



MEMORANDUM

TOWN OF PONCE INLET, TOWN MANAGER DEPARTMENT

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet residents obtain the greatest value for their tax dollar.

To: Parks, Recreation and Tree Advisory Board
From: Amy Zengotita, Parks/Rec & Museum Educator
Date: January 4, 2016
Subject: *Court Rentals by For-Profit Entities Policy*

MEETING DATE: February 2, 2016

Background:

At its December 2014 meeting, Town Council approved the Parks Board's recommendation to use the free online reservation system, Holdmycourt.com for individuals to reserve either the tennis or basketball courts in Pollard Park for personal use. Staff has since been approached by a for-profit entity requesting use of the tennis court to offer tennis lessons. At the direction of the Town Manger, staff is requesting the Board to provide a recommendation to Town Council on a court rental policy for "for profit" entities.

Rental System:

Staff investigated other local municipalities' court rental policies. The City of Port Orange rents its courts for \$10/per hour for non-profit entities and \$20/per hour for profit entities. The instructor is required to fill out a rental application and supply a copy of their current Business Tax Receipt (BTR) and liability insurance.

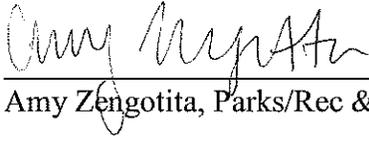
The City of South Daytona receives 30% of the total revenues received by the instructor at the end of a session and the instructor keeps the remaining 70%. The instructor is responsible for the registrations and paying the City 30% of the amount received. The city requires a contract with the instructor, an annual criminal background check, and a copy of their BTR. The city does not require liability insurance.

The City of DeBary also receives 30% of the total revenues received by the instructor. The City requires their participants to fill out a waiver so that the City is not liable, as well as conducts a background check on the instructor, and requires the instructor to list the City on their insurance.

The Board is asked to make a recommendation on a court rental by for profit entities policy to Town Council, to include the following:

1. If a rental application/contract is necessary;
2. If the instructor needs to provide a BTR and/or a copy of liability insurance;

3. If a criminal background check should be conducted;
4. If participants should fill out a waiver;
5. If any fees will be charged.



Amy Zengotita, Parks/Rec & Museum Educator

January 4, 2016
Date

Attachments:

1. Sample Agreement from the City of DeBary
2. Sample New Instructor Contract from the City of South Daytona

Attachment 1

INSTRUCTOR AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of June, by and between the City of DeBary, Florida, a Florida municipal corporation, hereinafter referred to as "City", and KC Tennis Academy., a Florida for-profit business hereinafter referred to as "Instructor".

W I T N E S S E T H

WHEREAS, the City operates special recreation programs for the purpose of providing recreation and education to the general public; and

WHEREAS, the City may provide parks, preserves, playgrounds, recreation areas, and other recreation facilities and programs pursuant; and

WHEREAS, the City has accepted the Instructor's proposal to provide special interest recreation programs for the Parks and Recreation Department; and

WHEREAS, the operation of said program will mutually benefit the parties hereto and the residents of DeBary, Florida.

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

1. Special Interest Recreation Program: The Instructor is hereby authorized to conduct the following special interest recreation program for the City's Parks and Recreation Department for the period commencing August 1, 2014 and terminating July 31, 2015.

Youth and Adult Tennis Clinic
(Name of Program)

Said program shall be conducted strictly in accordance with Exhibits "A", "B" and "C" (attached hereto and made a part hereof by this reference) including, but not limited to, all restrictions therein set forth regarding number of registrants, fee per registrant, and total number of hours of instruction per program. All sessions shall be conducted at locations designated by a representative of the City's Parks and Recreation Department. A program outline and guide including, but not limited to, a list of objectives for the program session and materials and facility requirements shall be submitted to the City's Recreation Coordinator prior to commencement of the applicable program for review, required changes or approval.

2. Payments: Instructor shall pay the City, a sum equal to **Thirty Percent (30%)** of the gross registration fees received for said program which shall be remitted to the City within fourteen (14) business days after the conclusion of the program session to be conducted by the Instructor. As noted in "Exhibit A" the clinics will be held on a month to month basis. Payment must be received by the City no later than the 14th day of the following month. Failure to make payments on time will result in a \$50 late payment fee. All payments must include a roster and financial statement that includes the amount paid by each registrant, the total amount of fees taken that month, and what the City's 30% payment is. In no event shall registration be closed and sessions for any programs be commenced until such a time as the minimum number of registrants designated on Exhibit "A" have registered and their fees received by the Instructor. Payment must be made by check. All checks must be made payable to the City of DeBary. Any checks that do not clear will result in the following fees:

- A. \$0 - \$50 will be charged a fee of \$25.
- B. Over \$50 - \$300 will be charged a fee of \$30.
- C. Greater than \$300 will be charged a fee of \$40.

3. Registration and Collection of Fees: The Instructor assumes sole responsibility for registration and the collection of fees for all programs described herein. The Instructor shall also be responsible for the collection and/or payment of any sales tax or use tax that may be required by federal, state, or local laws.

4. Inclement Weather and Unforeseen Events: In the event of a cancellation of a clinic due to inclement weather, an emergency, or any other unforeseen event, the INSTRUCTOR agrees to notify the City of cancellation. The INSTRUCTOR agrees to contact all participants when a clinic is cancelled.

5. Right to Audit Records: In the performance of this Agreement, the Instructor shall keep books, records, and accounts of all activities, related to the Agreement in compliance with generally accepted accounting procedures. Books, records, and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the City and shall be retained by the Instructor for a period of three years after termination of this Agreement. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

6. Obligations of the Instructor: The Instructor agrees as follows:

a. To conduct all sessions for the special interest recreation program(s) described herein in accordance with Exhibits "A"

b. To secure and maintain, without cost to the City, all licenses required and to pay when due all taxes and assessments which shall be imposed by any governmental body in connection with the special interest recreation program(s) described herein, and to otherwise comply with all applicable laws, ordinances, rules, regulations, policies and procedures established by the City, Parks and Recreation Department, and all other local, state, and federal laws, regulations, rules and requirements.

c. In no event shall any person other than the Instructor conduct any class or session unless and until a background check is conducted and is specifically authorized by the Recreation Coordinator.

d. To maintain good public relations; to conduct said program in a manner which is courteous and fair to the public; and to be responsive to public requests and complaints.

e. To cooperate fully with City officials in all matters relating to said program(s).

f. To conduct background checks prior to the program for all instructors and others involved in the program and to immediately advise the Parks and Recreation Director of any convictions for felonies, misdemeanors, or violations of law where jail or prison time can be imposed as a punishment or sanction even though such jail or prison time is not imposed. For the purpose of this Agreement conviction includes situations of adjudication and with-holding of adjudication.

7. City Obligations: Unless otherwise herein set forth, the City agrees to provide the facilities, marketing flyers and to pay all utility charges required for the special interest recreation program(s) described herein.

8. Indemnification and Insurance: The Instructor agrees to indemnify and hold harmless the City and the City's officials, employees and agents from any and all liability, claims, damages, expenses (including attorneys' fees and costs), proceedings and causes of action of every kind and nature, arising out of or connected with: the activities of the Instructor, the use, occupation, management or control of the facilities or any improvements thereon or any furniture, furnishings, equipment and fixtures utilized in connection therewith; and the classes, sessions and program. The Instructor agrees to defend at its expense any and all actions, suits and proceedings which may be brought against the City and the City's officials, employees and agents arising from or in any way related to the Instructor's activities, the classes, sessions or program, and that Instructor will satisfy, pay, and discharge any and all judgments that may be entered against the City

in any such action or proceeding. It is agreed by the parties hereto that specific consideration has been paid under this Agreement for this indemnification and hold harmless provision.

The Instructor shall notify the City immediately in writing of any potentially hazardous or dangerous condition existing on or about the premises utilized in conducting said program(s). All personal property housed or placed at a City facility shall be at the risk of the Instructor, and the City shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. The Instructor agrees and understands that the City does not and shall not carry liability, fire, or theft insurance on the operation of these facilities to cover the Instructor's interest therein.

By initialing this statement, I understand the remaining provision of Section 8. Indemnification and Insurance must be adhered to in addition to all other terms of this Agreement: _____

The Instructor agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the City, policies of insurance generally known as comprehensive general liability policies insuring the Instructor against any and all claims, demands, and causes of action whatsoever for injuries received and damage to property incurred in connection with the use, occupation, and management or control of the property used for or in conjunction with classes, sessions, program and any other activities conducted on such property by Instructor. Such policies of insurance shall insure the Instructor in the amount of not less than \$1,000,000 to cover any and all liability claims arising in connection with any particular accident or occurrence. Said insurance policies shall provide that the City is named as an additional insured and shall be entitled to thirty (30) days prior notice of any changes or cancellation in said policies. The Instructor shall provide to the City the described insurance policies with insurers acceptable to the City, prior to commencement of registration or ten (10) days after the date of this Agreement, whichever first occurs.

These insurance requirements shall not relieve or limit the liability of the Instructor. The City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Instructor's interests or liabilities, but are merely minimum requirements for the benefit of the City.

A certificate of insurance indicating the Instructor has coverage in accordance with the requirements of this Agreement shall be furnished by the Instructor to the City of

DeBary Parks and Recreation Department, Recreation Coordinator at the earlier of ten (10) days from the date of the execution of this Agreement and prior to the commencement of registration.

9. Independent Contractor: The Instructor shall perform the terms and conditions of this Agreement as an independent contractor, and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall, in any way, be construed to constitute the Instructor or any of its agents or employees as the representative agents or employees of the City.

10. Attorneys' Fees: In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorneys' fees and costs.

11. Governing Law: This Agreement shall be deemed to have been executed and entered into within the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

12. Venue: Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Volusia County, Florida, and any trial shall be non-jury.

13. Unauthorized Alien Workers: Since the City of DeBary will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA") the City shall consider the employment by the Instructor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Instructor of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Agreement by the City.

14. Emergencies: In the case of a declared state of emergency in the City of DeBary by the State of Florida, the City retains the right to immediately resume occupation, management, and maintenance of the facility, to use the facility to meet any emergency needs of the citizens of DeBary for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the City.

15. Modification: No modification of this Agreement shall be binding on City or the Instructor unless reduced to writing and signed by a duly authorized representative of City and the Instructor.

16. Termination: This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. When it is determined to be in the best interest

of the City, the Parks and Recreation Department Director or his designee on behalf of the City, may terminate the agreement upon written notice thereof being delivered by the Parks and Recreation Department Director, or his designee, to the Instructor. Upon termination of this Agreement, the Instructor shall have fifteen (15) days within which to remove its personal property from any City facility. Any personal property not removed within said (15) day period shall become the property of the City. In the event this Agreement is terminated for any reason and the Instructor does not complete a program session, the Instructor will be responsible for registrations that are outstanding based on the INSTRUCTORS program's policy.

17. Notice: Notice under this Agreement shall be given to the City by mailing written notice postage prepaid, to the Parks and Recreation Director; and notice shall be given to the Instructor by mailing written notice, postage prepaid to the following addresses:

If to City:

John Fletcher, Director
City of DeBary Parks and Recreation Department
16 Colomba Rd.
DeBary, FL 32713

If to Instructor:

Kurt Collis, Director of Tennis
P.O. Box 902
DeLand, FL 32721

18. Renewal: It is hereby mutually agreed and understood that the Instructor Agreement will automatically renew for an additional one (1) year terms unless written notice of termination to the City received at least thirty (30) days prior to the date of termination of the current term.

19. Special Provision:

a. The City shall provide building and utilities only for instruction in the program(s) listed in paragraph one (1).

b. The Instructor and/or participant shall be responsible for all material costs.

20. Severability: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

21. Copyright: No report, data, programs or other materials produced, in whole or in part for the benefit and use of the City, under this Agreement shall be subject to copyright by Instructor in the United States or any other country.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

KC Tennis Academy

By: _____ Date: _____

Print Name: _____

Its: _____

City of DeBary

By: _____ Date: _____

Print Name: _____

Its: _____

EXHIBIT "A"

**CITY OF DEBARY
PARKS AND RECREATION DEPARTMENT**

RECREATION SPECIAL INTEREST PROGRAM(S)

Instructors of the Program: Kurt Collis, Director of Tennis;

1. Youth and Adult Tennis Clinics ("Sessions") will be conducted at locations and days as mutually agreed upon at the Bill Keller Park or other location approved by the City.

Friday		Min.	Max.
		# of Participants	
Age 5-8	4:25pm - 4:55pm	4	8
Age 9-14	5:00pm - 5:55pm	4	10
Adult	6:00pm - 7:00pm	4	8

Private Lessons: Private lessons are allowed to be held at the Bill Keller tennis courts in the above designated time slots, if a clinic is not being held. If clinics are being held, private lessons may be held at the tennis courts on a first come first serve basis with public use of the tennis courts. KC Tennis Academy may not reserve the court or remove patrons from the courts for a private lesson. Private lesson registration and commission must be reported in the same fashion as clinics on a monthly basis.

2. Minimum number of registrants: Varies per age group. See Above.
3. Maximum number registrants: Varies per age group. See Above.
4. Fee per registrant(s): \$60 per month (one clinic per week). Private Lessons are from \$55-\$65 per hour (discounts for blocks of 5-10).
5. Number of weeks for program(s): Clinics are ongoing. Payments are made on a monthly basis.
6. Total minimum hours of instruction to be provided by Instructor: 30 minutes per clinic. Number of clinics will depend on participation.
7. Age of registrants must be at least 5 years of age.

Future number of sessions per class may vary subject to prior written approval of the Parks and Recreation Department. Fees shall not vary from 70% of total registrations as specified in the original Agreement without approval of the Department Director or designee. Minimum and maximum numbers of registrants may be adjusted by mutual agreement between the Parks and Recreation Department and the Instructor.

EXHIBIT "B"

**CITY OF DEBARY
PARKS AND RECREATION DEPARTMENT**

SPECIAL INTEREST INSTRUCTOR PROGRAM OUTLINE

Program Title: KC Tennis Academy Youth and Adult Clinics

INSTRUCTOR/Company: Kurt Collis, Director of Tennis; Joyce Chen, Instructor

Contact Name: Kurt Collis
Email: kurt@kctennisacademy.com

Phone #: 386-801-7725

INSTRUCTOR FEES:

INSTRUCTOR: 70% of sales
City of DeBary: 30% of sales

KC Tennis Academy will provide:

1. Any extra equipment needed for the program.
2. Any necessary instructors or support staff.
3. Conduct Registrations.

City of DeBary will provide:

1. Program site (Bill Keller Park) or other location acceptable to the City.
2. Advertisements including flyers, notice on city website and in city newsletter (if possible) and flyers in city park kiosks. The number of advertisements and the content are all subject to City's and KC Tennis Academy's approval.
3. All equipment listed in Exhibit "C"

KC Tennis Academy will be required to set up all equipment and prepare the Program site prior to start of Session each day. The CITY requires all instructors to arrive at least 15 minutes prior to start of each Session.

SCOPE OF SERVICES:

KC Tennis Academy (hereinafter referred to as "INSTRUCTOR") duties while conducting the Youth and Adult Tennis Sessions will include all aspects of the program. The INSTRUCTOR will be responsible for developing lesson plans for each age group for the entire program. The INSTRUCTOR will be required to submit these lesson plans to the CITY prior to the start of the Program.

The INSTRUCTOR will be responsible for supervision of all participants during scheduled class times while at Bill Keller Park or other City approved location. The INSTRUCTOR will be responsible for providing attendance sheets to the City at the conclusion of each month's Session in order to match payment sheets.

The INSTRUCTOR will be responsible for reporting any and all problems, questions or concerns regarding Youth and Adult Tennis Clinics to CITY representative, Jason Schaitz.

REPRESENTATIONS:

The INSTRUCTOR hereby represents to the CITY that:

1. They have the experience and skill to perform the services required to be performed by this agreement.
2. They shall provide and employ, in connection with the performance of such services, personnel qualified and experienced in their profession it being understood that the CITY may at any time require the INSTRUCTOR to remove, and the INSTRUCTOR shall immediately remove, any person employed in connection with the performance of the services in the sole opinion of the CITY who is unfit for the proper performance of his/her duties.
3. They shall comply with applicable federal, state and local laws and codes.

EVALUATION:

The INSTRUCTOR will periodically be evaluated by the CITY for the services rendered in conjunction with this Agreement.

EXHIBIT "C"

CITY OF DEBARY PARKS AND RECREATION DEPARTMENT

EQUIPMENT USE AGREEMENT

The CITY agrees to allow KC Tennis Academy use of its tennis equipment solely for the Youth and Adult Tennis Clinics that were listed in the above agreement held at Bill Keller Park. All the equipment available for use is listed below in "EQUIPMENT INVENTORY". Use of the equipment is contingent on the factors listed below:

1. The INSTRUCTOR agrees to replace any broken, lost, or stolen equipment that happens during the time the program is taking place.
2. The INSTRUCTOR agrees to inform the CITY within 24 hours after the equipment is found to be broken, lost or stolen.
3. The INSTRUCTOR agrees to use the equipment only during designated class times listed in the above agreement at Bill Keller Park.
4. The INSTRUCTOR agrees to leave the CITY tennis equipment at Bill Keller Park at all times.
5. The INSTRUCTOR agrees to maintain the CITY tennis equipment as needed.
6. The INSTRUCTOR agrees to place the CITY tennis equipment back in an orderly fashion in its designated storage closet, located in between the bathrooms next to the tennis court, and lock the closet properly after every session.
7. The INSTRUCTOR agrees to take full responsibility of the keys issued for the tennis equipment closet. The INSTRUCTOR agrees to only allow the approved instructors listed in this agreement use of the equipment storage closet keys. The INSTRUCTOR agrees to never make a copy of the keys they are issued. The INSTRUCTOR agrees to report lost or stolen keys to the CITY within 24 hours.

EQUIPMENT INVENTORY

The CITY will allow the KC Tennis Academy use of the equipment below. Inventory will be taken at least once (1) per year by the CITY. The CITY reserves the right to take inventory and inspect equipment any time as needed. KC Tennis Academy agrees to clearly mark any of their equipment that is left in the storage closet to avoid mixing equipment. KC Tennis Academy will not be required to replace equipment that has been deemed unusable from reaching its life span due to normal wear and tear.

Gamma First Set Tennis Net System – 4 sets

Gamma Agility Ladders – 2 ladders with carrying bag

Gamma Quick Kids Tennis Racquet – Blue 19' – 9 racquets

Gamma Quick Kids Tennis Racquet – Maroon 21' – 11 racquets

Gamma Quick Kids Tennis Racquet – Orange 23' – 11 racquets

Gamma Quick Kids Tennis Racquet – Green 25' – 11 racquets

Gamma Quick Kids Tennis Balls – Green – 58 balls

Gamma Quick Kids Tennis Balls – Orange – 71 balls

Gamma Quick Kids Tennis Balls – Red – 71 balls

Gamma Quick Kids Tennis Balls – Red/Yellow Foam – 14 balls

Yellow Tennis Balls – 98 balls

Red Bean Bags – 20

Gamma Rubber Portable Court Lines (Blue and Yellow) – 2 sets

Multicolor Spot Cones – 12

Orange Cones – 4

Hoola Hoops – Yellow, Red, Green, Purple – 1 of each color

AGREEMENT

This agreement, entered into on the ___ day of January 2016, by and between _____ and the **CITY OF SOUTH DAYTONA, FLORIDA, PARKS AND RECREATION DEPARTMENT**, hereinafter called "City" and/or "Department."

WHEREAS, _____ wishes to conduct _____, a recreational activity, and finds City-owned, or City-leased facilities for its use, and WHEREAS, the City owns or leases facilities for recreational activities, NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. Instructor shall be responsible for class activities and materials needed to conduct the class. Instructor is also responsible for their specific advertising needs.
2. Instructor agrees to monitor and supervise the safety of class participants. Instructor is to notify the Department immediately of any accident, injury, illness or incident occurring during class or on City property.
3. Instructor understands and agrees that he/she is "contracted" personnel and is without benefits, insurances, or compensation other than is outlined in #5.
4. Instructor shall provide proper supervision at all activities co-sponsored by Instructor upon City-owned or City-leased facilities.
5. Instructor agrees to pay city 30 percent of total revenues. Instructor agrees to issue payment and full accounting at each session ending. City reserves the right upon notification to Instructor to change percentage of revenue sharing based on registration rates.
6. Instructor will conduct activity at: _____ as scheduled.
7. Instructor shall be responsible for notification of participants in the case of cancelation of classes. Instructor shall notify the Department in such case, and will reschedule class to provide participants with the number classes for which participants were charged.
8. Instructor agrees to inspect facilities prior to each use to identify hazardous conditions, and that failure to do so may lead to injury to participants, which would then be the sole responsibility of the Instructor. Instructor should notify the Department of any hazardous conditions as soon as possible and refrain from using area during class.

9. Instructor understands the City may deem it necessary to conduct background screening, research and monitor the conduct and actions of it's employees, agents, and associated, particularly in the instruction of, or contact with children. Instructor agrees to submit, if requested, a notarized statement of good moral character and/or information required for background screening.
10. Instructor understands that no further use of City owned facilities or properties, except as stipulated in #6, is permitted without prior approval of the Department.
11. City shall provide access to facility stipulated in #6.
12. City shall provide public relations through public service announcement, newsletters, and informational releases, and gain permission through appropriate agencies for the distribution of announcements when necessary.
13. This agreement runs **January 1, 2016 continuing through perpetuity, unless otherwise changed by the city.**
14. This agreement can be terminated by either party upon completion of the session/dance in progress.
15. Instructor agrees to abide by all rules, regulations, and policies governing the use of City-owned and City-leased properties.
16. Instructor agrees to protect, defend, indemnify and hold harmless the CITY OF SOUTH DAYTONA, FLORIDA, from any and all claims of any type or nature whatsoever, including property damage and personal injury arising out of this agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the _____ of January in the year of 2016.

Instructor

Parks & Recreation Director

Independent Contractor Information

Name: _____ Address: _____

City: _____ Zip Code: _____ Phone #: _____

Social Security #: _____