

CITY COMMISSION AGENDA ITEM
City of Fernandina Beach



SUBJECT: **Resolution 2017- 27**
Lease Agreement – Maharaj Tennis, LLC

ITEM TYPE: Ordinance Resolution Other
 Proclamation Presentation

REQUESTED ACTION: **Approve Resolution 2017-27**

SYNOPSIS: Maharaj Tennis, LLC, is currently engaged in an Agreement, (Exhibit 1), with the City of Fernandina Beach to provide professional tennis instruction utilizing the Northern Cluster of Tennis Courts located at 1218 Atlantic Avenue (Central Park).

Under the current agreement, Maharaj Tennis pays the City 20% of revenue generated for the use of the tennis courts; this amount fluctuates based on the number of participants.

Maharaj Tennis now desires to enter into a lease agreement with the City to lease Courts 1 and 2, (Northern Cluster of Tennis Courts), from the City for activities and functions related to providing professional tennis instructions. Maharaj Tennis will pay the City \$1,200.00 per month for the lease of said tennis courts; the lease shall be for a period of three years with two 1-year renewal options.

Parks and Recreation staff recommends approval of the proposed lease agreement. The implementation of the lease agreement with Maharaj Tennis will help streamline the accounting aspect of revenue collection and participant verification.

FISCAL IMPACT: This lease eliminates cash handling / internal control issues and provides a reliable revenue stream.

2016/2017 CITY COMMISSION GOALS: (As approved by Resolution 2016-51)

<input type="checkbox"/> Beach Safety	<input type="checkbox"/> Alachua Street
<input type="checkbox"/> Soccer Field Lighting	<input type="checkbox"/> Stormwater
<input type="checkbox"/> Downtown Density	<input type="checkbox"/> Opportunity
<input type="checkbox"/> ADA Improvements	<input type="checkbox"/> Departmental
<input type="checkbox"/> Consideration	

CITY ATTORNEY COMMENTS: No additional comments.

CITY MANAGER RECOMMENDATION(S): I recommend that the City Commission adopt proposed Resolution 2017-27 . *DM*

DEPARTMENT DIRECTOR	Submitted by: Nan S. Voit Director of Parks and Recreation	Date: 2/3/17
CONTROLLER	Approved as to Budget Compliance <i>PHC</i>	Date: 2/7/17
CITY ATTORNEY	Approved as to Form and Legality <i>TEB</i>	Date: 2/6/17
CITY MANAGER	Approved Agenda Item for 2/21/17 <i>DM</i>	Date: 2/8/17

COMMISSION ACTION: Approved As Recommended Disapproved
 Approved With Modification Postponed to Time Certain
 Other Tabled

RESOLUTION 2017-27

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF FERNANDINA BEACH AND MAHARAJ TENNIS, LLC TO LEASE THE NORTHERN CLUSTER OF TENNIS COURTS LOCATED AT 1218 ATLANTIC AVENUE; AUTHORIZING EXECUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Maharaj Tennis, LLC, is currently engaged in an agreement (Exhibit 1) with the City of Fernandina Beach to provide professional tennis instruction utilizing the northern cluster of tennis courts, (Courts 1 and 2), located at 1218 Atlantic Avenue (Central Park); and

WHEREAS, under the current agreement, Maharaj Tennis pays the City 20% of revenue generated for the use of the tennis courts; this amount fluctuates based on the number of participants; and

WHEREAS, Maharaj Tennis now desires to enter into a lease agreement with the City to lease the northern cluster of tennis courts (Courts 1 and 2) from the City for activities and functions related to providing professional tennis instructions to the community; and

WHEREAS, Maharaj Tennis will pay the City \$1,200.00 per month for the lease of said tennis courts; the lease shall be for a period of three years with two 1- year renewal options.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, THAT:

SECTION 1. The City Commission hereby approves the Lease Agreement, attached hereto as Exhibit "A," between the City of Fernandina Beach and Maharaj Tennis, LLC to lease the northern cluster of tennis courts (Courts 1 and 2), located at 1218 Atlantic Avenue.

SECTION 2. The City Manager and City Clerk are hereby authorized to execute said agreement upon review and approval of the City Attorney.

SECTION 3. This Resolution shall become effective immediately upon passage.

ADOPTED this 21st day of February, 2017.


CITY OF FERNANDINA BEACH

Robin C. Lentz
Mayor - Commissioner

ATTEST:

Caroline Best
City Clerk

APPROVED AS TO FORM AND LEGALITY:



Tammi E. Bach
City Attorney

**MAHARAJ TENNIS
LEASE AGREEMENT**

THIS LEASE AGREEMENT, hereinafter referred to as "Agreement", by and between the **CITY OF FERNANDINA BEACH, FLORIDA**, a municipal corporation whose address is 204 Ash Street, Fernandina Beach, FL 32034, hereinafter referred to as "Lessor" or "Landlord" and **MAHARAJ TENNIS, LLC**, a Florida limited liability company with authority to do business in the State of Florida whose address is 86087 Montauk Drive, Fernandina Beach, FL 32034, hereinafter referred to as "Lessee" or "Tenant".

W I T N E S S E T H:

WHEREAS, LESSOR now owns and controls certain land and tennis courts located at 1218 Atlantic Avenue, Fernandina Beach, FL 32034 **known as Central Park and more specifically described as Central Park Tennis Courts ("Property")**; and

WHEREAS, LESSEE has proposed to lease a portion the Property specifically described as Courts 1 and 2, the Northern Cluster of Tennis Courts ("Premises") from LESSOR for activities and functions related to the purpose of the LESSEE in performing tennis lessons, clinics, tournaments and generally playing tennis; and

NOW THEREFORE, in consideration of the Premises and the mutual covenants contained in this Agreement, the parties hereby agree as follows:

1. **Term.** The term of this Agreement shall be for a **period of 3 years**, commencing on February 1, 2017, and continuing for said term, unless earlier terminated or extended as provided in this Agreement.

1.1 **Option to Renew.** If the Tenant has fully and faithfully complied with this Lease, the lease may be extended for **two (2) one-year renewal terms** based on the mutual written agreement of the Lessor and Lessee. The extended term will begin on the day following the expiration date of the Lease term specified in § 1. But if, on the date the original term expires, Tenant is in default of any of the terms of this Lease, the renewal option is void. All other terms and covenants of the original Lease term apply to the extended Lease term, unless otherwise modified by agreement of both parties hereto.

(a) Tenant may exercise each option to extend this Lease by giving the City notice of its intention to do so not later than sixty (60) days before the Lease term expires. The Lessor shall respond in writing to the request.

2. **Rights and Obligations of Lessee.** Lessee is hereby granted the non-exclusive privilege to engage in, and Lessee agrees to engage in, the business of performing tennis lessons, clinics, tournaments and generally playing tennis on the Premises.

2.1. The parties agree that this agreement shall be construed as "Lease Agreement" and Lessee shall not engage in any business on the Premises other than those services specified in this Lease Agreement.

2.2. Lessee shall meet and pay all expenses and payments in connection with the use of the Premises and the rights and privileges herein granted, including sales tax on rent if applicable.

2.3. Lessee shall comply with all federal, state, City and local laws, rules, codes and regulations that may apply to the conduct of the business contemplated herein.

2.4 Lessee understands and agrees that Courts 3 and 4, known as the “Southern Cluster of Tennis Courts”, are open to the public and available on a first-come, first-serve basis; however, in consideration of this Lease of the Northern Cluster of Tennis Courts, if the Lessee finds it necessary to use Courts 3 and 4 for performing tennis lessons, clinics, tournaments and generally playing tennis as part of its business, that Lessee shall inform the City in writing at least 24 hours prior to using the Southern Cluster of Tennis Courts.

2.5. Lessee shall not cause or permit to occur:

(a). Any violation of any federal, state or local law, ordinance or regulation now or later enacted, related to environmental conditions on, under, or about the Premises, or arising from Lessee’s use or occupancy of the Premises, including, but not limited to, soil and ground water conditions; or

(b). The use, generation, release, manufacture, refining, production, processing or disposal of any hazardous substance on, under, or about the Premises.

2.6. Lessee’s obligations under Section 2 and all of its Sub-sections, and Sections 3, 4 and 6 of this AGREEMENT shall survive the expiration or termination of this AGREEMENT or any renewal thereof.

2.7. During the term of this Agreement, Lessee is permitted to use the small storage space (located between the male and female restrooms) at the Central Park Comfort Station. Lessee shall have the right, at its expense, to place in or on the Premises, a sign or signs identifying Lessee. Said sign or signs shall be of a size, shape and design, and at a location or locations, approved and permitted by Lessor and in conformance with any overall directional graphics or sign program established by Lessor. Lessee shall also comply with any sign code regulations, historic district regulations and guidelines, and obtain all permits required. Lessor's approval shall not be unreasonably withheld. Notwithstanding any other provision of this Agreement, said sign(s) shall remain the property of Lessee. Lessee shall remove, at its expense, all lettering, signs and placards so erected on the Premises at the expiration of the term of this Agreement.

3. LEASEHOLD IMPROVEMENTS. Lessee shall not make any structural changes, additions, removal or improvements to the Premises without first obtaining Lessor’s written consent or approval of such changes.

3.1. Lessee shall have no authority to subject the Premises, or any part thereof or any interest of Lessor therein, to any mechanic’s or other lien. Should any mechanic’s or other liens be filed against the Premises or any part thereof or any interest of Lessor therein, by reason of Lessee’s acts or omissions or because of a claim against Lessee, Lessee shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after notice by Lessor.

3.2. Lessee shall at Lessee’s sole cost and expense keep and maintain the Premises in good condition. All damage or injury to the Premises caused by the act or negligence of Lessee, its employees, agents or visitors, shall be repaired by Lessee at Lessee’s sole cost and expense. Lessee shall upon the expiration or sooner termination of the term hereof surrender the Premises to Lessor in at least the same condition as existed on the Effective Date, ordinary

wear and tear excepted. Lessor shall have no obligation to alter, remodel, improve, decorate, or paint the Premises or any part thereof, and the parties hereto affirm that Lessor has made no representations to Lessee respecting the condition of the Premises, except as specifically herein set forth. Lessee accepts the Premises in its "as is" condition on the Effective Date of this Lease.

4. Payments. In consideration of the rights and privileges granted by this Agreement, Lessee agrees to pay to Lessor the following:

4.1. As consideration for the improvements to be made by the Lessee to the Lessor's Premises, rent from the date of commencement of lease payments hereunder shall be, **One Thousand Two Hundred Dollars (\$1,200.00)**, per month. Lessee shall be solely responsible for the sales tax on said payment, and sales tax shall be included with each monthly payment.

4.2. The parties understand and agree that the Lessee shall be solely responsible for any and all taxes on personal property, or any other lawfully imposed taxes that are assessed by any taxing authorities on the Premises occupied by Lessee.

4.3. Lessor shall be responsible for the landscaping of the Premises being leased by Lessee. Said landscaping shall be performed by City employees or other contractors as the City deems necessary, and shall include the normal upkeep of the property at the level provided at the time of this agreement.

5. Insurance. Lessee shall obtain and maintain continuously in effect at all times during the term of this Agreement, at Lessee's sole expense, the following insurance:

5.1. Comprehensive general liability insurance protecting Lessor against any and all liability by reason of Lessee's conduct incident to the use of the Premises, caused by or arising out of any wrongful act or omission of Lessee, in the minimum amount of **\$1,000,000.00**. A copy of annual insurance certificate shall be attached as **Exhibit "A" "Liability Insurance Certificate"**.

5.2. The insurance specified in Section 5.1 shall name Lessor as an additional insured by separate written endorsement with instructions that Lessor will be notified by the insurance carrier if the Lessee defaults on premium payments.

5.3. Lessor agrees to notify Lessee in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which Lessor has knowledge, and to cooperate with Lessee in the investigation and defense thereof.

6. Indemnification. The parties recognize that MAHARAJ TENNIS, LLC is an independent contractor. MAHARAJ TENNIS, LLC agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising directly or indirectly out of or in connection with any negligent and/or deliberate act or omission of MAHARAJ TENNIS, LLC its members, officers, employees, agents, and representatives. MAHARAJ TENNIS, LLC's liability hereunder shall include all attorney's fees and costs incurred

by the City in the enforcement of this indemnification provision. This includes claims made by the employees of MAHARAJ TENNIS, LLC against the City, and MAHARAJ TENNIS, LLC hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

7. Independent Contractor. In conducting its operations hereunder, Lessee acts as an independent contractor and not as an agent of Lessor. The selection, retention, assignment, direction and payment of Lessee's employees shall be the sole responsibility of Lessee, and Lessor shall not attempt to exercise any control over the daily performance of duties by Lessee's employees.

8. Assignment. This Agreement, or any part thereof, may not be assigned, transferred or subleased by Lessee, except to affiliated companies, by process or operation of law or in any other manner whatsoever, without the prior written consent of Lessor, which consent shall not be withheld unreasonably.

9. Non-Discrimination. Notwithstanding any other inconsistent provision of this Agreement, during the performance of this Agreement, Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration for this agreement, does hereby covenant and agree, as a covenant running with the land, that:

9.1. No person on the grounds of race, color, religion, sex or national origin shall be excluded from participating in, denied the benefits of, or otherwise be subjected to discrimination, in the use of the Premises;

9.2. In the furnishing of services on, over or under the Premises, no person on the grounds of race, color, religion, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

10. Termination. This Agreement shall be subject to termination by either party in the event of any one or more of the following:

10.1. The abandonment of the Premises for activities related with Lessee's organization.

10.2. The default by either party in the performance of any of the terms, covenants and conditions of this Agreement, and the failure of such defaulting party to remedy or to undertake to remedy to the other party's satisfaction such default for a period of thirty (30) days after receipt of written notice from the non-defaulting party to the defaulting party to remedy same;

10.3. Damage to or destruction of all or a material part of the Premises necessary to the operation of Lessee's tennis instruction and play.

11. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties, and as of its effective date supersedes all prior or independent contracts or agreements between the parties covering the subject matter hereof. Any change or modification hereof must be in writing signed by both parties.

12. Severability. If any substantive provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, and such declaration results in a substantial failure of consideration for either party, the entire agreement shall be subject to termination by such party. Otherwise, such declaration shall not be cause for termination of this Agreement, but only such void or illegal provision shall be canceled or deemed to be of no effect.

13. Notice. Any notice given by one party to the other in connection with this agreement shall be in writing and shall be sent by certified mail, return receipt requested, with postage and certification fees prepaid, to the following addresses:

Lessee: Michele Maharaj
Managing Member
Maharaj Tennis, LLC
86087 Montauk Drive
Fernandina Beach, FL 32034

Lessor: City of Fernandina Beach
City Manager
204 Ash Street
Fernandina Beach, FL 32034
Telephone: 904-310-3100

14. Governing Law. This Agreement is to be construed in accordance with the laws of the State of Florida.

15. Re-Entry. It is further understood and agreed between the parties hereto that in the event of any breach of any covenant or agreement on the part of the Lessee to be performed and provided, that if such breach is not remedied by the Lessee after reasonable notice in writing to it by the Lessor, the Lessor may re-enter and terminate this tenancy by giving the Lessee thirty (30) days written notice, to quit the Premises. Lessor shall at all times be entitled to recover by all lawful means any and all damage sustained by it through the breach of any said covenants and agreements on part of the Lessee to be performed.

16. Attorney's Fees. Should either party bring suit to enforce its rights under this Agreement, the prevailing party shall be paid its reasonable attorney's fees and costs of such suit, including appeals, to be paid by the non-prevailing party.

17. Obligation Upon Termination. Upon termination of this Lease, all obligations of either party hereunder to the other shall cease and terminate, and the Lessee agrees that upon the termination of this Lease, it shall quit and surrender the Premises in as good order and condition as existed at the time of the initial occupancy and only reasonable wear and tear being accepted.

18. Non-Exclusive. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right.

19. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

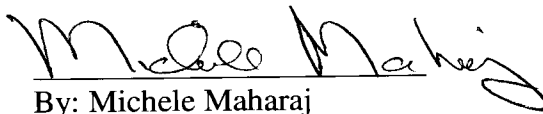
20. Effective Date. This Agreement shall become effective as of February 1, 2017.

IN WITNESS WHEREOF, the parties have executed this Agreement on 23 day of January, 2017.

CITY OF FERNANDINA BEACH

MAHARAJ TENNIS, LLC

By: Dale L. Martin
Its: City Manager



By: Michele Maharaj
Its: Managing Member

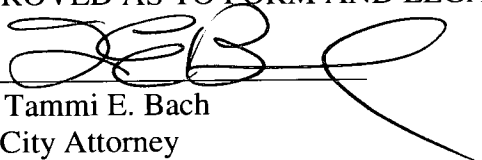
ATTEST:

ATTEST:

By: Caroline Best
Its: City Clerk

By: _____
Its: _____

APPROVED AS TO FORM AND LEGALITY:



By: Tammi E. Bach
Its: City Attorney

Attachments

1. Exhibit "A" – Liability Insurance Certificate



January 24, 2017

Mr. Vishnu Maharaj
86087 Montauk Dr
Fernandina Beach, FL 32034-8139

Dear Vishnu,

This letter will confirm that, as a certified member of the United States Professional Tennis Association, you have liability insurance as outlined below. This USPTA liability policy covers applicants, certified and certain honorary members in the United States, its territories or Canada, and nonmembers who are insured through a certified member's policy.

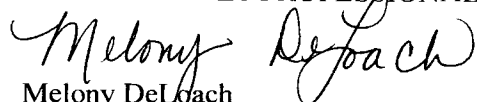
THE USPTA LIABILITY POLICY INCLUDES \$6 million liability insurance, *while on court*, for bodily injury to others, and for damage to property not in the tennis teacher's care, custody or control. It *does not cover* injury to the tennis teacher, or damage to his/her property. The accident must have taken place on court, and arisen from the tennis teacher's playing, practicing, teaching or officiating in tennis, pickleball, and platform tennis.

Policy Number:	PHPK1584574
Effective Period:	12/31/2016 - 12/31/2017
For questions or to report an accident, contact:	USPTA World Headquarters 3535 Briarpark Drive, Suite 202 Houston, TX 77042 Telephone 713-978-7782

If we may be of further assistance, please do not hesitate to contact us.

Sincerely,

UNITED STATES PROFESSIONAL TENNIS ASSOCIATION, INC.


Melony DeLoach
Insurance Department

This coverage is null and void if the member is not a citizen of or does not legally reside and work in the United States, its territories or Canada.



January 30, 2017

Ms. Michele Maharaj
86087 Montauk Dr
Fernandina Beach, FL 32034-8139

Dear Michele,

This letter will confirm that, as a certified member of the United States Professional Tennis Association, you have liability insurance as outlined below. This USPTA liability policy covers applicants, certified and certain honorary members in the United States, its territories or Canada, and nonmembers who are insured through a certified member's policy.


THE USPTA LIABILITY POLICY INCLUDES \$6 million liability insurance, *while on court*, for bodily injury to others, and for damage to property not in the tennis teacher's care, custody or control. It *does not cover* injury to the tennis teacher, or damage to his/her property. The accident must have taken place on court, and arisen from the tennis teacher's playing, practicing, teaching or officiating in tennis, pickleball, and platform tennis.

Policy Number:	PHPK1584574
Effective Period:	12/31/2016 - 12/31/2017
For questions or to report an accident, contact:	USPTA World Headquarters 3535 Briarpark Drive, Suite 202 Houston, TX 77042 Telephone 713-978-7782

If we may be of further assistance, please do not hesitate to contact us.

Sincerely,

UNITED STATES PROFESSIONAL TENNIS ASSOCIATION, INC.


Melony DeLoach
Insurance Department

This coverage is null and void if the member is not a citizen of or does not legally reside and work in the United States, its territories or Canada.

United States Professional Tennis Association

Hereby certifies that

Michele Maharaj

has successfully completed all requirements, including an extensive examination of teaching, playing and business skills, necessary for the rating of

Professional

John R. Embree
Chief Executive Officer



Membership No. 20676
Valid through Dec. 31, 2017

United States Professional Tennis Association

Hereby certifies that

Vishnu Maharaj

has successfully completed all requirements, including an extensive examination of teaching, playing and business skills, necessary for the rating of

Elite Professional

John R. Embree
Chief Executive Officer



Membership No. 3205
Valid through Dec. 31, 2017

AGREEMENT TO FURNISH TENNIS PROFESSIONAL SERVICES TO THE
CITY OF FERNANDINA BEACH

This AGREEMENT made on the 21 day of October, 2015 between the City of Fernandina Beach, a municipal corporation whose address at 204 Ash Street, Fernandina Beach, Florida 32034 ("CITY") and the TENNIS PROFESSIONAL, Vishnu and Michele Maharaj, two Florida residents, whose address is 86087 Montauk Drive, Fernandina Beach, Florida, 32034 (hereinafter referred to as "TENNIS PRO").

The TENNIS PRO agrees to provide professional services to the City of Fernandina Beach, as follows:

ARTICLE 1 - SCOPE OF SERVICES

The parties hereto agree that under this Agreement, the TENNIS PRO will provide professional services of a specified nature as described herein:

The TENNIS PRO will coordinate leagues, tournaments, ladders, kids' camps, clinics, and lessons. This will include recruiting players for the activities as well as providing a balanced tennis-activities mix for all ages and abilities. The environment should promote tennis for fun, health and skill.

Tennis programs must be structured for both children and adults and shall include, but not be limited to, programs as public demand dictates to promote tennis in the community.

The TENNIS PRO shall be responsible for cleaning the courts surface of debris during his/her scheduled programs and shall notify the City and recommend replacement and/or repair of nets, courts, lighting and fencing.

If for some reason the TENNIS PRO is absent a USPTA Certified Pro or other Certified Pro from a pre-approved list can fill in for lessons. A pre-approved instructor can fill in for clinics; this person not having to be a certified pro.

TENNIS PRO shall be permitted to use the facility known as Central Park Tennis Courts, located at 1218 Atlantic Avenue, Fernandina Beach, FL 32034, for the purpose of offering its program to the general public.

TENNIS PRO shall be permitted the use of the facility Monday through Sunday from 7:00 am to 9:00 pm.

As a condition to the TENNIS PRO's right to use the facility herein, TENNIS PRO agrees to and shall comply with the following:

- A. TENNIS PRO shall operate and maintain a community service or program open to the general public.
- B. TENNIS PRO shall not exclude any person from its programs or services because of race, sex, age, religion, disability, national origin or other prohibited discrimination.

- C. TENNIS PRO shall have a competent, responsible and able person on the premises at all times when its services or programs are being offered (USPTA Certified Pro for lessons and an instructor from a pre-approved list for clinics/camps).
- D. The needs of the community shall be given consideration in the planning of TENNIS PRO's programs or services, and therefore the parties agree that joint meetings will be held as needed, to facilitate mutual cooperation and to make possible regular re-examination of the effectiveness of the TENNIS PRO's program at the facility.
- E. CITY shall have the right, acting through its agents or employees, to enter upon the premises at reasonable hours and times for the purpose of making inspections.
- F. TENNIS PRO shall not undertake any alterations or changes in the construction of the facility premises, without prior written consent of the CITY.
- G. All program or service registration payments will be made through the CITY Parks and Recreation Department administrative office located at 2500 Atlantic Avenue, Fernandina Beach, FL during regular business hours. The Pro may accept checks on the court but no cash payment is permitted accept at the administrative office.
- H. TENNIS PRO will provide services that follow the fee schedule submitted by the TENNIS PRO (see attachment A). If changes are to be made in the fee schedule once operation begins, TENNIS PRO will first submit the proposed new fee to the Director of Parks and Recreation or designee for approval.
- I. TENNIS PRO shall, at all times, abide by all Federal, State and local laws, in the operation of its programs or services at the facility.

ARTICLE 2 - TERM OF AGREEMENT

This Agreement shall commence on the 1st day of November, 2015 and shall terminate one (1) year from that date. The CITY reserves the right to extend the contract for two (2) additional one (1) year terms providing both parties agree to the extension, and such extension is approved by the CITY.

A. TENNIS PRO/CITY Compensation

The CITY shall collect and deposit all tennis related receipts. At least monthly, but no later than ten (10) days after each month end the CITY will compensate the TENNIS PRO for service in accordance with the fee schedule below.

For use of the facilities, CITY shall compensate the TENNIS PRO, 80% of the gross tennis related revenues from the programs or services offered at the CITY's tennis facilities.

The TENNIS PRO agrees to provide the programs and services in accordance with the fees and program descriptions described in Exhibit "A", attached hereto and incorporated fully herein by this reference. Any changes to Exhibit "A" shall be submitted to the CITY by the TENNIS PRO at least seven (7) business days prior to implementation.

B. Reimbursable Expenses

The TENNIS PRO's out-of-pocket expenses including, but not limited to, travel, insurance and living expenses are the sole responsibility of the TENNIS PRO.

C. Advertising/Incidental Expenses

Printing and reproduction using CITY copier, use of CITY computer equipment and CITY field equipment used by the TENNIS PRO for advertising are the responsibility of the CITY. Charges for use of TENNIS PRO's equipment, stringing machine, ball machine and personal automobiles are the responsibility of the TENNIS PRO.

D. Monthly Reporting

The TENNIS PRO shall be responsible for recording all registration information to include participants name, phone number, address, amount paid, and date of classes. The Pro will also be responsible for contacting participants for rainouts and other changes that may need to be communicated to participants. The Pro will notify the City of Fernandina Beach Parks and Recreation Department immediately of important changes so that the info can be passed along to participants that may contact the Parks and Recreation Department for updated changes. The Pro will be provided an area at the Atlantic Recreation Center to do the required administrative work. Original or duplicate copies of registration forms must be kept at the administrative office.

The CITY shall make available to the TENNIS PRO, upon request, monthly reports of revenues and number of program participants.

ARTICLE 3 - TERMS OF PERFORMANCE

It is further mutually agreed by the parties hereto that:

A. Starting Work

The TENNIS PRO will not begin work on any of the services listed in Article I until authorized in writing to proceed by the CITY.

B. Services in Connection with Claims and Litigation

The scope and extent of services to be provided under this agreement does not include personal time of the TENNIS PRO or time of personnel working under sub-agreements and related expenses required or requested to support, document, bring, defend, or assist in litigation and/or claims, undertaken by or defended by the City of Fernandina Beach.

C. Force Majeure

Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances,

rules, or regulations. The TENNIS PRO or City of Fernandina Beach may suspend its performance on any assignment as a result of a force majeure without being in default of this agreement, but upon the removal of such force majeure, the TENNIS PRO or City of Fernandina Beach shall resume its performance as soon as is reasonably possible.

D. Approval of Changes

The City of Fernandina Beach must approve any changes in the scope or other conditions under which the services specified or referred to herein are to be performed which result in additional costs or expenses to the City of Fernandina Beach or which would change the underlying substance of this agreement. Changes include, but are not limited to: issuing additional instructions, requesting additional work, direct omission of work previously ordered, or changes in time of performance.

E. Termination

The City of Fernandina Beach or the TENNIS PRO may terminate, suspend, or delay this agreement for any reason by giving at least thirty (30) days written notice to the other party of their intent to terminate, suspend, or delay. In the event the agreement is terminated, suspended or delayed by the City of Fernandina Beach for reasons unrelated to the quality of work provided by the TENNIS PRO, the City of Fernandina Beach shall forthwith pay the TENNIS PRO in full for all work previously authorized and actually performed prior to the Notice of Termination, Suspension or Delay. This payment shall be the sole financial obligation or responsibility of the City of Fernandina Beach for compensation hereunder in the event of termination, suspension or delay in accordance with the provisions of this paragraph. This agreement shall continue in effect until a Notice of Termination, Suspension or Delay is given by either party as set forth above. Upon termination, suspension or delay, at the City of Fernandina Beach's request, the TENNIS PRO shall turn over to the City of Fernandina Beach all keys and City equipment up to the date of termination, suspension or delay.

ARTICLE 4 INSURANCE AND INDEMNIFICATION

RELEASE AND INDEMNIFICATION

The TENNIS PRO does hereby consent to, understand, acknowledge and agree to assume all risks and hazards incidental to use of the City's tennis facilities. The TENNIS PRO does further promise and hereby further agrees to waive, release, absolve, and covenant not to sue the City of Fernandina Beach, its mayor, commissioners, employees, officers, volunteers, representatives, attorneys and agents, for any and all claims, including claims for equitable or injunctive relief, damages, loss or injury of any kind resulting from or in any way arising directly or indirectly out of TENNIS PRO's use of the City's tennis facilities. **THIS RELEASE INCLUDES A RELEASE FOR ANY AND ALL LOSSES OR INJURIES ARISING OUT OF ANY AND ALL NEGLIGENT OR WRONGFUL ACTS OR OMISSIONS OF THE CITY OF FERNANDINA BEACH, ITS MAYOR, COMMISSIONERS, EMPLOYEES, OFFICERS, VOLUNTEERS, REPRESENTATIVES, ATTORNEYS AND AGENTS.**

The parties recognize that TENNIS PRO is an independent contractor. TENNIS PRO agrees to assume liability for and indemnify, hold harmless, and defend the CITY, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising directly or indirectly out of or in connection with any negligent and/or deliberate act or omission of TENNIS PRO, its officers, employees, agents, and representatives. TENNIS PRO's liability hereunder shall include all attorney's fees and costs incurred by the CITY in the enforcement of this indemnification provision. This includes claims made by the employees of TENNIS PRO against the CITY and TENNIS PRO hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the CITY may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

INSURANCE

Prior to Award, the CITY of Fernandina Beach shall be furnished proof of insurance coverage as follows:

A. Certificate of Insurance

- a. The name of the insured, the name of the insurer, the number of the policy, its effective date, and its termination date;
- b. Statement that the insurer will mail notice to the CITY of Fernandina Beach and a copy to TENNIS PRO at least thirty (30) days prior to any material changes in provisions, cancellation, renewal, or non-renewal of the policy;
- c. Certificate of Insurance shall be in the form as approved by the CITY of Fernandina Beach, naming the CITY as additional insured, and such Certificate shall clearly state all the coverage required in this Section;
- d. If requested by the CITY of Fernandina Beach, TENNIS PRO shall furnish complete copies of all insurance policies, forms and endorsements; and
- e. Receipt of certificates or other documentation of insurance or policies or copies of policies by the CITY of Fernandina Beach or by any of its representatives which indicate less coverage than required by this agreement does not constitute a waiver of TENNIS PRO's obligations to fulfill the requirements of this Section.

B. Workers' Compensation Insurance

- a. TENNIS PRO shall have in full force, during the life of this agreement, Workers' Compensation and Employer's Liability Insurance for all its employees connected with work under this agreement, and in the event any work is subcontracted, TENNIS PRO shall require the subcontract similarly to provide Workers' Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by TENNIS PRO.
- b. TENNIS PRO may provide a workers' compensation waiver in lieu of workers' compensation insurance where such waiver is properly approved by the Florida Department of Labor and Employment Security and accepted by the CITY of Fernandina Beach in writing. Such insurance or waiver shall comply with the Florida

Workers' Compensation Law. In case any class of work conducted under this agreement is not protected under the Workers' Compensation statute, TENNIS PRO shall provide adequate insurance, satisfactory to the CITY of Fernandina Beach, for the protection of employees not otherwise protected.

C. Liability Insurance

TENNIS PRO shall have in full force, during the life of this agreement, Commercial General Liability and Commercial Automobile Liability Insurance that shall protect the CITY of Fernandina Beach from claims for damage for bodily injury and personal injury, including accidental death, as well as claims for property damages which may arise from tasks associated with or carried out under this agreement, whether such operations are by itself or by anyone directly or indirectly employed by them, and the amount of such insurance shall be minimum limits as follows:

- a. Commercial General Liability:
 - i. Minimum Coverage is \$1,000,000 per occurrence
 - ii. Coverage shall include premises, operations, products, completed operations, independent TENNIS PROs, contractual liability covering this agreement, contracts and leases, broad form property damage coverage, personal injury and bodily injury.
 - iii. If Umbrella or Excess liability coverage is used to satisfy the requirements of this Article, it shall not be more restrictive than the underlying insurance policy coverage.

ARTICLE 5 – REMEDIES

A. Claims, Counter-Claims, Disputes, Etc.

- a. All claims, counter-claims, disputes, and other matters in questions between the TENNIS PRO and the City of Fernandina Beach will be first reviewed by authorized representatives of both parties for a recommended solution. If no solution or resolution is forthcoming, such disputes will be decided by a court of competent jurisdiction convened in the State of Florida.

B. Governing Laws

- a. This agreement shall be governed by the laws of the State of Florida.

C. Venue

- a. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submits itself to the exclusive jurisdiction of the Fourth Judicial Circuit Court, in and for Nassau County, Florida, and the jurisdiction of the United States District Court for the Middle District of Florida, Jacksonville Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Agreement; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense or

otherwise in any suit, action or other proceeding, (i) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever, and (ii) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any party hereto is brought in an inconvenient forum, or that the venue of such suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such courts.

D. Attorney's Fees and Costs

- a. In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs, and expenses, including attorney's fees, as may be set by the Court.

ARTICLE 6 – CLOSING

A. Validity, Severability and Reformation

- a. The validity, interpretation, construction, and effect of this agreement shall be in accordance with and be governed by the laws of the State of Florida. Any provision or part of this agreement held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

B. Heading

- a. The headings of the sections of this agreement and capitalizations are for the purpose of convenience only and shall not be deemed to expand or limit the provisions contained in such sections.

C. Entire Agreement

- a. This agreement, including the exhibits hereto, constitutes the entire agreement between the parties hereto and supersedes any prior negotiations, representations, agreements, and understandings, either written or oral.

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and date first above written:

CITY OF FERNANDINA BEACH, FLORIDA
A Municipal Corporation

VISHNU AND MICHELE MAHARAJ

D. Marshall McCrary *11/18/2015*
By: D. Marshall McCrary DATE:
It's: City Manager Pro Tem

Vishnu Maharaj *10/2/15*
By: Vishnu Maharaj Date

Michele Maharaj *10/2/15*
By: Michele Maharaj Date

ATTEST:

WITNESS:

Caroline Best *11/18/15*
By: Caroline Best Date
It's: City Clerk

Dawn M. Booker *10/2/15*
By: Date

APPROVED AS TO FORM & LEGALITY:

Tammi E. Bach *9/11/15*
By: Tammi E. Bach Date
It's: City Attorney

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**ADDITIONAL INSURED: OWNERS AND / OR LESSORS OF PREMISES,
LESSORS OF LEASED EQUIPMENT, SPONSORS OR CO-
PROMOTERS**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

This policy is amended to include as an additional Insured any person or organization of the types designated below, but only with respect to liability arising out of your operations:

1. Owners and / or lessors of the premises leased, rented, or loaned to you, subject to the following additional exclusions:
 - a. This insurance applies only to an "occurrence" which takes place while you are a tenant in the premises;
 - b. This insurance does not apply to "bodily injury" or "property damage" resulting from structural alterations, new construction or demolition operations performed by or on behalf of the owner and / or lessor of the premises;
 - c. This insurance does not apply to liability of the owners and / or lessors for "bodily injury" or "property damage" arising out of any design defect or structural maintenance of the premises or loss caused by a premises defect.

With respect to any additional insured included under this policy, this insurance does not apply to the sole negligence of such additional insured.

2. Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s) subject to the following additional exclusions:
 - a. This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
3. Sponsors
4. Co-Promoters



January 14, 2015

Ms. Michele Maharaj
86087 Montauk Dr
Fernandina Beach, FL 32034-8139

Dear Michele,

This letter will confirm that, as a certified member of the United States Professional Tennis Association, you have liability insurance as outlined below. This USPTA liability policy covers applicants, certified and certain honorary members in the United States, its territories or Canada, and nonmembers who are insured through a certified member's policy.

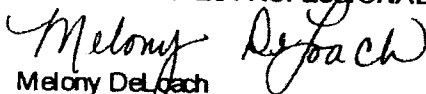
THE USPTA LIABILITY POLICY INCLUDES \$9 million liability insurance, while on court, for bodily injury to others, and for damage to property not in the tennis teacher's care, custody or control. It does not cover injury to the tennis teacher, or damage to his/her property. The accident must have taken place on court, and arisen from the tennis teacher's playing, practicing, teaching or officiating in tennis.

Policy Number:	PHPK1269427
Effective Period:	1/1/2015 - 12/31/2015
For questions or to report an accident, contact:	USPTA World Headquarters 3535 Briarpark Drive, Suite One Houston, TX 77042 Telephone 713-978-7782

If we may be of further assistance, please do not hesitate to contact us.

Sincerely,

UNITED STATES PROFESSIONAL TENNIS ASSOCIATION, INC.


Melony DeLoach
Insurance Department

This coverage is null and void if the member is not a citizen of or does not legally reside and work in the United States, its territories or Canada.



January 25, 2015

Mr. Tom R. Gibson
976 Chad St
Fernandina Beach, FL 32034-2936

Dear Tom,

This letter will confirm that, as a certified member of the United States Professional Tennis Association, you have liability insurance as outlined below. This USPTA liability policy covers applicants, certified and certain honorary members in the United States, its territories or Canada, and nonmembers who are insured through a certified member's policy.

THE USPTA LIABILITY POLICY INCLUDES \$9 million liability insurance, *while on court*, for bodily injury to others, and for damage to property not in the tennis teacher's care, custody or control. It *does not cover* injury to the tennis teacher, or damage to his/her property. The accident must have taken place on court, and arisen from the tennis teacher's playing, practicing, teaching or officiating in tennis.

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If we may be of further assistance, please do not hesitate to contact us.

Sincerely,

UNITED STATES PROFESSIONAL TENNIS ASSOCIATION, INC.

Melony DeLoach
Melony DeLoach
Insurance Department

This coverage is null and void if the member is not a citizen of or does not legally reside and work in the United States, its territories or Canada.

United States Professional Tennis Association, Inc.
Setting the standard for teaching professionals - That's Who We Are



January 14, 2015

Mr. Vishnu Maharaj
86087 Montauk Dr
Fernandina Beach, FL 32034-8139

Dear Vishnu,

This letter will confirm that, as a certified member of the United States Professional Tennis Association, you have liability insurance as outlined below. This USPTA liability policy covers applicants, certified and certain honorary members in the United States, its territories or Canada, and nonmembers who are insured through a certified member's policy.

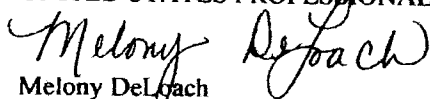
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For questions or to report an accident, contact:	USPTA World Headquarters 3535 Briarpark Drive, Suite One Houston, TX 77042 Telephone 713-978-7782

If we may be of further assistance, please do not hesitate to contact us.

Sincerely,

UNITED STATES PROFESSIONAL TENNIS ASSOCIATION, INC.


Melony DeLoach
Insurance Department

This coverage is null and void if the member is not a citizen of or does not legally reside and work in the United States, its territories or Canada.

RESOLUTION 2015-161

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, APPROVING THE INSTRUCTOR AGREEMENT BETWEEN MAHARAJ TENNIS, LLC AND THE CITY OF FERNANDINA BEACH TO PROVIDE PROFESSIONAL TENNIS INSTRUCTION AT CENTRAL PARK TENNIS COURTS; AUTHORIZING EXECUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fernandina Beach Parks and Recreation Department wishes to renew the instructor agreement with Maharaj Tennis, LLC to provide professional tennis instruction at the Central Park tennis courts; and

WHEREAS, the City retains 20% of the revenue generated, which is approximately \$17,000 annually.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, THAT:

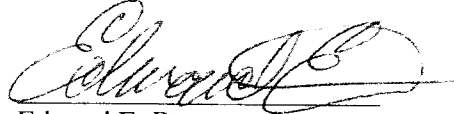
SECTION 1. The City Commission hereby approves the agreement between Maharaj Tennis, LLC and the City of Fernandina Beach, attached hereto as Exhibit "A".

SECTION 2. The City Manager and City Clerk are hereby authorized to execute said agreement upon review and approval of the City Attorney.

SECTION 3. This Resolution shall become effective immediately upon passage.

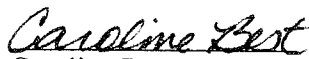
ADOPTED this 17th day of November, 2015.

CITY OF FERNANDINA BEACH

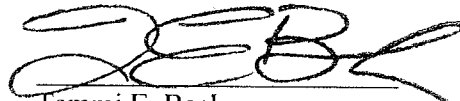


Edward E. Boner
Mayor – Commissioner

ATTEST:


Caroline Best
City Clerk

APPROVED AS TO FORM & LEGALITY:


Tammi E. Bach
City Attorney

C:kan

CITY COMMISSION AGENDA ITEM
CITY OF FERNANDINA BEACH

SUBJECT: Resolution 2015-161
Tennis Professional Services Agreement – Maharaj Tennis, LLC

DEPARTMENT: Parks & Recreation

ATTACHMENTS: ___ Ordinance X Resolution
 ___ Support Documents ___ Other

RECOMMENDED ACTION: Approve Resolution 2015-161

SUMMARY: The City of Fernandina Beach Parks and Recreation Department wishes to renew the Instructor Agreement with Maharaj Tennis, LLC to provide professional tennis instruction at the Central Park tennis courts.

FISCAL IMPACT: The City retains 20% of the revenue generated, which is approximately \$17,000 annually.

CITY ATTORNEY COMMENTS: **No Additional Comments**

DEPARTMENT HEAD	Submitted by: Nan Voit <i>Nan Voit</i> Parks & Recreation Director	Date: 11/17/15
	Requested Agenda	Date: 10/22/15
FINANCE DEPARTMENT	Approved as to Budget Requirements <i>PTK</i>	Date: 11/4/15
CITY ATTORNEY	Approved as to Form and Legality <i>TEB</i>	Date: 11/3/15
CITY MANAGER	Approved Agenda Item for 11/17/15 <i>[Signature]</i>	Date: 11/2/15

COMMISSION ACTION:

<input checked="" type="checkbox"/> Approved As Recommended	<input type="checkbox"/> Disapproved
<input type="checkbox"/> Approved With Modification	<input type="checkbox"/> Postponed to Time Certain
<input type="checkbox"/> Other	<input type="checkbox"/> Tabled

Approved at the City Commission Meeting
Regular
 Date: *11/17/15*
 Initial: *SB*



City of Fernandina Beach

OFFICE OF THE CITY CLERK

November 19, 2015

Vishnu and Michele Maharaj
86087 Montauk Drive
Fernandina Beach, Fla. 32034

RE: Tennis Professional Services Agreement

Dear Mr. and Ms. Maharaj,

The Fernandina Beach City Commission at their Regular Meeting on November 17, 2015, approved Resolution 2015-161 approving a Tennis Professional Services Agreement between the City of Fernandina Beach and Vishnu and Michele Maharaj. Attached is a copy of Resolution 2015-161 and an original executed Agreement for your files.

If you have any questions, please let us know.

Sincerely,
City of Fernandina Beach

Caroline Best
Caroline Best
City Clerk