair Gloria Jones adjourned the Regular Meeting at 7:42 p.m.

**TOWN OF FLOWER MOUND, TEXAS**

**ATTEST:**

\_\_\_\_\_  
**Gloria Jones, Chair**

\_\_\_\_\_  
**Jade Olson, Administrative Secretary**



## PARKS BOARD MEETING AGENDA ITEM NO: 2

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**DATE:** February 7, 2019

**FROM:** Mark Long, Recreation Superintendent

**ITEM:** **Consider recommending approval for Town Manager consideration a Contractual Services Agreement with Bad Dawg Tennis to provide the services of Tennis Professional from March 1, 2019 through February 29, 2020, with renewal for up to four additional one year terms.**

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**Background Information:** In October 2018, Flower Mound Tennis professional Frank Ford informed staff of his intent to terminate the Tennis Agreement with the Town one year early to pursue other interests. Mr. Ford had been contracted to the Town for over 14 years and provided a quality program to the citizens of Flower Mound. With the termination of the agreement, staff began the process of soliciting proposals from interested individuals and/or groups. As prescribed by the Youth Sports Task Force, the Town developed a Request For Proposals (RFP) seeking interested parties to provide the services of Tennis Professional. On December 20, 2019, the Town began advertising the RFP and continued to accept proposals from interested parties until January 18, 2019. The RFP was posted on the Town's website, Parks and Recreation and Community Activity Center webpages, and Town social media outlets. Staff also reached out to several individuals who had expressed interest in submitting a proposal. Staff received a total of four proposals by the deadline. Staff reviewed each proposal and held in-person interviews with each organization. At the conclusion of the interview and reference check process, staff determined that Bad Dawg Tennis provided the most comprehensive community based tennis program.

Bad Dawg Tennis currently has municipal tennis partnerships with City of Highland Village, City of Frisco, the City of Denton, as well as several HOA's throughout Denton and Collin County. The management team of Bad Dawg Tennis are all USPTA certified at the highest level (Elite) and their years of experience have proven that they are able to provide a comprehensive community based tennis program. Bad Dawg Tennis instructors have coached professional players at Grand Slam events, run professional tournaments, coached the world's #1 junior player, and instructed countless numbers of youth and adults in the game of tennis. Over the past 18 years of building tennis relationships, Bad Dawg Tennis has developed a full range of tennis programs for the communities they serve, and look to expand their offerings to the Flower Mound community.

This Agreement will allow Bad Dawg Tennis to conduct and operate tennis programs at the Helen and Leonard Johns Community Park tennis courts. Bad Dawg Tennis agrees to operate the Town's tennis program to include camps, classes, leagues, lessons, drills, clinics, tournaments, special events, and other professional tennis related services. Specific programs offered include youth and Pee Wee classes for ages 4-6, Superstar classes for ages 7-9, and Championship classes for ages 10-15. Adult programming offered will include Tennis 101 and 201 classes, coed instructional classes, ladies leagues/classes, cardio tennis workouts, and Super Senior workouts. Beginner/Intermediate/Advanced youth camps will be offered during the summer months. Additional tennis programs offered to the community throughout the year will include adult leagues, tournaments, private and group lessons, boot camps, special needs programming, family tennis days, and community special events.

Additional highlights in the Agreement include addressing such issues as minor maintenance,

quality of services rendered, background checks, indemnification, insurance, and termination of Agreement. The Agreement specifically states that the Town will take all program registration online and in-person at the Community Activity Center, and that on a monthly basis, the Town will pay Bad Dawg Tennis 80% of gross revenues received from all programs offered. Bad Dawg Tennis is hoping to generate revenue exceeding \$75,000 annually.

**FISCAL IMPACT:** \$15,000 to the Town annually

**LEGAL REVIEW:** Drew Larkin, of Taylor, Olson, Adkins, Sralla, Elam, LLP has reviewed the proposed Agreement as to form and legality.

**ATTACHMENTS:**

1. Contractual Services Agreement
2. Proposal from Bad Dawg Tennis

**RECOMMENDATION:** Move to approve as presented in the agenda caption.



**TENNIS SERVICES CONTRACT  
WITH  
BAD DAWG TENNIS**

THIS TENNIS SERVICES CONTRACT (“Contract”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas (“TOWN”), acting by and through its TOWN Manager or his designee, and, **BAD DAWG TENNIS** whose address is 6010 Osage Place, Frisco, TX 75034 (“CONTRACTOR”).

WITNESSETH:

WHEREAS, TOWN desires to obtain personal services necessary to organize and operate tennis programs at specified TOWN owned tennis facilities (“Facilities”) to the residents of the TOWN (hereinafter referred to as “Services”); and

WHEREAS, CONTRACTOR is certified with the United States Professional Tennis Association and is qualified to provide such Services and desires to provide such Services for TOWN in exchange for the ability to provide a public service and be financially compensated as provided herein below; NOW, THEREFORE,

THAT IN CONSIDERATION of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

**Section 1.  
Scope of Services**

CONTRACTOR shall organize, implement, and provide tennis programs at the Facilities, in accordance with the terms of this Contract. Such tennis programs are to include camps, classes, leagues, lessons, drills, clinics, tournaments, special events, and other professional tennis related services (each individually a “Program Event” and collectively the “Program Events”).

**Section 2.  
Term**

The terms of this Agreement will begin when it has been signed by both the TOWN and CONTRACTOR. This Agreement will expire on \_\_\_\_\_, unless terminated earlier by the TOWN in accordance with the terms of the Agreement. The Agreement, however, may be renewed by mutual consent of the parties for four (4) additional terms, consisting of one (1) year each, provided CONTRACTOR gives written notice of its intent to renew to the TOWN at least ninety (90) days prior to the expiration of the current term.

**Section 3.  
Termination**

A. TOWN may terminate this Contract, with or without cause, upon thirty (30) days prior written notice to CONTRACTOR. Upon termination, CONTRACTOR shall stop all work in progress, including subcontracts. In no event shall any such termination give rise to any claim against TOWN by CONTRACTOR, whether for lost profits, costs, overhead or any other reason.

B. CONTRACTOR may terminate this Contract, with or without cause, upon thirty (30) days prior written notice to TOWN; provided, however, that CONTRACTOR may not terminate this Contract while engaged in an active Program Event and may only terminate this Contract upon thirty (30) days written notice prior to the end of an active Program Event.

**Section 4.**  
**CONTRACTOR Fees**

A. On a monthly basis, TOWN shall pay to the CONTRACTOR eighty percent (80%) of gross revenues received from the Program Events. Additionally, the Town shall pay to the CONTRACTOR ninety percent (90%) of gross revenues received from private lessons provided by the management level teaching professionals and eighty percent (80%) of gross revenues for all other teaching professionals. All payments are to be made to CONTRACTOR no later than thirty (30) days after the end of proceeding month's Program Events. TOWN shall provide CONTRACTOR a monthly financial report pertaining to Services provided under this Contract that includes registration figures and revenues for each Program Event offered.

B. The TOWN's obligation to pay CONTRACTOR the compensation provided for in this section stops upon the expiration and/or termination of the Agreement.

**Section 5.**  
**CONTRACTOR's Responsibilities**

CONTRACTOR agrees to the following:

1. CONTRACTOR shall implement and operate the Program Events.
2. CONTRACTOR shall supervise and perform minor maintenance at Facilities utilized for the Program Events. Minor maintenance shall include, but is not limited to, net repair and replacement, and routine cleaning and sweeping of debris on Facilities surface.
3. CONTRACTOR shall regularly inspect courts and report to the TOWN any conditions of courts that do not meet or satisfy the standards for tennis court adopted and/or applied by the United States Tennis Association for the type of activities to be conducted pursuant to this agreement or which may reasonably pose safety issues for those playing on or otherwise using one or more of the courts. In the event CONTRACTOR observes a condition on a court that poses a potential for injury to person or property, CONTRACTOR shall immediately stop all use of court where condition exists and notify TOWN of nature of the potentially hazardous condition.
4. CONTRACTOR shall reserve the Facilities for the Program Events as prescribed by the TOWN.
5. Every participant in each Program Event must be properly registered for said Program Event with the TOWN.
6. CONTRACTOR will be liable for any losses or damages sustained by CONTRACTOR as part or under the rights and privileges granted by this Contract

7. CONTRACTOR shall be responsible for any damages to the Facilities caused by the CONTRACTOR, his agents, employees or its subcontractors.
8. CONTRACTOR, its employees, agents, and subcontractors must conduct themselves at all times in a manner acceptable to the TOWN.
9. CONTRACTOR may not assign or delegate the rights or obligations under this Contract without the prior written consent of the TOWN.
10. CONTRACTOR may promote Program Events on CONTRACTORS web site, social media outlets, and/or printed material controlled by CONTRACTOR. TOWN reserves the right to request removal of any content placed on CONTRACTOR'S web site, social media outlet, and/or printed material that TOWN determines, in its sole discretion to be objectionable or violate the TOWN's ordinances, policies, rules, or regulations. CONTRACTOR will answer telephone calls and emails requesting Program Event information and refer interested parties to TOWN for registration.
11. CONTRACTOR will not discriminate against anyone on the basis of race, color, national origin, age, handicap, creed, religion, sex, ancestry, or place of birth in the provision of services to the public, and will comply with all applicable provisions of Title VII of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973.
12. CONTRACTOR agrees to comply with all TOWN Parks and Recreation Department rules, procedures and policies governing TOWN Recreational Programs and TOWN policies and procedures. Policies applicable to CONTRACTOR may be amended from time to time. CONTRACTOR agrees to abide by and enforce all applicable rules, procedures and policies during the term of this Agreement.
13. CONTRACTOR is an independent contractor. CONTRACTOR's officers, agents, servants and, employees are not entitled to any employment related or any other forum of employee benefits from the TOWN and they have no claims against the TOWN for any type of TOWN employee benefits. CONTRACTOR agrees and acknowledges that the TOWN is not responsible for the withholding or the payment of any social security taxes, federal unemployment taxes or federal income taxes for CONTRACTOR's officers, agents, servants, or employees.
14. CONTRACTOR is responsible for obtaining and distributing any required materials and supplies.
15. CONTRACTOR agrees to allow TOWN employees to sit in on CONTRACTOR's sessions as deemed necessary by the TOWN in order to observe and audit the session's operation, to check attendance and to verify CONTRACTOR's adherence to curriculum, rules, policies and procedures. TOWN employees who attend a session as part of their duties and responsibilities as a TOWN employee, or representative, are not considered session participants for purposes of determining CONTRACTOR's compensation. With the exception of CONTRACTOR, an approved substitute instructor, TOWN employees and paid class participants, CONTRACTOR may not allow anyone else to sit in on or observe the session without the TOWN's prior authorization. CONTRACTOR may, at TOWN's request, be required to administer a final evaluation and submit the results to the TOWN. The TOWN and CONTRACTOR acknowledge and agree that all CONTRACTOR personnel and any approved and/or proposed substitute instructors will be the subject of a criminal history background check by the TOWN. CONTRACTOR shall provide the TOWN with appropriate names, addresses, dates of

birth, social security numbers, and driver's license numbers of all personnel provided to the TOWN. All such information shall be provided to the TOWN prior to the start date of the first class.

16. CONTRACTOR shall not collect any money or fees from class participants for registration.

### **Section 6. Insurance**

CONTRACTOR shall purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. CONTRACTOR shall not commence work under this Contract until it has obtained all the insurance required under the Contract and such insurance has been approved by TOWN; nor shall CONTRACTOR allow any subcontractor to commence work on his subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Contract shall be written on an "occurrence" basis.

A. Workers' Compensation, as required by law, with the policy endorsed to provide a waiver of subrogation as to the owner; Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease - each employee \$500,000 disease - policy limit.

B. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, covering but not limited to the indemnification provisions of this Contract, fully insuring CONTRACTOR's liability for injury to or death of employees of TOWN and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of \$500,000 per person, \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.

D. It is agreed by all parties to this Contract that the insurance required under this Contract shall:

1. Provide for thirty (30) days notice of cancellation to TOWN, for nonpayment of premium, material change or any other cause.
2. Be written through companies duly authorized to transact that class of insurance in the State of Texas.
3. Relative to Workers' Compensation coverage, waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against TOWN and/or Lewisville Independent School District, it being the intention that the required insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by such policies.
4. Identify TOWN as additional insureds on all liability insurance policies.
5. Provide evidence of the foregoing required insurance to:

TOWN OF FLOWER MOUND  
c/o Purchasing Division

**Section 7.**  
**TOWN's Responsibilities**

- A. TOWN hereby authorizes and agrees that CONTRACTOR will be the tennis services provider for the TOWN. During the term of this Contract, CONTRACTOR will have the ability to use the Facilities, as assigned by TOWN, during the performance of the Services. At any time the Facilities are not being utilized by CONTRACTOR, TOWN may assign the Facilities to other parties.
- B. TOWN will work with CONTRACTOR to schedule time periods for use of the Facilities by CONTRACTOR during the Term of this Contract. It will be CONTRACTOR's responsibility to meet with TOWN to discuss the scheduling of all Program Events. TOWN will coordinate the tentative schedule discussed with CONTRACTOR for such Program Events and notify CONTRACTOR regarding the availability of the Facilities as requested by CONTRACTOR as soon as is reasonably practicable.
- C. TOWN will promote the Program Events as the TOWN determines in its sole opinion to be appropriate. Such promotion may include providing Program Event registration forms to appropriate Flower Mound schools for distribution, advertisement of Program Event in the utility billing bulletin on a space available basis, posting notices and updates on the TOWN's website, placing information in divisional brochures, issuing press releases, posting notices and program information on bulletin boards, and placing information on Flower Mound TV. The TOWN will answer telephone calls and e-mails requesting CONTRACTOR information and refer interested parties to CONTRACTOR when requested or necessary.
- D. TOWN will coordinate availability of the Facilities with CONTRACTOR.
- E. All Program Event fees shall be paid to the TOWN.
- F. TOWN shall assume responsibility for all refunds to Program Event participants and for the collection of bad checks.
- G. TOWN specifically reserves the right to remove or exclude any person, group or organization from the Facilities based on conduct that the TOWN determines, in its sole discretion, to be objectionable or violate the TOWN's ordinances, policies, rules or regulations and any State or Federal rule, regulation, law or statute.
- H. TOWN shall be responsible for all structural repairs and maintenance to the Facilities due to normal wear and tear when needed.

**Section 8.**  
**Indemnity**

**CONTRACTOR assumes all responsibility for and agrees to defend, indemnify and hold harmless the TOWN and any and all of its boards, commissions, officers, agents, representatives, employees, volunteers and elected or appointed officials from and against any and all suits and causes of action, claims for contribution or indemnity, charges, costs, damages, demands, expenses (including, but not limited to, attorney's fees and cost of litigation), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including**

**CONTRACTOR's employees and agents or damage or destruction to any property of either party hereto or third persons in any manner arising by reason of or incident in the performance of this Agreement occasioned by any error, omission or negligent act on the part of CONTRACTOR or CONTRACTOR's officers, agents, employees or subcontractors.**

**Section 9.**  
**Negligence**

CONTRACTOR assumes full responsibility for the work and programs conducted by CONTRACTOR pursuant to this Agreement whether or not any claims for bodily injury, death, property damage or any other damage or injury of any kind are alleged to arise from the negligence of CONTRACTOR or CONTRACTOR's personal representatives, successors, contractors, subcontractors, agents, or employees or from any act of negligence by the TOWN, its officers agents and employees. It is the intent of the parties hereto that all indemnity obligations and liability are assumed by CONTRACTOR without regard to the causes thereof or the negligence of any party or parties, including any negligence of the TOWN, its officers, agents and employees, whether the negligence is sole, joint, concurrent, active or passive.

**Section 10.**  
**Release of Liability**

CONTRACTOR does hereby release, acquit, and forever discharge the TOWN, its officers, agents, servants and employees, from all liability and from any and all claims or causes of action of any kind whatsoever, at common law, statutory or otherwise, attributable to the acts of omissions of CONTRACTOR, CONTRACTOR's personal representatives, contractors, subcontractors, agents and employees, and from any and all losses, damages or claims of damages on account of injury to the person or property of CONTRACTOR or others, or the death of CONTRACTOR or others, arising out of any of the services or courses of instruction provided. This Agreement shall be binding upon CONTRACTOR's heirs, assigns, administrators, executors and legal representatives forever.

**Section 11.**  
**Default**

CONTRACTOR's failure to comply with the terms of this Contract will be deemed a default and CONTRACTOR will have thirty (30) days after receipt of written notice from the TOWN to cure such default. If the default is not cured within that period, the TOWN may terminate this Contract. In the event of termination under this section, the TOWN shall have the right, but not the obligation, to assume CONTRACTOR's performance to complete previously scheduled Program Events. If TOWN assumes the obligation to so perform, CONTRACTOR shall be responsible to the TOWN for, and shall pay to TOWN within thirty (30) days after billing therefor, all costs and expenses associated with the performance of the balance of the work required to complete previously scheduled Program Events. CONTRACTOR shall also be responsible for and reimburse to TOWN, within thirty (30) days following demand therefor, any costs or expenses incurred by TOWN in canceling any scheduled Program Events upon CONTRACTOR's nonperformance under this Contract.

**Section 12.**  
**Confidential Information**

During the term of this Agreement, CONTRACTOR may have access to, and become familiar with certain confidential information. CONTRACTOR agrees that any confidential information so obtained, including without limitation, any and all computer programs, software, and other proprietary data of whatever type of nature, is

confidential information in the nature of a trade secret, and is the exclusive property of the TOWN. CONTRACTOR agrees and acknowledges that the determination of what constitutes confidential information is a matter of state law, pursuant to Chapter 552 of the Texas Government Code, and that the TOWN is legally obligated to comply with such statute. CONTRACTOR covenants and agrees that it will not directly or indirectly, during or after termination of this Agreement, use for its own benefit, use to the detriment of the TOWN, or divulge to persons other than authorized employees or officers of the TOWN, any confidential information of the TOWN. Upon termination of this Agreement, all confidential information shall be left with or returned to the TOWN. CONTRACTOR agrees that its obligations under this section shall survive the expiration and/or termination of this Agreement.

**Section 13.**  
**Equitable Relief**

CONTRACTOR acknowledges that irreparable injury will result to the TOWN in the event of CONTRACTOR's breach of any of the provisions herein. Consequently, in addition to any other rights or remedies available to the TOWN for breach of this Agreement by CONTRACTOR, the TOWN shall be entitled to enforcement by temporary restraining order and/or injunction. The rights and remedies of the TOWN under this Agreement (or otherwise) are cumulative, and no one of them is exclusive of any other or of any right or remedy allowed by law.

**Section 14.**  
**Changes**

TOWN may, from time to time, require changes in the Services to be performed under this Contract. Such changes as are mutually agreed upon by and between TOWN and CONTRACTOR shall be incorporated by written modification to this Contract.

**Section 15.**  
**Conflict of Interest**

CONTRACTOR covenants and agrees that CONTRACTOR and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the Services called for under this Contract. All activities, investigations and other efforts made by CONTRACTOR pursuant to this Contract will be conducted by employees, associates or subcontractors of CONTRACTOR.

**Section 16.**  
**Mailing Address**

All notices and communications under this Contract to be mailed or delivered to TOWN shall be sent to the address of TOWN's agent as follows, unless and until CONTRACTOR is otherwise notified:

The TOWN of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
Attn.: Mark Long  
Telephone: 972.874.6341

Notices and communications to be mailed or delivered to CONTRACTOR shall be sent to the address of CONTRACTOR as follows, unless and until TOWN is otherwise notified:

Bad Dawg Tennis  
6010 Osage Place  
Frisco, TX 75034  
Attn: David Gray  
Telephone: 469-774-4560

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted by the sending party.

**Section 17.**  
**Successors and Assigns**

TOWN and CONTRACTOR each bind their successors, executors, administrator and assigns to the other party of this Contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither TOWN nor CONTRACTOR shall assign or transfer its interest herein without the prior written consent of the other.

**Section 18.**  
**Applicable Law**

This Contract is entered into subject to the Charter and ordinances of TOWN as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and Federal laws. CONTRACTOR will make any and all reports required per Federal, State or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONTRACTOR's income. Situs of this Contract is agreed to be Denton County, Texas, for all purposes including performance and execution.

**Section 19.**  
**Severability**

If any of the terms, provisions, covenants, conditions or any other part of this Contract are held for any reason to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**Section 20.**  
**Remedies**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder.

**Section 21.**  
**Entire Agreement**

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein, cannot be modified without written agreement of the parties.



**Section 22.**  
**Non-Waiver**

The waiver by the TOWN of a breach of any provision of this Contract by CONTRACTOR shall not operate or be construed as a waiver of any subsequent breach by CONTRACTOR.

**Section 23.**  
**Headings**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**Section 24.**  
**Venue**

The parties to this Contract agree and covenant that this Contract will be enforceable in Flower Mound, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

**Section 25.**  
**No Third Party Beneficiary**

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONTRACTOR) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with TOWN or CONTRACTOR or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONTRACTOR.

**Section 26.**  
**Attorney's Fees**

If an action at law or in equity by the TOWN is necessary to enforce the terms of this Contract, the TOWN shall be entitled to recover its reasonable attorney's fees and costs, in addition to any other relief to which it may be entitled.

IN WITNESS WHEREOF, the parties have hereunto set their hands by their representatives duly authorized on the day and year first written above.

**THE TOWN:**

THE TOWN OF FLOWER MOUND, TEXAS

By: \_\_\_\_\_

Name: Jimmy Stathatos

Title: Town Manager

ATTEST:

\_\_\_\_\_  
Theresa Scott, Town Secretary

**CONTRACTOR:**

By: \_\_\_\_\_

Name:

Title:

Date Signed: \_\_\_\_\_

STATE OF TEXAS        )  
                                  )  
COUNTY OF DENTON    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_