

**AMENDMENT NO. 2
TO THE ONE (1) YEAR PILOT AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA
AND
VAN DAALEN TENNIS, LLC
TO PROVIDE TENNIS PROGRAMMING AT THE CITY'S MIAMI BEACH TENNIS CENTER**

This Amendment No. 2 ("Amendment") to the One (1) Year Pilot Agreement ("Agreement"), dated August 30, 2017, to Provide Tennis Programming at the City's Miami Beach Tennis Center, by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (the "City"), and Van Daalen Tennis, LLC, a Florida limited liability company, having its principal place of business at 15051 Royal Oaks Lane, Apt. 1604, North Miami, Florida 33181 ("CONTRACTOR"), is entered into this 11 day of Oct, 2019.

RECITALS

WHEREAS, on July 26, 2017, the Mayor and City Commission adopted Resolution Number 2017-29936, accepting the written recommendation of the City Manager and waiving, by 5/7th vote, the competitive bidding requirement, finding such waiver to be in the best interest of the City; and approving, in substantial form, a one (1) year pilot agreement between the City and Van Daalen Tennis, LLC ("CONTRACTOR"), for tennis programming at the City's "Miami Beach Tennis Center" (the "Center"); and

WHEREAS, on August 30, 2017, the City and CONTRACTOR executed the One (1) Year Pilot Agreement (the "Agreement"); and

WHEREAS, on April 11, 2018, the Mayor and City Commission adopted Resolution No. 2018-30279, changing the name of the "North Shore Tennis Center" to the "Miami Beach Tennis Center"; and

WHEREAS, on June 6, 2018, the Mayor and City Commission adopted Resolution No. 2018-30330, accepting the recommendation of the Finance and Citywide Projects Committee, at its May 18, 2018 meeting, approving Amendment No. 1 to the Agreement, said Amendment, in material part: (1) acknowledging the term extension of six months from the completion of the scheduled construction projects at the Miami Beach Tennis Center and the CONTRACTOR's contribution to the education compact fund, in the amount of \$500.00; (2) providing for the addition of language related to identifying the Center as the Miami Beach Tennis Center; and (3) adding language: (i) addressing light fees and club baskets (ii) addressing payment to CONTRACTOR for the City's summer sports specialty camp; (iii) updating the tennis software provider; and (iv) providing the City with utilization of courts for City produced tennis related special events and/or City sponsored special events (The Agreement and Amendment No. 1 to the Agreement shall be collectively referred to herein as the "Agreement"); and

WHEREAS, on April 10, 2019, the Mayor and City Commission adopted Resolution No. 2019-30776, approving, in substantial form, Amendment No. 2 to the Agreement; said approved amendment, in material part; increasing the CONTRACTOR'S programming fee and

management fee cap from \$500,000.00 to an amount not to exceed \$750,000.00 per year of the term of the Agreement; and

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and CONTRACTOR hereby agree to amend the Agreement as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS.

The Agreement is hereby amended (deleted items ~~struck through~~ and inserted items underlined) as follows:

(a) Subsection 4.1 of the Agreement is hereby amended to read as follows:

- 4.1 The fees to participate in ~~CONTRACTOR'S North Shore Tennis Programs~~ Miami Beach Tennis Center Programs are set forth in Attachment "A" hereto, which is incorporated herein by reference. In consideration of Services to be provided, City shall pay CONTRACTOR a programming fee equal to 70% of the total monthly gross programming revenues collected by the City and a management fee equal to 21% of the total monthly gross programming revenues collected by the City, with the City retaining the remainder of the total monthly gross programming revenues collected. Additionally, the City shall retain 100% of the membership fees and court fees collected.

The CONTRACTOR's annual programming fee and management fee shall not exceed ~~\$500,000~~ \$750,000 ~~per year during the term~~, or a pro-rata thereof, during any the Holdover Term. The City shall provide payment to CONTRACTOR by the 15th of the month.

By way of an example, assuming that the gross programming revenues for one month equal \$100,000, the CONTRACTOR'S programming fee and management fee would be calculated as follows:

CONTRACTOR receives a programming fee of 70% of the monthly gross programming revenues, in the amount of \$70,000;

CONTRACTOR will receive a management fee of 21% of the monthly gross programming revenues, in the amount of \$21,000; and

The City will receive the remaining \$9,000 of the total monthly gross programming revenues, plus 100% of all membership fees and court fees collected during the month.

As referenced herein, "gross programming revenues" shall mean all income received (less returns and refunds) by the City from clinics, tennis instruction, camps, tournaments, academy, hospitality packages, food and beverage sales

and Pro Shop sales. The gross programming revenues shall not include income received by the City for annual membership fees or hourly court fees.

3. RATIFICATION.

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

Date

10/11/19

FOR CONTRACTOR:

VAN DAALEN TENNIS, LLC

ATTEST:

By: _____

Cindy Casanova- Assistant Director

Print Name and Title

Date

10-9-19

Director of Programming

Martin Van Daalen

Print Name



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Rafael E. Granado

City Attorney

10-4-19

Date