

AGENDA ITEM # 9

CITY COUNCIL COMMUNICATION FORM

FROM: Anne Small, Director of General Services (Ext.249)
Chris Wilson, Director of Parks, Open Space and Recreation
(879-4300 ext. 317)

THROUGH: Jon B. Roberts, City Manager (Ext. 228)

DATE: September 18, 2012

ITEM: Tennis Center Concession Agreement.

NEXT STEP: A resolution authorizing a Concession Agreement between the City of Steamboat Springs and the Tennis Center at Steamboat, Inc.

RESOLUTION
 MOTION
 DIRECTION

I. REQUEST OR ISSUE:

Staff requests approval of a resolution authorizing a Concession Agreement between the City of Steamboat Springs and the Tennis Center at Steamboat, Inc.

II. RECOMMENDED ACTION / NEXT STEP:

Motion to approve to resolution

III. FISCAL IMPACTS:

Proposed Expenditure: General repairs and maintenance to the facility
Source of Funds: Parks and Facilities operating budgets

IV. BACKGROUND INFORMATION:

The twenty-year agreement with Jim Swiggart/Tennis Center at Steamboat, Inc. for tennis center concession services is scheduled to expire on September 30, 2012. Staff conducted a formal RFP process soliciting proposals for tennis center operations and management. After extensive review, research and interviews of the two proposers, the

evaluation committee unanimously recommended awarding a contract to the Tennis Center at Steamboat, Inc.

The expiring contract requires the Concessionaire to pay a an annual concession fee equal to 20% of the annual gross receipts over \$250,000. This fee averaged \$25,000 annually over the past three years. Additionally, the Concessionaire was responsible for 15% of the gas and electric utility costs, which averaged \$7,500 annually. Staff negotiated a 3-year contract with similar terms and conditions with the following exceptions: Concessionaire is responsible for all costs of gas and electric utilities; Concessionaire will not pay a concession fee. The new agreement will net the City, on average, \$13,000 more than the previous contract.

V. LEGAL ISSUES:

Agreement was prepared by the General Services Department and reviewed by Legal.

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

None

VII. SUMMARY AND ALTERNATIVES:

Council may select one of the following options:

1. Approve the resolution for the concession agreement with the Tennis Center at Steamboat, Inc.
2. Table the item and give direction to staff on changes.
3. Decline to approve the resolution.

CITY OF STEAMBOAT SPRINGS, COLORADO

RESOLUTION NO.

**A RESOLUTION AUTHORIZING A CONCESSION AGREEMENT
BETWEEN THE CITY OF STEAMBOAT SPRINGS AND THE TENNIS
CENTER AT STEAMBOAT, INC.**

WHEREAS, the City of Steamboat Springs ("City") is the owner of certain property known as the Tennis Center; and

WHEREAS, the City is desirous of entering into a Concession Agreement for operations and management of the Tennis Center; and

WHEREAS, the City requested proposals from qualified tennis management professionals to provide operation and management services at the Tennis Center; and

WHEREAS, the Tennis Center at Steamboat, Inc. submitted the best proposal and City Council has determined that the interests of the City would be best served by entering into a concession agreement with the Tennis Center at Steamboat, Inc; and

WHEREAS, the City Council of the City of Steamboat Springs wishes to award the concession on the terms contained in the attached Concession Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
STEAMBOAT SPRINGS, COLORADO:**

Section1. Hereby authorizes the City Manager to execute the Steamboat Springs Tennis Center Concession Agreement attached hereto as Exhibit "A."

PASSED, ADOPTED AND APPROVED this __ day of _____, 2012.

**Bart Kounovsky, President
Steamboat Springs City Council**

ATTEST:

**Julie Franklin, CMC
City Clerk**

Exhibit "A"

CONCESSION AGREEMENT STEAMBOAT SPRINGS TENNIS CENTER

THIS CONCESSION AGREEMENT (hereafter "Agreement") is made and entered into this ____ day of _____, 2012 by and between the City of Steamboat Springs, Colorado, a municipal corporation, ("City"), and The Tennis Center at Steamboat, Inc., a Colorado corporation, ("Concessionaire").

WITNESSETH:

WHEREAS, the City owns certain property known as the Steamboat Springs Tennis Center with six indoor, four outdoor hard courts and six outdoor clay courts located at 2500 Pine Grove Road, Steamboat Springs Colorado ("Tennis Facility").

WHEREAS, the City and Concessionaire desire to enter into an Agreement for the Concessionaire to operate the Tennis Facility.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions, it is agreed as follows:

1. **Purpose of the Agreement.** Upon the terms and conditions provided herein, the City does hereby grant the Concessionaire the exclusive right and privilege of operating the Tennis Facility on the property described in Exhibit "A", attached hereto and made a part hereof by reference (hereinafter "Premises"). Concessionaire agrees to operate the Tennis Facility upon the terms and conditions provided herein.
2. **Use of Premises.** During the period and term of this Agreement, the Premises shall be used for tennis play, racquet sports, instruction, pro shop sales, food and beverage sales and special events. Concessionaire shall not use or permit the Premises to be used for any other purpose without obtaining prior written consent from the City.
3. **Equipment.**
 - a. Concessionaire acknowledges the receipt of certain City property and equipment with the right to use such equipment in conjunction with the operation of the business, all fully listed on the Schedule of Equipment, attached as Exhibit "B" ("City Equipment"). Any addition to or removal from such Schedule shall be promptly recorded by written amendments to the Schedule, which shall be dated and signed by both parties. Concessionaire shall at all times maintain City-owned equipment in good condition. The City shall have the right to inspect City-owned equipment and, if necessary, establish maintenance standards and procedures. In the event City-owned equipment, due to normal wear or damage as a result of weather, hazard or cause other than negligence, improper maintenance, misuse or abuse by Concessionaire, is in need of repair or replacement, City-owned equipment shall promptly be repaired or replaced at City expense. However, the City shall require Concessionaire to repair or replace at Concessionaire's expense any equipment damaged due to Concessionaire's negligence, improper maintenance, misuse, or abuse. The Concessionaire shall obtain City approval prior to ordering said repairs or replacements. The City shall provide the Concessionaire with the name of City-approved repair personnel and, once

approved by the City, the Concessionaire shall contact such personnel to perform the repair or replacement work. The City assumes no responsibility for product loss or damage due to equipment failure, utility outages, plumbing breaks or blockages, insects, rodents, theft or vandalism, and Concessionaire waives any rights to claim against the City for loss or damage related thereto. The City and Concessionaire shall cooperate in making any claims for repair or replacement of equipment under applicable warranties. In no event shall Concessionaire be entitled to any claim against the City for any damages due to the failure of any equipment.

b. Concessionaire shall furnish and install ready for use, at its own expense, all of the equipment necessary to operate the Concession other than that listed in Section 3 (a) above as being furnished by the City. Concessionaire shall supply the items listed in Exhibit "C" as necessary. Concessionaire shall be responsible for the costs of installation of all equipment supplied by it and Concessionaire shall maintain all such equipment in good working condition at all times, at its own expense.

c. Upon the termination of this agreement, Concessionaire shall be reimbursed for 1) those fixed assets as described on Exhibit C and 2) those fixed assets purchased over the life of the agreement (except for replacement fixed assets already included on Exhibit C, City shall have the right to approve new fixed asset purchases). The value of those fixed assets and replacements as described on Exhibit C shall be equal to the initial value as described in Exhibit C less 10% of the initial value per year with the first such reduction in value occurring one year from the Initiation Date of this agreement. [For example, if the Playmate Ball Machine has an initial value of \$8,000 on October 1, 2012, the value on October 1, 2018 shall be: $\$8,000 - (.1 * \$8,000 * 6) = \$3,200.$] City shall pay to Concessionaire the total value of all fixed assets on Exhibit C and those replacement Items on Exhibit C based on this computation within sixty (60) days after the termination of the agreement. Should there be abnormal wear, damage or destruction to any fixed asset, the City and Concessionaire may mutually agree to a different value. If an agreement of value is not reached within ten (10) days, then an appraisal paid for by the City shall be deemed the value of the asset."

4. **Risk of Loss.** Concessionaire shall indemnify the City against the risk of loss, damage or theft to any City equipment or property designated as City Equipment, unless resulting from ordinary wear and tear, from negligence of the City, or from hazards or third party theft or vandalism as would be typically covered under a commercial insurance policy. However, Concessionaire's liability and obligations under this Agreement shall not survive the expiration or termination of such Agreement. In the event of such loss, damage or theft, Concessionaire shall promptly notify the City in writing and replace or repair same within ten days of such loss or a commercially reasonable time following such loss if replacement or repair cannot be completed within such 10-day time period.

5. **Repairs and Maintenance.**

a. Concessionaire agrees to keep and maintain the Premises, and all contents thereof, in a clean, sanitary and orderly condition at all times. Concessionaire shall be responsible for providing janitorial services such as sweeping,

vacuuming, dusting, cleaning tables and chairs, trash removal, and daily maintenance of the clay courts.

Concessionaire shall be responsible for purchasing and installing clay as needed. City shall annually reimburse Concessionaire up to \$4,000 for such purchase and installation. Concessionaire shall submit an invoice, including copies of paid invoices and labor costs to City for reimbursement and payment shall be made within thirty (30) days of receipt of invoice.

Any remodeling of the Premises shall be subject to the prior written approval of the City which may be granted in the City's sole discretion. Upon the termination or expiration of this Agreement, City shall have the option, in its sole discretion, to request Concessionaire to leave all such alterations, improvements and fixtures in place, which would then, with no cost to the City, be solely owned by the City, or to require the Concessionaire to remove same at Concessionaire's expense.

b. City shall have the right and obligation to maintain existing facilities in good order and repair, including, but not limited to, heating, water, gas, electricity, sewerage, drainage, fire protection, ventilating, and communications systems and other such service systems and equipment on the Premises and to enter upon the Premises at all reasonable times to make such repairs, replacements and alterations as may, in the opinion of the City, be deemed necessary or advisable.

c. City shall also be responsible for maintenance and repair of the mechanical building, fabric structure and insulation, interior and exterior lighting fixtures, fencing and gates on outdoor courts, court repairs/replacement, landscaping, sidewalks and parking lot.

d. Unless expressly stated to the contrary (including as expressly stated in Section 3(a) hereof), nothing contained in this Agreement shall be construed to impose upon the City any obligation to maintain or make repairs, replacements, alterations or additions to equipment furnished by the City for use in conjunction with the business, or any liability for failure to do so.

e. The City, by its officers and employees, may, upon reasonable notice to Concessionaire, have access to the Premises for the purpose of inspection to insure compliance by Concessionaire with the terms of this Agreement.

f. In the event that the City fails to meet its obligations listed above with regard to maintenance and repair of City Equipment or the facilities or items listed in Section 5 (a) through (c) inclusive, then after seven (7) days written notice to the City and after obtaining not less than two bids to accomplish such work, the Concessionaire may enter into a contract to have such work completed. In the event of an emergency, the requirement of notice and competitive bid set forth above shall be waived, provided however that Concessionaire shall first make a good faith attempt to notify the City of the emergency prior to engaging a contractor to complete such work. The City shall promptly reimburse the Concessionaire for such work within thirty (30) days of receipt by the City of an invoice.

6. **Utilities.** Concessionaire shall be responsible to for all gas, electric and telephone utility charges. Gas and electric utilities shall be listed in City's name and City shall invoice Concessionaire monthly for gas and electric utility charges. Concessionaire shall remit payment to City within thirty (30) days of receipt of invoice. City shall be responsible for water, sewer and trash removal services.
7. **Concession Fee and Conditions.**
 - a. Concessionaire shall be entitled to all proceeds derived from the operations of the Tennis Facility.
 - b. Concessionaire shall keep and maintain complete and accurate accounts, records, books and data in accordance with generally accepted accounting procedures which shall identify all sales and services performed for cash or credit and also the gross receipts of the business and the aggregate amount of all services provided within the Tennis Facility.
 - c. Concessionaire, at all times during the term of this Agreement and for three (3) years following its termination, shall maintain appropriate records and books reflecting all sales, charges, fees and expenses made or incurred by him or his staff pursuant to this Agreement. All financial records shall be maintained in accordance with generally accepted accounting practices and available for review and/or audit by the City's designated representative.
8. **Quality of Service.**
 - a. Concessionaire shall operate the concession in accordance with the highest standards for this type of operation.
 - b. Concessionaire shall employ, train, staff and manage all personnel.
 - c. Concessionaire shall observe and obey all laws, ordinances, regulations and rules of the federal, state, and local governments.
 - d. Concessionaire, in providing food and beverage equipment, shall not install or operate any coin activated vending machines or devices of any kind without written consent of the City.
9. **Operating Hours.** Concessionaire shall operate the concession seven (7) days a week during the term of this Agreement. Hours of operation during winter season (October 1-May 15) will be 8:00 AM to 9:00 PM and during summer season (May 16-September 30) 9:00 AM to 8:00 PM with the exception of December 24, 25, 31 and January 1 of each year. Concessionaire may modify these hours of operation with written consent of the City.
10. **Marketing.** Concessionaire will collaborate with the Steamboat Springs Chamber Resort (Chamber) and the City to market the Tennis Facility. On an annual basis, City shall provide up to two thousand five hundred dollars (\$2,500) for marketing the Tennis Facility and/or its programs contingent upon the Chamber providing a five thousand dollars (\$5,000) cash or in-kind contribution for the same purpose. Concessionaire shall match total of City and Chamber's contribution up to five thousand dollars (\$5,000) annually.
11. **Rates and Charges.**

- a. Concessionaire shall establish and from time to time modify its rates and charges for court time, food, beverage, merchandise and instruction. Annually, Concessionaires shall provide the City with any and all proposed rate schedule changes for court time three months in advance of such proposed changes.
 - b. Concessionaire may establish a season pass program allowing local members of the community to receive free and/or reduced court time and instruction rates in return for an annual, pre-paid fee and Concessionaire may offer lodge owners a discount on pre-purchased court time. Amendments to all season pass or discount programs shall be with the approval of the City.
12. **Independent Contractor.** For the purposes of defining Concessionaire's relationship with City, it is understood and agreed that Concessionaire is an independent contractor and nothing herein contained shall constitute or designate the Concessionaire or any of its employees or agents as agents or employees of the City, nor shall Concessionaire be deemed to be engaged in a partnership or joint venture with the City. The Concessionaire understands and agrees that Concessionaire is not entitled to nor shall receive any City benefits, including vacation, worker's compensation, sick pay or any other benefits from City.
13. **Term of Agreement and Option to Renew.** The term of this Agreement shall begin October 1, 2012 and shall continue until September 30, 2015. Concessionaire shall have the option to renew this agreement for one additional three-year term after the initial three-year term of this Agreement expires, provided that, at a time not later than sixty days prior to the expiration of the term of this Agreement, the Concessionaire serves a written notice on City of its desire to extend the term hereof and City agrees to said request for renewal. All other terms of this Agreement shall remain the same unless both parties mutually agree to a change thereof.
14. **Termination.** Either the City or Concessionaire may, in its reasonable discretion, terminate this Agreement upon the conditions set forth herein.
- a. **For Cause, Without Illegality.** Upon thirty days written notice, the City or Concessionaire may terminate the Agreement in the event any of the terms of this Agreement have been violated, unless the breaching party has cured any such failure to conform to the conditions of the Agreement within such period, or unless the breaching party has commenced such cure within the cure period, if the cure cannot reasonably be completed within such thirty day period, and completes such cure in a diligent manner.
 - b. **For Cause, With Illegality.** The City or Concessionaire, may in its reasonable discretion, terminate this Agreement, effective immediately, upon the giving of written notice of termination, in the event that either the City or Concessionaire engages in, or permits, the violation of any federal, state, county, or city law or ordinance in the operation of said business.
 - c. **Without Cause.** The City or Concessionaire, may in its reasonable discretion, terminate this Agreement without cause upon providing sixty (60) days written notice to the other party.

15. **Delivery after Termination.** The Concessionaire will deliver the Premises and any permanent improvements, and items specified in the current Schedule of Equipment to the City at the termination of this Agreement in as good condition and state of repair as when received, except for ordinary wear and tear. In the event of termination of this Agreement by the City or Concessionaire for cause as set forth above in Section 14 (a) and (b), City shall assume responsibility for performing all outstanding store credits, prepaid services, or rain checks or other similar customer liabilities, provided that Concessionaire provides to City a list of such customer liabilities within fifteen days of termination.
16. **No Signs.** Concessionaire will not erect nor install any signs on the Premises except with the written consent of the City.
17. **Taxes, Compensation Insurance, Licenses.** Concessionaire shall promptly pay all taxes and fees of any nature, including, but not limited to, all applicable employment related taxes and sales taxes, applicable to this operation. Concessionaire shall obtain and keep current all licenses, required for the conduct of the business. Concessionaire shall not permit any mechanic's lien or any other lien to be imposed upon the Premises, or any part thereof. Concessionaire shall furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all Social Security, Unemployment Compensation, and other applicable taxes and fees and showing that the Workmen's Compensation Insurance and all required licenses are in good standing. Concessionaire shall promptly pay, when due, all bills, debts and obligations incurred in connection with the operation of the business and not permit the business to become delinquent.
18. **Notices.** All notices, requests, demands, and other communications under this Agreement shall be in writing and deemed duly given upon delivery, if delivered personally, or upon depositing in the U.S. Mail, postage prepaid and certified, return receipt requested, and addressed to the proper party as follows:

To the City: City of Steamboat Springs
P.O. Box 775088
Steamboat Springs, CO 80477
Attn: City Manager

With a Copy to: City of Steamboat Springs
P.O. Box 775088
Steamboat Springs, CO 80477
Attn: City Attorney

To the Concessionaire: The Tennis Center at Steamboat, Inc.
PO Box 881537
Steamboat Springs, CO 80488
Attn: James M. Swiggart, President

At any time either party may change the address for purposes of notice by providing the other party with written notice of a change in address.

19. **Insurance.**

a. Workers' Compensation Insurance. Concessionaire shall procure and maintain throughout the term of this Agreement workers' compensation insurance in the forms and with coverages complying with Colorado law, covering the Concessionaire's employees.

b. Concessionaire's Property. Concessionaire may obtain such insurance coverage as he deems advisable to protect from loss, theft, or destruction the equipment or merchandise of Concessionaire associated with his business.

c. Public Liability Insurance. Concessionaire shall provide public liability insurance with bodily injury limits of not less than \$1,000,000.00 per occurrence, \$1,000,000.00 aggregate, property damage insurance with limits of not less than \$500,000.00 per occurrence, \$300,000.00 aggregate and liquor liability limits of not less than \$150,000.00 per occurrence and \$600,000.00 aggregate and shall name City under said insurance policy as an additional insured.

d. Evidence of Insurance. A certificate of insurance shall be completed by Concessionaire's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 10 days prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City of Steamboat Springs
Director of General Services
P.O. Box 775088
Steamboat Springs, CO 80477

e. Termination for Failure to Obtain Insurance. Notwithstanding any other portion of this Agreement, failure on the part of Concessionaire to procure or maintain policies providing the required coverages set forth in this Paragraph 18 shall constitute a material breach of this Agreement for which the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Concessionaire to the City upon demand, or the City may offset the cost of the premiums against any monies due to Concessionaire from the City.

f. Copies of Policies. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

g. No Waiver of Governmental Immunity. The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000.00 per person and \$600,000.00 per occurrence) and any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., as from time to time amended, or any other law or limitation of liability otherwise available to the City, its officers, or its employees.

h. General Liability and Premises Insurance. The City shall provide, at its cost, general liability and premises insurance in such amount and with such carriers as the City may from time to time determine.

20. Indemnification by Concessionaire. Concessionaire agrees to indemnify and hold the City, its officers, employees, insurers, and self-insurance pool, harmless from and against all liability, claims, and demands on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by the wrongful act, omission, error, professional error, mistake, negligence, or other fault of Concessionaire, any subcontractor of Concessionaire or which arise out of any worker's compensation claim of any employee of Concessionaire.
21. Damage or Destruction of Premises. Should any portion of the Premises be partially damaged by fire or other casualty but not be rendered untenable, such Premises shall be repaired by the City at its expense as soon as commercially reasonable.
- Should any portion of the Premises be so extensively damaged by fire or other casualty as to render the same untenable, and should the City fail or refuse to repair or rebuild the same, Concessionaire shall be under no obligation to do so and shall be relieved of its obligation to continue the business formerly conducted by it in such area or areas, until such time as the City shall furnish Concessionaire with replacement space suitable to Concessionaire. In such event, any and all fees or expenses to be paid by Concessionaire under this Agreement shall abate and the terms and provisions of Section 15 shall apply as if this Agreement was terminated.
22. Assignment. Concessionaire shall not assign, sell, transfer, or in any way convey any interest in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, provided however that Concessionaire may subcontract, at its sole discretion, the pro shop and/or retail activities within the Tennis Center (or a portion thereof).
23. No Implied Representations. No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Agreement.
24. Attorneys Fees. If any action is brought to recover on account of any breach of this Agreement, or for the recovery of the possession of the Premises or otherwise, the prevailing party shall be entitled to recover from the other party, as part of prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment.
25. No Third Party Beneficiaries. None of the terms or conditions in this Agreement shall give or allow any claim, benefit or right of action by any third person not a party hereto.

26. **Financial Obligations of the City.** All financial obligations of the City under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed a pledge of the City's credit or a payment guarantee by the City to the Concessionaire.
27. **Integrated Agreement and Amendments.** This Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. The parties shall only amend this Agreement in writing with the proper official signatures attached thereto.
28. **Waiver.** No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.
29. **Severability.** Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provision of this Agreement.
30. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.
31. **Binding Effect.** This Agreement shall be binding upon the parties and their respective successors and assigns.
32. **Promotional and Charitable Events.** The City reserves the right to sponsor or authorize promotional or charitable events to occur at the Tennis Facility. The parties agree to negotiate in good faith as to how the Tennis Facility will be utilized and how the Concessionaire will be compensated for such events.
33. **Concessionaire's Compliance with Applicable Laws.** The Concessionaire agrees to comply with all local, state, and federal laws, including, without limitation, compliance with Equal Employment Opportunity laws, the Americans with Disabilities Act ("ADA"), laws prohibiting discrimination and harassment in the workplace, laws relating to the hiring of or contracting with illegal aliens, and compliance with all liquor laws. Notwithstanding the foregoing, Concessionaire shall have no obligation to construct any ramps or other structures, or remove any structural barriers to access, in order to provide accessibility compliance under the ADA, regardless of whether such changes would be readily achievable, with all such structural modifications being solely the responsibility of the City. In addition, Concessionaire agrees to comply with all federal and state laws, rules or regulations concerning the posting of notices, advertisements, and solicitations regarding any of the policies and laws set forth in this paragraph 33.
34. **Quiet Enjoyment.** City agrees that Concessionaire upon performing the covenants and conditions of this Agreement, may quietly have, hold and enjoy the Concession Premises during the term of this Agreement and any extensions hereof without hindrance or interruption. Should, for any reason, Concessionaire's use of the Concession Premises be interrupted through no fault of Concessionaire, City shall reimburse Concessionaire all lost revenues based on the prior year's financial statement (after the 1st one thousand dollars) through the term of the Agreement. In addition, interruption of Concessionaire's use of the

Concession Premises shall constitute a breach of this Agreement which shall entitle the Concessionaire to terminate this Agreement as set forth in Section 14.

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

CITY OF STEAMBOAT SPRINGS
A Municipal Corporation

Jon B. Roberts, City Manager

ATTEST:

Julie Franklin, City Clerk

The Tennis Center at Steamboat, Inc.

By: _____
James M. Swiggart, President

STATE OF COLORADO)
)ss.
COUNTY OF ROUTT)

The foregoing instrument was subscribed to and acknowledged before me by Jon B. Roberts, City Manager and Julie Franklin, City Clerk for the City of Steamboat Springs, this _____ day of _____, 2012.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF ROUTT)

The foregoing instrument was subscribed to and acknowledge before me by James M. Swiggart on the day of _____, 2012.

WITNESS my hand and official seal

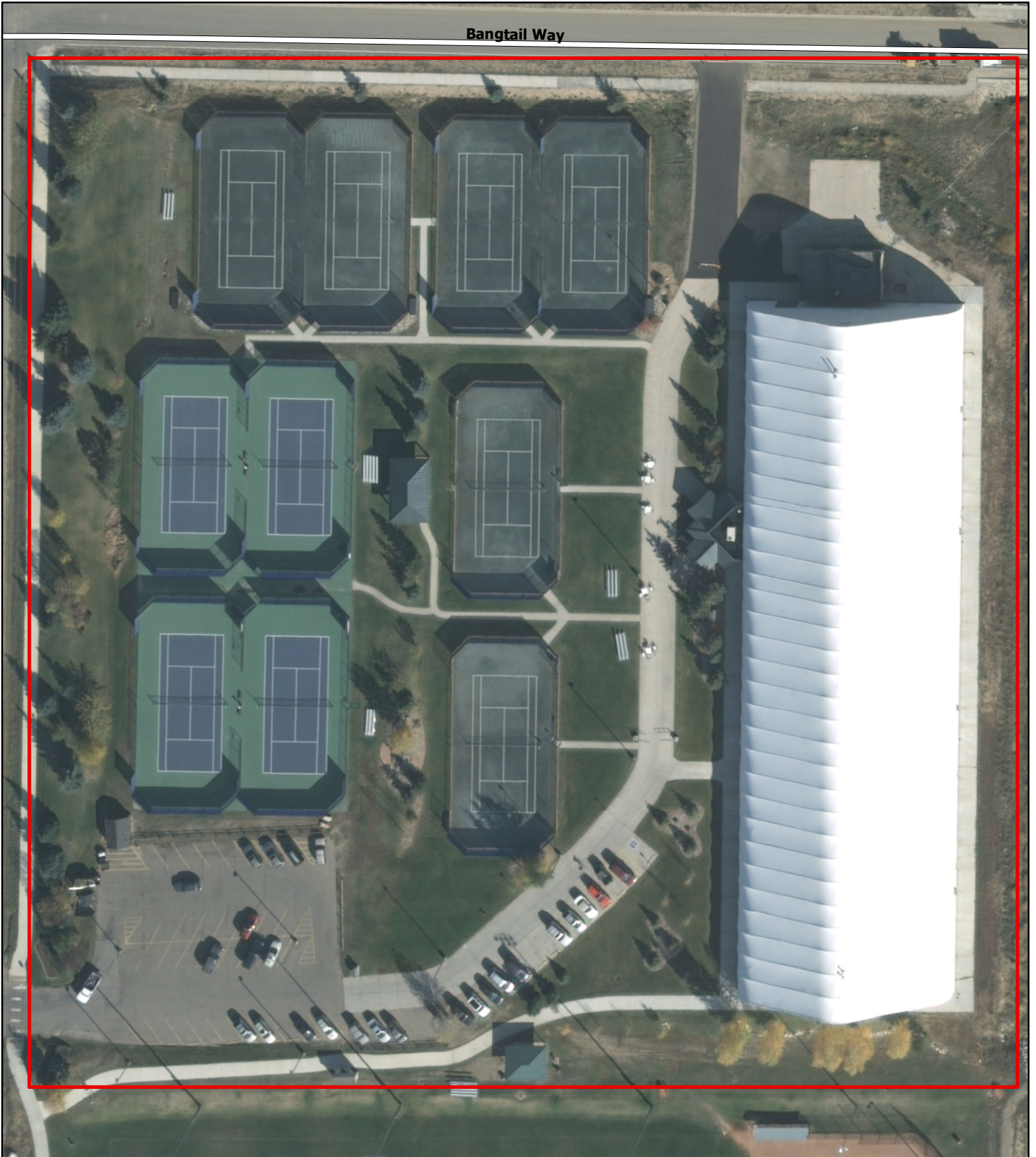
My commission expires: _____

Notary Public

Steamboat Springs Tennis Center
2500 Pine Grove Road
Steamboat Springs, Colorado

Exhibit "A"

Bangtail Way



0 35 70 140 **9.15**
Feet

Exhibit "B"
Provided Equipment

Section 1

1. Six (6) indoor RSS 500 cushioned hard courts
2. One frame and fabric structure with mechanical system
3. Pro Shop, conference room, storage room, offices and locker rooms as described to include:
 - a. lockers, showers, toilets and assorted support equipment
 - b. counter and cabinets
 - c. viewing deck furniture
 - d. conference room furniture and tables
 - e. carpeting
 - f.
4. Six (6) outdoor hydro, clay tennis courts, line tapes and nails
5. Four (4) outdoor hard surface tennis courts
6. Outside landscaping including water, irrigation, snow removal
7. Drinking fountain
8. Courtside benches
9. Outdoor court windscreens
10. Indoor court dividers and backdrops
11. 24' gas roller (Brutus ar-1)
12. Telephone system
13. Court and facility numbering and signage
14. Replacement nets, clay court court material, divider netting, back drops and windscreens
15. Courtside benches, trash disposal units, score posts, brooms and line sweeps
16. Parking lot and entrance lighting
17. Automated External Defibrillator
18. Indoor lighting and light bulbs

Exhibit "C"
Concessionaire's Property

Item	#	Location	Category	Cost
1 Playmate Ball Machine (Smash)	1	Behind Indr Crts	Ball Machines	\$4,395.00
2 Playmate Ball Machine (Grand Slam)	1	Behind Indr Crts	Ball Machines	8995
3 Playmate Ball Machine (Ace)	1	Behind Indr Crts	Ball Machines	3495
4 husky power wash 1720	1	Maintenance Room	Court Equip	225
5 Brutus Clay Court Roller		Clay Storage Room	Court Equip	8000
6 Clay Court Line Brush	8	Outdoor clay courts	Court Equip	976
7 wheel barrel	1	Behind Indr Crts	Court Equip	125
8 Utility Golf Cart		Clay Storage Room	Court Equip	1500
9 Tent (20' x 20") 1/3 ownership	1		Court Equip	500
10 Clay Court Brooms	6	Outdoor clay courts	Court Equip	306
11 industrial hot water rubber hose 75'	8	Maintenance Room	Court Equip	480
12 Water Wand	2	Maintenance Room	Court Equip	350
13 Roll Dries & Frames	6	Crts	Court Equip	402
14 Lutes	6		Court Equip	306
15 Score Posts and frames	16	Courts	Court Equip	1024
16 Torro Leaf blower	1	Maintenance Room	Court Equip	69
17 Court Equip (MIsc)		Clay Storage Room	Court Equip	1000
18 Clay Spreader (metal)	1		Court Equip	150
19 Trash cans (with tennis ball return slots)	4	Indoor Crts & Entrance	Court Equip	636
20 office tray		Director's Office	Display/Art	25
21 cork board	3	Pro's Office 2/Foyer	Display/Art	45
22 display 5' stand up racks(metal)	2	Indoor Foyer	Display/Art	150
23 miscellaneous frames and poster material		Confrence Room	Display/Art	75
24 display 5' stand up racks(wood)	3	Indoor Foyer	Display/Art	375
25 Display (arrows)	2	Confrence Room	Display/Art	200
26 Dahlquist professional tennis photo		Confrence Room	Display/Art	1500
27 Shadow Box	1	Foyer	Display/Art	150
28 Banner - 2011 USTA National Facility of Yr	1	Crt 1	Display/Art	395
29 information display rack (cusotm)		Pro Shop/Viewing Deck	Display/Art	175
30 tennis art		Pro Shop	Display/Art	250
31 Ball Carts	10	Ball Storage Room	Equip-Teaching	1950
32 Ball Hoppers	14	Ball Storage Room	Equip-Teaching	840
33 Ball pick up tubes	10	Ball Storage Room	Equip-Teaching	480
34 Custom Hopper Rack	1	Ball Storage Room	Equip-Teaching	350
35 Dart Fish computer stand (custom)		Confrence Room	Equip-Teaching	720
36 Dart Fish cpu monitor and camera	1	Confrence Room	Equip-Teaching	350
37 pee wee tennis racquets	10	side court	Equip-Teaching	125
38 Quick Start Nets	5	Behind Indr Crts	Equip-Teaching	625
39 Quick Start On court-Off ocourt	5	Behind Indr Crts	Equip-Teaching	250
40 target cones	12	side court	Equip-Teaching	125
41 target cones 12"	12	Behind Indr Crts	Equip-Teaching	150
42 tennis twist ball machine	1	Behind Indr Crts	Equip-Teaching	125
43 5' locker	3	Pro's Office 2	Furniture/Fixtures	125
44 fax machine HP 640	1	Pro's Office 2	Furniture/Fixtures	125
45 shelving		Storage Room	Furniture/Fixtures	1750
46 desk	1	Confrence Room	Furniture/Fixtures	50
47 igloo water jugs w cup dispensers	8	Maintenance Room	Furniture/Fixtures	250
48 Court Benches	18	Courts	Furniture/Fixtures	1080
49 tool storage rack/hardware (custom)		Maintenance Room	Furniture/Fixtures	2800
50 slat wall		Pro Shop	Furniture/Fixtures	2200
51 window shades	3	Confrence Room/Offices	Furniture/Fixtures	1750
52 trophy display case	1	Upstairs Viewing Deck	Furniture/Fixtures	450

53	bissel vacuum cleaner power force		
54	folding tables 4'		
55	simple human trash can		
56	score post parts		
57	logo tennis center mats		
58	Trash can		
59	trash can		
60	comfort zone radiant heater		
61	guest chairs		
62	Folding Tables 8'		
63	big screen TV		
64	Folding Tables 6'		
65	Shelving		
66	folding tables 5'		
67	Wood Court Caddies (custom)		
68	black metal enclosed trash cans		
69	Desk		
70	POS System (Custom Counterpt)		
71	Customer List (2,000)		
72	Website Domain Registration		
73	Logo and Website Signage		
74	Monitor		
75	Speakers		
76	Monitor		
77	CPU		
78	CPU		
79	Monitor		
80	Monitor (Touch Screen)		
81	Server		
82	Monitor		
83	Computer Equip Misc		
84	Carpet Sweep Dual Action		
85	Toiltery Supplies		
86	Janitorial Supplies (Misc)		
87	Ridgid Wet-Dry Vacuum		
88	Tools - Misc		
89	Air Compressor		
90	Fitness equipment		
91	Vivera Scanner		
92	HP Deskjet 6940		
93	Drawer File Cabinets		
94	HP laserjet printer		
95	Office Supplies (misc)		
96	Paper Shreader		
97	Clocks		
98	Premium Cutting Board		
99	Savin 2518 CopY Machine		
100	Staples SPLS302D Shreeder		
101	File Rack		
102	Storage Bins		
103	HP deskjet 6940		
104	Dart Fish Software		
105	Dart Fish Monitor		
106	Dart Fish CPU		
1	Maintenance Room	Furniture/Fixtures	69
2	upstairs storage	Furniture/Fixtures	210
1	Confrence Room	Furniture/Fixtures	100
	Maintenance Room	Furniture/Fixtures	185
2	Pro Shop	Furniture/Fixtures	450
	Behind Indr Crts	Furniture/Fixtures	175
1	Pro's Office 2	Furniture/Fixtures	25
	Upstairs Viewing Deck	Furniture/Fixtures	450
2	Director's Office	Furniture/Fixtures	550
2	upstairs storage	Furniture/Fixtures	160
1	Upstairs Viewing Deck	Furniture/Fixtures	2500
4	upstairs storage	Furniture/Fixtures	240
	Maintenance Room	Furniture/Fixtures	250
4	upstairs storage	Furniture/Fixtures	320
5	Behind Indr Crts	Furniture/Fixtures	400
2	upstairs storage	Furniture/Fixtures	300
1	Director's Office	Furniture/Fixtures	195
1	CP	Intellectual	2500
1	CP	Intellectual	5000
1	Internet	Intellectual	7500
8	windows throughout	Intellectual	400
2	Pro's Office 2	IT	250
2	Director's Office	IT	75
1	Director's Office	IT	125
1	Director's Office	IT	450
2	Front Desk	IT	900
1	Front Desk	IT	125
1	Front Desk	IT	450
1	Server Room	IT	400
1	Server Room	IT	50
1	Server Room	IT	750
1	Storage Room	Maintenance	120
	Storage Room	Maintenance	300
	Storage Room	Maintenance	400
1	Maintenance Room	Maintenance	70
	Maintenance Room	Maintenance	500
1	Maintenance Room	Maintenance	400
	Behind Indr Crts	MISC	420
1	Director's Office	Office Supplies	50
1	Pro's Office 2	Office Supplies	200
2	Director's Office	Office Supplies	200
1	Pro's Office 2	Office Supplies	125
	Storage Room	Office Supplies	500
1	Storage Room	Office Supplies	75
2	Upstairs Viewing Deck	Office Supplies	50
1	Pro's Office 2	Office Supplies	120
1	Confrence Room	Office Supplies	850
1	Director's Office	Office Supplies	125
	Pro's Office 2	Office Supplies	75
5	Pro's Office 2	Office Supplies	250
1	Director's Office	Office Supplies	150
1	Confrence Room	Video	2500
1	Confrence Room	Video	250
1	Confrence Room	Video	600
			\$86,828.00