

RESOLUTION NO. 09-03-14

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT WITH TEN STAR MANAGEMENT, INC. FOR TENNIS CENTER MANAGEMENT AND MAINTENANCE SERVICES AT THE LAKE PARK TENNIS CENTER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town is a municipality and given those powers and responsibilities enumerated by Chapter 166 Florida Statutes and the Florida Constitution; and

WHEREAS, the Town is empowered to enter into contractual arrangements with public agencies, private corporations or other persons to provide services; and

WHEREAS, the Town desires the services of a qualified and experienced professional to manage and to provide maintenance at the Lake Park Tennis Center (LPTC); and

WHEREAS, the Town has solicited via a Request for Proposals (101-2014) for services from professionals to manage and maintain the LPTC; and

WHEREAS, Ten Star Management, Inc. (TenStar) responded to the TOWN'S solicitation and it's response that it is willing to, and it's response demonstrated that it is qualified to provide the services solicited by the Town; and

WHEREAS, the Town has budgeted funds in its current fiscal year budget which are available for the funding of this Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1. The foregoing recitals are incorporated herein.

Section 2. The Mayor is hereby authorized and directed to execute the Agreement for Tennis Center Management and Maintenance Services with Ten Star. A copy of the Agreement is attached hereto and incorporated herein as **Exhibit "A"**.

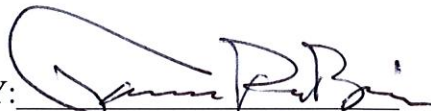
Section 3. This Resolution shall be effective upon adoption.

The foregoing Resolution was offered by Commissioner O'Rourke who moved its adoption. The motion was seconded by Commissioner Flaherty and upon being put to a roll call vote, the vote was as follows:

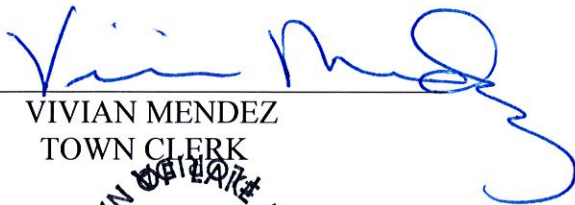
	AYE	NAY
MAYOR JAMES DUBOIS	<u>/</u>	___
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	___
COMMISSIONER ERIN FLAHERTY	<u>/</u>	___
COMMISSIONER MICHAEL O'ROURKE	<u>/</u>	___
COMMISSIONER KATHLEEN RAPOZA	<u>/</u>	___

The Town Commission thereupon declared the foregoing Resolution NO. 09-03-14 duly passed and adopted this 19 day of March, 2014.

TOWN OF LAKE PARK, FLORIDA


BY: 
JAMES DUBOIS
MAYOR

ATTEST:


VIVIAN MENDEZ
TOWN CLERK



Approved as to form and legal sufficiency:

BY: 
THOMAS J. BAIRD
TOWN ATTORNEY

**AGREEMENT FOR TENNIS CENTER MANAGEMENT
AND MAINTENANCE SERVICES
BETWEEN THE TOWN OF LAKE PARK, FL
AND
TENSTAR MANAGEMENT, INC**

THIS AGREEMENT FOR TENNIS CENTER MANAGEMENT AND MAINTENANCE SERVICES (Agreement) is made this ___ day of _____, 2014, by and between the Town of Lake Park, a municipal corporation of the State of Florida, 535 Park Avenue, Lake Park, Florida 33403 (“Town”) and TenStar Management, Inc., 5433 54th Way, West Palm Beach, FL 33409 (“TenStar”).

WITNESSETH THAT:

WHEREAS, the Town is a municipality and given those powers and responsibilities enumerated by Chapter 166 Florida Statutes and the Florida Constitution; and

WHEREAS, the Town is empowered to enter into contractual arrangements with public agencies, private corporations or other persons to provide services; and

WHEREAS, the Town desires the services of a qualified and experienced professional to manage and to provide maintenance at the Lake Park Tennis Center (LPTC); and

WHEREAS, the Town has solicited via a Request for Proposals (101-2014) for services from professionals to manage and maintain the LPTC; and

WHEREAS, TenStar responded to the TOWN'S solicitation and its response that it is willing to, and its response demonstrated that it is qualified to provide the services solicited by the Town; and

WHEREAS, the Town has budgeted funds in its current fiscal year budget which are available for the funding of this Agreement;

NOW THEREFORE, the Town and TenStar in consideration of the benefits flowing from each to the other do hereby agree as follows:

1. RESPONSIBILITIES OF TENSTAR

- 1.1 TenStar shall provide a qualified Tennis Professional, as set forth below to direct and oversee the operations of the LPTC.
- 1.2 TenStar shall be responsible for the management of the operations of the LPTC, including its fiscal management.
- 1.3 TenStar shall coordinate the operation and management of the LPTC with the

Town's Director of Parks & Recreation (the Director).

- 1.4 TenStar shall be responsible for the scheduling of tennis courts, providing individual and group tennis lessons, scheduling league play, the supervision of the LPTC facilities and its Tennis Professionals, independent contractors, or employees.

2. RESPONSIBILITIES OF THE TENNIS PROFESSIONAL:

- 2.1 The Tennis Professional must be a United States Professional Tennis Association (USPTA) member, and must be certified as a USPTA Professional 1.
- 2.2 Maintain a daily log showing the lessons which have been provided by any and all teaching professionals on the Town courts and any days of league play at the LPTC.
- 2.3 Provide such qualified staff as may be necessary to support the programming advertised as offered at the LPTC.
- 2.4 Maintain complete accounting records and implement appropriate accounting controls consistent with standard business practices. Accounting records shall be available for audit/inspection by the Town of Lake Park during regular working hours.
- 2.5 Establish the rates for individual and group tennis lessons, and league play.
- 2.6 Schedule the use of the Lake Shore Park tennis courts and provide private tennis lessons and schedule league play.
- 2.7 Provide the Director with a monthly schedule one week in advance of the next month. If there are any weekly or daily changes to the schedule, the Tennis Professional shall provide the Director with as much written advance notice as possible.
- 2.8 Provide professional tennis instruction for individuals or groups and promote league play.
- 2.9 Coordinate two annual fundraising tournaments, in cooperation with the Director, the net proceeds of which shall be deposited as a revenue to the Parks and Recreation Department's budget. The proceeds from fundraising tournaments shall be earmarked for the purchase of materials and equipment for the tennis program at the LPTC.
- 2.10 Schedule one free tennis lesson per week, for a minimum of one hour, for Lake Park children (with proof of residency) between the ages of 6 and 16. During the school year, the one hour lesson shall be conducted after school. During the summer, the timing of the scheduling of the weekly free tennis lesson will be at the discretion of the Tennis Professional.

- 2.11 Maintain an office schedule allowing for a minimum of 10 hours per week for administrative functions and duties.
- 2.12 Provide all equipment, which includes balls, racquets and any other necessary equipment required to conduct lessons, and league play.
- 2.13 Secure and maintain all business tax receipts or any licenses which are necessary to do business in Palm Beach County, the Town of Lake Park, and the State of Florida, and other operations provided by the Tennis Professional at the LPTC.

3. LPTC HOURS OF OPERATION:

- 3.1 Open every day throughout the year, weather permitting, at hours which are consistent with tennis industry practices and Town's needs, except for Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve, Christmas Day, and New Year's Day.
- 3.2 The Tennis Professional will be provided with keys for the purpose of opening and closing the Tennis Center. At a minimum, the two courts located in Kelsey Park will remain unlocked. The Tennis Professional will determine when to open any locked facilities. Further, the Tennis Professional will be responsible for ensuring that tennis court lighting at the Lake Shore Park courts are turned off no later than 10:00 pm each day that the facility is open.
- 3.3 Court Schedule: At all times, a minimum of 2 courts shall be available for use by the general public. The terms of this paragraph notwithstanding, this schedule, and the availability of courts to the public may be revised from time to time by the Town.

4. TERM:

The term of this Agreement shall be one year, commencing on May 1, 2014. Thereafter, the contract shall continue for two successive one year terms.

5. RESPONSIBILITIES OF THE TOWN:

- 5.1 Process fees related to Town tennis programs.
- 5.2 Enforce Town rules and regulations.
- 5.3 Promote and coordinate Town sponsored tennis programs.
- 5.4 Promote the facilities and recreational opportunities of the LPTC including professional tennis instruction through the distribution of an annual brochure, flyers, new releases and such other media sources as the Town deems appropriate and necessary.

6. INDEMNIFICATION AND INSURANCE REQUIREMENTS:

- 6.1 TenStar shall indemnify, defend, and save harmless the Town, its elected and appointed officials, agents, and employees, from any and all suits, actions, claims, demands, damages, losses, expenses, including attorney's fees, costs and judgments of every kind and description to which the Town, its elected and appointed officials, agents, or employees may be subjected by reason of personal injury, bodily injury including death, or property damage, resulting from or growing out of any intentional, negligent, reckless, or careless act of commission, omission, or consequential damage directly or indirectly connected with TenStar, its subcontractors, its agents, or employees, and committed in connection with TenStar's performance of any services performed hereunder.
- 6.2 TenStar must obtain the insurance as set forth below and submit the declaration page for same to the Town to demonstrate the retention of these policies.
 - a. **WORKERS' COMPENSATION INSURANCE** for all employees of TenStar for Statutory Limits in compliance with the applicable state and federal laws. Notwithstanding the number of employees or any other statutory provisions to the contrary, coverage shall extend to all employees of TenStar and all subcontractors. **EMPLOYERS LIABILITY** limits are required to be not less than \$1,000,000.00 EACH ACCIDENT; \$1,000,000.00 DISEASE-POLICY LIMIT; AND \$1,000,000.00 DISEASE-EACH EMPLOYEE.
 - b. **COMPREHENSIVE GENERAL LIABILITY** with the minimum limits of \$1 million, Per Occurrence, Premises and Operations, Independent contractors, Products and Completed Operations, Personal and Advertising Injury, and including evidence of coverage limits for Abuse and Molestation of no less than \$1 million. \$2 million aggregate.

7. MAINTENANCE REQUIREMENTS OF TENNIS PROFESSIONAL:

Maintenance: All maintenance (internal/external/minor) of the LPTC is the responsibility of the Tennis Professional. All tools, materials, and equipment for the maintenance of the LPTC shall be the responsibility of the Tennis Professional. Maintenance duties include:

All six tennis courts shall have the leaves removed (preferably with the use of a leaf blower) on a daily basis.

Picking up, by the end of each day, all the trash and tennis balls lying around.

Zip-tying and/or replacing the windscreen or nets that have become loose or have ripped.

Unlocking all gates in the morning and locking all gates at night.

Inspecting the LPTC for maintenance or repairs once per week and making the Director aware of any maintenance issues which fall under Section 8 below.

8. MAINTENANCE REQUIREMENTS OF THE TOWN:

Water and sewer, trash collection, telephone, internet, and cable television service costs shall be paid by the Town.

Major repairs and capital improvements shall be the responsibility of the Town including:

- Fencing repairs.
- Light fixture repair.
- Repair and maintenance of the irrigation system for the tennis courts.
- Pressure washing of the concrete and the canopies twice per year.
- Maintaining clean and presentable restrooms.

9. COMPENSATION AND REVENUE SHARING:

TenStar's direct earned revenues (compensation) from operation of the LPTC shall be limited to the Tennis Professional's fees for private lessons and the scheduling of league play. TenStar shall share in revenue from all fees collected by the Town for tennis programs, tennis camps, tennis clinics, and tennis tournaments sponsored by the Town.

Schedule of compensation and revenue sharing:

<u>Activity</u>	<u>Tennis Professional</u>	<u>Town</u>
Private lessons	100%	0%
League Play (@ \$700/player)	80%	20%
Independent contractor lessons	90%	10%*
Town programming	80%	20%
Fundraising events	10%	90%

* It is anticipated that the annual premium for Workers' Compensation insurance will cost the Tennis Professional approximately \$1,400.00 per year. The Tennis Professional will be entitled to retain the 10% revenue sharing proceeds from the Independent contractor lessons until 100% of the full cost of Workers' Compensation insurance premiums is reimbursed. After that, the Town will be entitled to the 10% revenue sharing proceeds from Independent contractor lessons.

PAYMENT OF ANY AND ALL PERTINENT FEDERAL, STATE, OR LOCAL SELF-EMPLOYMENT, WORKERS' COMPENSATION OR INCOME TAXES, OR OTHER ASSESSMENTS LEVIED BY GOVERNMENTAL AUTHORITIES ON ANY MONIES EARNED AS A RESULT OF THE TENNIS MANAGEMENT SERVICES CONTRACTUAL

RELATIONSHIP WITH LAKE PARK, THE TOWN OF LAKE PARK SHALL BE REIMBURSED FOR ANY CLAIM OR ASSESSMENT, INCLUDING INTEREST AND PENALTIES, BY ANY TAXING AUTHORITY ARISING OUT OF CONTRACTOR'S FAILURE TO FULFILL THE FOREGOING RESPONSIBILITIES.

10. ACCOUNTING PROCEDURES:

TenStar shall maintain complete and adequate accounting records supporting all charges, fees, expenses, and costs associated with this Agreement.

TenStar shall implement appropriate accounting controls consistent with standard business practices. All transactions generated as a result of lessons and league play shall be accounted for as follows:

1. TenStar shall maintain and have available for the Town it's monthly participation reports to include:
 - frequency of lesson; and
 - amounts paid by participant.
2. TenStar's accounting records shall be available for audit and inspection by the Town during hours of operation.
3. TenStar shall provide a monthly report showing the amounts of all revenue collected for Tennis Professional's related services.

11. TERMINATION

Either party may terminate the Agreement prior to the end of the Term by providing the other with 60 days advance written notice of its intention to do so. Provided however, the Town may terminate this Agreement at any time for its convenience provided it gives TenStar 60 days advance written notice of its intention to do so.

12. NOTICES

All notices between the parties shall be in writing and mailed or hand delivered to the parties at the following addresses:

TO THE TOWN:

Town of Lake Park
Attn: Town Manager
535 Park Avenue
Lake Park, FL 33408

TO TENSTAR:

TenStar Management, Inc.
Attn: Darryl Fornatora, President
5433 54th Way
West Palm Beach, FL 33409

13. GOVERNING LAW/VENUE.

This Agreement shall be governed by the laws of the State of Florida. Venue for any cause of action arising out of this Agreement shall lie in the 15th Judicial District in and for Palm Beach County, Florida, or the United States District Court, Southern District of Florida, West Palm Beach, Florida.

14. ATTORNEY FEES

If either party is required to initiate a legal action, including appeals, to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

15. ASSIGNMENT

This Agreement may not be assigned without the written approval of the Town. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and permitted assigns.

16. SEVERABILITY

In the event that any sentence, section, paragraph or portion of this Agreement shall be held by a court to be invalid for any reason, such invalidity shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

17. WAIVER

Any waiver by either party hereto of any one or more of the covenants, conditions, or provisions of this Agreement, shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Agreement.

18. ENTIRE AGREEMENT.

This Agreement embodies the entire Agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter. This Agreement may only be modified by written amendment executed by the Town and TenStar.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year last executed below

ATTEST:

TOWN OF LAKE PARK

By: _____
Vivian Mendez, Town Clerk

By: _____
James DuBois, Mayor

Town Seal

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
Thomas J. Baird, Town Attorney

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this ____ day of _____ 2014 by James DuBois, as Mayor of the Town of Lake Park, and who is personally known to me.

(NOTARY SEAL)

Notary Public, State of Florida

WITNESSES:

TENSTAR MANAGEMENT, INC.

By: _____

By: _____

Darryl Fornatora

Title: President

Printed Name

Printed Name

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument has been acknowledged before me this ____ day of _____ 2014 by Darryl Fornatora, as President of TenStar Management, Inc. He is personally known to me or has produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida