

**AMENDMENT NO. 3
TO VAN DAALEN TENNIS, LLC ONE (1) YEAR PILOT
AGREEMENT TO PROVIDE PROGRAMMING AT THE
CITY'S MIAMI BEACH TENNIS CENTER**

This Amendment No. 3 ("Amendment") to the Agreement, dated August 30, 2017, to provide 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 13 day of November, 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 programming at the City's "Miami Beach Tennis Center" (the "Center"); and

WHEREAS, on August 30, 2017, the City and Van Daalen Tennis, LLC. ("Contractor") executed the One (1) Year Pilot Agreement (the "Agreement") to Provide Tennis Programming at the City's North Shore Tennis Center, now known as the "Miami Beach Tennis Center" (the "Center"); and

WHEREAS, on April 11, 2018, the Mayor and City Commission referred Item C4F to the Finance and Citywide Projects Committee ("FCWPC") to discuss a term extension for 6 months of the Agreement for the Contractor to provide programming following the completion of the scheduled construction projects at the "Center"; and

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

WHEREAS, at the May 2, 2018, Parks and Recreational Facilities Advisory Board meeting, the board passed the following motion: "The Parks and Recreational Facilities Board motions to favorably recommend a term extension of six months after the completion of the scheduled construction projects at the Miami Beach Tennis Center for Van Daalen Tennis, LLC to include the amendments made to the agreement as discussed at our Board meeting"; and

WHEREAS, at the May 18, 2018 FCWPC, the Committee made a favorable motion to approve amendments to the Agreement, including: (1) extending the term to a date that is six months after completion of the scheduled construction projects at the Center, which would extend the expiration of the term to a date in December of 2019; (2) updating the name of the Center; and (3) amending other provisions to keep the Agreement relating to club baskets and light fees, Contractor's contribution to the Education Compact fund, uses of the courts for City sponsored special events; 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, and approving Amendment No. 1 to the Agreement, including the following modifications to the Agreement:

- (1) Acknowledging the term extension of six months at the completion of the scheduled construction projects at the Miami Beach Tennis Center for Van Daalen Tennis, LLC;
- (2) Acknowledging the Contractor's education compact fund contribution, in an amount of \$500.00;
- (3) providing for the addition of language related to identifying the Center as the Miami Beach Tennis Center;
- (4) Adding language addressing light fees and club baskets;
- (5) Adding language regarding payment to Contractor for the City's summer sports specialty camp;
- (6) Updating the tennis software provider; and
- (7) Providing the City with utilization of courts for City produced tennis related special events and/or City sponsored special events to be added to the scope of the Agreement; and

WHEREAS, at the April 10, 2019, City Commission Meeting, City staff updated the City Commission with respect to the opening of the Center, which is slated to occur during late Spring or Summer of 2020, and that prior to the end of the term, the Administration would be bringing forward a procurement item so that the Agreement may be competitively bid; and

WHEREAS, at the April 10, 2019, City Commission Meeting, Resolution No. 2019-30776 was passed approving Amendment No. 2 to the pilot agreement to adjust the Contractor's programming and management fee from \$500,000.00 to a not to exceed amount of \$750,000.00 per year during the term of the Agreement to correspond to the programming demands; and

WHEREAS, at the July 19, 2019, Finance and Citywide Projects Committee meeting, a motion was made to have the Parks and Recreation Department amend the Agreement of the Center, providing programming at the City's Miami Beach Tennis Center, to shift the responsibility and costs associated with the operation of the Center to the Contractor; and

WHEREAS, this shift in responsibilities would yield an annual savings to the City in the approximate sum of \$182,000.00; and

WHEREAS, on July 31, 2019, the Mayor and City Commission adopted Resolution No. 2019-30923, accepting the recommendation of the Finance and Citywide Projects Committee meeting of July 19, 2019 to amend the Agreement transferring, the responsibility for payment of operational and personnel expenses at the Center from the City to the Contractor; and

WHEREAS, on October 16, 2019, the Mayor and City Commission adopted Resolution No. _____, accepting the City Manager's recommendation and waive, by 5/7ths vote, the competitive bidding requirement, finding such waiver to be in the best interest of the City, and approve, in substantial form, Amendment No 3 to the one year pilot agreement with Van Daalen Tennis, LLC (Contractor), dated August 30, 2017, to provide tennis programming at the Miami Beach Tennis Center (Center); said amendment, in material part: (1) fixing the expiration date of the Agreement as September 30, 2020 and including two (2) successive one (1) year renewal terms, at the City's option; (3) shifting the responsibilities and costs associated with the operation

of the Center from the City to Contractor; (4) changing the financial terms to provide for payment to the City of: (i) a minimum monthly guarantee payment of \$3,500 for the one-year period commencing on January 1, 2020 (year one), with the minimum monthly guarantee increasing by \$500 for each renewal term, plus (ii) a monthly payment equal to 5% of the gross revenues, which becomes payable once the total cumulative gross revenues for a particular contract year exceeds \$700,000, with the gross revenue accrual resetting at the beginning of each subsequent contract year; and further authorize the Mayor and City Clerk to execute the final amendment.

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) Section 1 (Term) is hereby deleted in its entirety and replaced with the following:

SECTION 1. TERM

- 1.1 The Initial Term of this Agreement commenced on August 1, 2017 and shall expire on September 30, 2020. The City Manager shall have the right, at its sole option and discretion, to extend this Agreement for two (2) successive one (1) year terms (each a "Renewal Term"), by giving written notice to the City Manager of such intention not less than ninety (90) days prior to the expiration of the Initial Term or any exercised Renewal Term. The Initial Term and any successive Renewal Term, if approved by the City Manager, may collectively be referred to, herein as the "Term".

NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, IF THE CITY DETERMINES, AT ANY TIME DURING ANY TERM HEREUNDER, THAT IT IS IN THE BEST INTEREST OF THE CITY TO TERMINATE THIS AGREEMENT, THE CITY MAY, ACTING THROUGH THE CITY MANAGER, TERMINATE THIS AGREEMENT, WITHOUT PENALTY OR CAUSE, IN THE CITY'S SOLE DISCRETION, UPON NINETY (90) DAYS' WRITTEN NOTICE OF INTENT TO TERMINATE GIVEN TO THE CONTRACTOR.

A Contract Year shall refer to the period from October 1st to September 30th of a given year.

(B) Subsection 2.2 of the Agreement is hereby amended to read as follows:

- 2.2 The City has employed the CONTRACTOR, and CONTRACTOR agrees, to manage and operate the tennis program and the Pro Shop at the Center, pursuant to the terms and conditions set forth herein. ~~The City shall continue to be responsible for the following duties at the Center: opening and closing~~

~~the Center; staffing and operating the front desk; maintaining the reservation software system; maintaining the courts and overall facilities of the Center; collecting all revenues for the Center including, without limitation, all programming fees (including revenue from the Pro Shop), membership fees and court fees; providing court maintenance personnel; and providing facility maintenance personnel. The City will assist the public in scheduling tennis programs and instruction, with significant assistance from the CONTRACTOR. The CONTRACTOR shall be responsible for the following duties at the Center: opening and closing the Center; staffing and operating the front desk; maintaining the reservation software system; maintaining the courts and overall facilities of the Center; collecting all revenues for the Center including, without limitation, all programming fees (including revenue from the Pro Shop), membership fees and court fees; providing court maintenance personnel; providing facility maintenance personnel; and will assist the public in scheduling tennis programs and instruction.~~

(C) A new Subsection 2.3 is hereby added to the Agreement to read as follows:

2.3 CONTRACTOR accepts the Center "As Is" where is condition. The City will not have an obligation to improve or change the condition of the Center at anytime during the Term. The City is currently in the process of refurbishing the Café, constructing an enclosure and improving outside restrooms ("City's Construction Project"). The City makes no warranties or representations as to the quality of the improvements, which completed improvements will be accepted "As Is" by CONTRACTOR. CONTRACTOR further releases the City from any business interruption or loss of revenue relating directly or indirectly from the City's Construction Project.

(D) Section 4 of the Agreement is hereby deleted in its entirety and replaced with the following:

SECTION 4. FEES AND REPORTS

4.1 **CONTRACTOR Payment**

In consideration of the rights granted the CONTRACTOR pursuant to this Agreement, and CONTRACTOR'S further agreement and acknowledgement to perform and furnish the management and operational services, professional skills and qualified personnel, systems, and materials consistent with the management and operations of other first-class, high quality public tennis center, the City and CONTRACTOR herein agree that the CONTRACTOR shall collect and maintain (in accordance with generally acceptable accounting principles) on behalf of the City, all revenues, generated at and from the Center including, but not limited to, all memberships, tennis instruction, lessons and clinics; court rental fees, sales, equipment rental, pro shop sales, and the sale and operation of food and beverage concessions.

All said revenues collected by the CONTRACTOR shall be deposited into an account of the CONTRACTOR, established pursuant to this Agreement, and to be maintained solely for the sole and exclusive purpose(s) of the management, operation and maintenance of the Center, pursuant to this Agreement (including, without limitation, to pay for all budgeted operational expenses arising from the management or operation of the Center

pursuant to this Agreement). Interest accrued in the account shall be part of the operating income.

CONTRACTOR shall submit, within twenty-five (25) days following the close of each month, copies of records and reports related to the receipts and expenditures with respect to all expenses and revenues generated during such month at the Center. Such records and reports shall be in a form satisfactory to the City's Chief Financial Officer, and shall include a comparison of revenues and expenses for the two (2) months prior to the report being submitted. The City shall have no obligation whatsoever to reimburse CONTRACTOR for any cash flow deficiencies.

CONTRACTOR, upon receipt thereof from the depository bank, shall submit to the City copies of all deposits, withdrawals, and bank statements concerning the account established for the Center pursuant to this subsection 4.2. Additionally, there shall be a reconciliation of all accounting within 15 working days following the completion of each Agreement year during the Term hereof.

4.1.1 Notwithstanding anything to the contrary in this Subsection 4.1, the City shall, without limitation, be paid by wire transfer from the established bank account to the City's account, on the last work day of each month during the Term of this Agreement, the following amounts:

- (A) A minimum monthly guaranteed payment of \$3,500.00 ("Minimum Guarantee" or "MG") for year 1 (one) of the Agreement. The minimum monthly guarantee will be increased by \$500 for each "Renewal Term"; and
- (B) In addition to the Minimum Guarantee, within fifteen days from the last day of each month, the City shall be entitled to an additional monthly payment, based upon a percentage of the total Gross Revenues (as defined herein) as it cumulatively accrues during each Contract Year ("Contract Year Gross Revenues"), due upon the Contract Year Gross Revenues exceeding the threshold of \$700,000.00 ("Percentage Gross" or "PG"), as determined by the Contract Year Gross Revenues accrued as of the last day of each month, as follows: a payment equal to 5% of Contract Year Gross Revenue when said Contract Year Gross Revenues exceed the total sum of \$700,000.00. Commencing January 1st of each Contract Year, Contract Year Gross Revenues reset to zero and start to accrue again for the purposes of calculating PG

4.1.2 The term "gross revenues" or "revenues", as used herein, is understood to mean all income, whether collected or accrued, derived by the CONTRACTOR under the privileges of this Agreement, including, without limitation, tennis instruction, lessons and clinic, court rental fees, sales, equipment rental, pro shop sales, tournaments and tournament registration fees, and the sale and operation of food and beverage concessions, excluding amounts of Federal, State, or City sales tax, or other tax, government imposition, assessment, charge or expense of any kind, collected by the CONTRACTOR pursuant to this Agreement, and required by law to be remitted to the taxing or other government authority.

4.2 During the Term of this Agreement, CONTRACTOR shall prepare and submit to the City, prior to October 1st of each fiscal year (or portion thereof) that is within the Term, a proposed, detailed line-item annual operating budget for the Center, in compliance with a format reasonably requested by the City's Chief Financial Officer. CONTRACTOR shall also prepare and submit, prior to October 1st of each fiscal year (or portion thereof) that is within the Term, a cash flow budget, based on its submitted operating budget for such fiscal year. The operating budget and the cash flow budget shall be approved by the Chief Financial Officer, with such modifications as the Chief Financial Officer shall make.

4.3 The CONTRACTOR shall provide a monthly activity report/revenue report which shall be submitted to the City by the 25th day of each month. The monthly reports shall include, but not be limited to, the following information:

- (A) a comprehensive description of the work performed, profit/loss reports for clinics, tournaments, lessons, etc. detailing revenues generated in the prior month, expenses incurred in the prior month, and other performance measures as determined by the City;
- (B) a work plan to adequately address Continuous Quality Improvement goals in the CONTRACTOR's management plan;
- (C) a maintenance plan to adequately address court and facility maintenance in the CONTRACTOR's management plan and as it relates to the maintenance subcontractor Welch for a timely schedule of court refurbishments and overall court maintenance; and
- (D) the City reserves the right to add or modify the items required in the monthly report, as the City deems necessary, in its sole and reasonable discretion, in order to adequately monitor performance of the CONTRACTOR.

4.4 Sales and Use Tax.
Payment of any required Florida State Sales and Use Tax shall be the responsibility of CONTRACTOR.

4.5 Taxes, Assessments, and Utilities

4.5.1 CONTRACTOR agrees to and shall pay before delinquency all taxes (including but not limited to resort taxes) and assessments of any kind assessed or levied upon CONTRACTOR and with and/or against the Center, except as provided in subsection 4.5.2, by reason of this Agreement or by reason of the business or other activities of CONTRACTOR upon or in connection with the Center. CONTRACTOR will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings diligently conducted in good faith.

CONTRACTOR may refrain from paying a tax or assessment to the extent it is contesting the assessment or imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, CONTRACTOR shall be

responsible for such delinquency charges, in addition to payment of the contested tax and/or assessment, if so ordered.

CONTRACTOR, shall also pay for any fees imposed by law for licenses or permits for any business or activities of CONTRACTOR at the Center under this Agreement.

The CITY shall be responsible for payment of utilities used by, for, or on behalf of the operations contemplated herein including, telephone, basic cable, electricity, and water and sewer.

4.5.2

Procedure if Ad Valorem Taxes Assessed.

Notwithstanding Subsection 4.5, the parties agree that the operations contemplated herein are intended for public purposes and, therefore, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser. If, however, said taxes are assessed, City and CONTRACTOR agree that CONTRACTOR shall be responsible for real estate taxes which are assessed against the Center. If the entire City folio, where the center is located, is assessed and the Miami-Dade County Tax Appraiser does not identify which portion of the City folio relates to the CONTRACTOR's Area, CONTRACTOR shall be responsible for its proportionate share, determined by dividing the square footage of the Center, by the square footage for the City folio where the Center is located. In such case, either party may terminate the Agreement, upon providing the other party with ninety days written notice.

4.6 Maintenance and Examination of Records.

CONTRACTOR shall maintain current, accurate, and complete financial records on an accrual basis of accounting related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit, by the City Manager upon reasonable prior request and during normal business hours. Such records and accounts shall include a breakdown of revenues, expenses, and profit and loss statements. CONTRACTOR shall maintain accurate receipt-printing cash registers or a like alternative at the Center which will record and show the payment for every sale made or service provided at the Center; and such other records shall be maintained as would be reasonably required by an independent CPA in order to audit a statement of annual revenues and profit and loss statement pursuant to generally accepted accounting principles.

4.7 Inspection and Audit.

CONTRACTOR shall maintain its financial records pertaining to its operations for a period of three (3) years after the conclusion of any contract year and such records shall be open and available to the City Manager or his designee, as deemed necessary by the City Manager or his designee.

CONTRACTOR shall maintain all such records at its principal office, currently located at 15051 Royal Oaks Lane, Apt. 1604, North Miami, Florida 3318. At the City's request, in connection with any inspection or audit format, all such records shall be relocated, at CONTRACTOR'S expense, to a location in Miami Beach, within ten (10) days' written notice from the City.

The City, through its internal auditor or an independent auditor, shall be entitled to audit CONTRACTOR'S records pertaining to its operation as often as it deems reasonably necessary throughout the term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement, regardless of whether such termination results from the natural expiration of the term or for any other reason. The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five percent (5%) or more in CONTRACTOR'S statement of revenues for any year or years audited, in which case CONTRACTOR shall pay to the City, within thirty (30) days of the audit being deemed final (as specified below), the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest; provided, however, the audit shall not be deemed final until CONTRACTOR has received the audit and has had a reasonable opportunity to review the audit and discuss the audit with the City. Nothing contained within this Section shall preclude the City's audit rights for resort tax collection purposes. CONTRACTOR shall submit, within sixty (60) days from the end of each calendar year, an audited annual statement of revenues, in a form consistent with generally accepted accounting principles.

It is CONTRACTOR'S intent to stay informed of comments from and suggestions by the City regarding CONTRACTOR'S performance under the Agreement. Within thirty (30) days after the end of each contract year, CONTRACTOR and City shall meet to review CONTRACTOR's performance under the Agreement for the previous contract year. At the meeting, CONTRACTOR and City may discuss quality, operational, maintenance and any other issues regarding CONTRACTOR's performance under the Agreement.

(E) Subsection 5.1 of the Agreement is hereby amended to read as follows:

- 5.1 CONTRACTOR agrees that during the Term of this Agreement, Martin Van Daalen shall have active, ongoing direct participation in the day to day operation, maintenance and management of the Center. In the event that the CONTRACTOR, or otherwise ceases to participate in the day to day operation, maintenance, and management of the Center pursuant to this Agreement, then the City, at its sole option, may terminate this Agreement for cause pursuant to Section 15. In the alternative, should the City not opt to terminate this Agreement as provided therein, the City shall have prior written approval as to any replacement of the Principal subsequently offered by the CONTRACTOR.

In connection with the performance of its responsibilities hereunder, CONTRACTOR may hire Personnel (as defined in Subsection 3.4 herein), who will be the Personnel of the CONTRACTOR and not of the City, and who will be subject to a background Check Process, as set forth in Subsection 3.4 herein, at the expense of the CONTRACTOR. CONTRACTOR shall provide an adequate number of Personnel and man-hours in order to perform the services required under this Agreement. CONTRACTOR shall select the number, function, compensation, including benefits (if any), and may, at its discretion and at any time, adjust or revise the terms and conditions relating to such Personnel, in order

to ensure an adequate number of Personnel and man-hours to the satisfaction of the City Manager or his designee. The CONTRACTOR must provide the City with a copy of the Personnel Contract detailing the terms of employment for coaches, instructors, maintenance and office personnel. It is the expectation of the City that all of the CONTRACTOR'S personnel are paid in a timely and consistent manner based on the detailed specifications of the Personnel Contract.

(F) Subsection 7.8 of the Agreement is hereby amended to read as follows:

7.8 Management of the Pro-Shop

CONTRACTOR, at its own cost and expense, shall be responsible for purchasing and stocking the Pro-Shop with appropriate tennis products, including but not limited to snacks, strings, racquets, apparel, and beverages. Notwithstanding anything contained in Section 7, or in the Agreement, CONTRACTOR's food and beverage service shall be subject to and shall not under any event, conflict with, or otherwise violate, the City's exclusive vending contract with Coca-Cola Refreshments USA, Inc. b/b/a Florida Coca-Cola Bottling Company and Coca-Cola North America, a division of the Coca-Cola Company ("Coca-Cola Contract") and the City's exclusive vending contract with Bettoli Trading Corp. ("Bettoli Contract") (collectively referred to herein as "City Vending Contracts"); copies of which are attached hereto and made a part hereof as composite Exhibit D. All monthly income from the Pro-Shop shall be collected by the City and treated as part of the monthly gross programming revenues. The City will not be responsible for the purchasing, inventory, ordering, delivery or security of such products.

Furthermore, the "Premises" shall include the tennis center café area which CONTRACTOR will manage and operate upon completion of the café construction project. The tennis center café operation and management terms and conditions will be determined by the City Manager at the completion of the construction project.

(G) Subsection 8.2 of the Agreement is hereby amended to read as follows:

8.2 Building and Facility Maintenance.

The City further acknowledges that the CONTRACTOR shall not be required to improve, repair, restore, refurbish, or otherwise incur any expense in improving or changing the condition of the Center, except for all costs in connection with the fulfillment of this Agreement including, without limitation; costs in connection with the maintenance of the programming equipment and any costs relating to damage to the Facility caused as a result of CONTRACTOR'S negligence.

The City shall maintain all electrical, HVAC, plumbing and foundation and structural systems, roofs, exterior walls, and sports lighting at the Center at its sole cost, and in its sole discretion as to mean, manner and methods used for such maintenance.

The City will maintain the grass and landscaped areas in those portions surrounding the Center and within the Center. ~~as well as maintenance of the equipment in connection with the upkeep of the tennis courts to include:~~ CONTRACTOR will be responsible for all costs in connection with operating the Center (i.e. office supplies, internet, etc.); costs in connection with the maintenance of the equipment; costs in connection with the upkeep of the tennis courts, to include surface clay purchase; and costs in connection with the

daily maintenance and janitorial services of the Center including, without limitation, the following

- (A) Windscreens
- (B) Clay
- (C) Nets (includes hardware)
- (D) Lines (includes hardware)
- (E) Algae and Weeds on courts
- (F) Restrooms (clean and stocked)
- (G) Pro Shop and facility cleanliness
- (H) Litter Control
- (I) Water coolers, ice, water and cups on the courts for patron use.

CONTRACTOR agrees to assist in helping to ensure the facility remains clean and tidy.

City shall have the sole discretion as to the means, manner and methods utilized for aforesated maintenance.

(H) Subsection 8.3 of the Agreement is hereby amended to read as follows:

8.3 Courts and Related Facilities Maintenance Standards.

The City CONTRACTOR shall comply with minimum standards set forth for the underground watering systems, as set forth by the builder of the Center (Welch Tennis). The City shall conduct monthly maintenance inspections to ensure courts are up to industry standards. The CONTRACTOR will be responsible for corrective actions when identified within a reasonable amount of time based on industry standards for such repairs, or immediate corrective action shall be taken when it addresses life safety issues. If court maintenance deficiencies are found by City staff, the City may require court inspections from an outside vendor at the expense of the CONTRACTOR. The City will advise the CONTRACTOR of the findings and the CONTRACTOR must promptly respond to the findings in writing, addressing all findings including an action plan and time line for correcting any discrepancies identified in said findings. It is further understood that upon the request of the City, CONTRACTOR shall periodically, or upon the City's written request, provide the City Manager or his designee, with a maintenance report in a format approved by the City.

(I) Subsection 8.4 of the Agreement is hereby amended to read as follows:

8.4 Equipment.

The CONTRACTOR must purchase and maintain, at its own cost and expense, all materials, labor, and any and all equipment required to operate tennis programming and maintenance at the Center. Such equipment to be included as part of the CONTRACTOR's expense are:

- (A) Ball Caddies
- (B) Tennis Balls
- (C) Racquets
- (D) String
- (E) Water Cooler
- (F) Stringing Machine
- (G) Ball Machine

(H) Clothing Racks for Display

The City has supplied the Center with the following equipment that will be left for the CONTRACTOR at the Center in "as is" condition:

- (A) Blowers
- (B) Trimmers
- (C) Hot/Water/Pressure Washing
- (D) Trash cans
- (E) Brooms and Pans
- (F) Rakes
- (G) Giliberti
- (H) Court grooming materials (i.e. Aussie Sweeps, rollers, etc.)
- (I) Benches
- (J) Umbrellas
- (K) Outdoor Furniture
- (L) Televisions
- (M) Stringing Machine
- (N) Ball Machine

In the event any of the CONTRACTOR'S equipment or materials are lost, stolen, or damaged, they shall be replaced or repaired at the sole cost and expense of the CONTRACTOR in no more than five (5) days from date of loss, or if not possible, within such time frame, as promptly as reasonably possible, but in no event to exceed fifteen (15) days. The CONTRACTOR shall maintain, in accordance with the manufacturer's specifications and maintenance requirements, all equipment, whether City owned or owned by the CONTRACTOR, herein specified and purchased. All equipment shall be kept clean, fully functional and free of damage. With respect to the Ice Machine utilized by the entire park (North Shore Park), CONTRACTOR is permitted to access ice from the machine. If the Ice Machine is not operable for any given reason, it will be the responsibility of the CONTRACTOR to purchase ice at the CONTRACTOR'S expense. Any equipment purchased by CONTRACTOR with the revenues from the operation of the Center shall remain property of the City at all times. Any equipment purchased by CONTRACTOR with CONTRACTOR's own funds shall remain the property of CONTRACTOR.

(J) Section 10 of the Agreement is hereby amended to read as follows:

10. Fines and Penalties.

The City reserves the right to levy fines against the CONTRACTOR when the City determines that CONTRACTOR is not meeting the necessary work requirements. The following table below depicts areas where fines will be levied:

Work Activity	Grace Period
Quality of Operations	24 hours
Personnel Shortages	4 hours
<u>Personnel Payroll</u>	<u>24 hours</u>
<u>Personnel External Instruction</u>	<u>24 hours</u>
Personnel Dress Code	8 hours

<u>Reporting</u>	<u>24 hours</u>
<u>Payments</u>	<u>24 hours</u>
Equipment Deficiencies	72 hours
Supplies	8 hours
Program Management	24 hours
Communications	48 hours
Life Safety Maintenance	2 hours

Fines for failures to complete corrective action for any of the work activities listed above are as follows:

- \$100 after failing to complete corrective action after two (2) notifications
- \$200 after failing to complete corrective action after three (3) notifications
- \$500 after failing to complete corrective action after four (4) notifications

If additional time is required to complete corrective action, a written request must be submitted for approval to the City prior to the end of the grace period. The basis for the implementation of fines and penalties includes but is not limited to the following:

- a. Quality of Operations – Inability to provide service in a workmanlike and professional manner; failure to conform to professional and industry standards; unable to provide maintenance services in a manner in clean orderly and safe condition; and inability to meet the City's established tennis court maintenance standards in accordance with the Tennis Court Manufacturer's standards and guidelines for hydro-courts or other similar tennis court system.
- b. Personnel Shortages – Failure to provide a staffing plan that meets the maintenance coverage requirements of the service area, and/or failure to provide the necessary on-site personnel in accordance to the staffing plan.
- c. Personnel Payroll – Failure to pay personnel in a timely manner and based on the terms specified in the Personnel Contract.
- d. Personnel External Instruction – CONTRACTOR is responsible for ensuring that any external instruction engaged in by personnel must be such as to not directly or indirectly compete with the Tennis Center's business which includes private coaching and/or instruction at other City-owned neighborhood tennis courts.
- e. Personnel Dress Code – Failure of employees to meet uniform requirements, including wearing clean uniforms.
- f. Reporting – Failure to submit required maintenance and financial reports on due dates.
- g. Payments – Failure to submit required monthly payments and thresholds on due dates.
- h. Equipment Deficiencies – Inability to fully operate; in non-functional condition; in state of disrepair and or visibly damaged; lacking

maintenance; and not generally maintained and in clean condition.

- i. Supplies – Failure to provide the supplies necessary for the proper execution of the program or maintenance service specified.
- j. Program Management - Failure to implement a comprehensive management program to respond to City and/ or stakeholder requests for services and maintenance issues covered by the Contract.
- k. Communications – Failure to submit an approved communications plan addressing routine, scheduled, and emergency maintenance and repair activities, and failure to provide timely notifications as previous prescribed.
- l. Safety Regulations – Failure to adhere to OSHA's most recently published Safety and Health Regulations and general Occupational Safety and Health Standards.

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.

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FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

Date

11/13/19

FOR CONTRACTOR:

VAN DAALEN TENNIS, LLC

ATTEST:

By:

PAUL DE MUONT ATHLETIC MANAGER

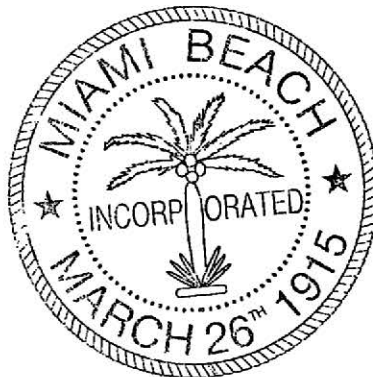
Print Name and Title

11/5/19

Date

Director of Programming

Martin Van Daalen
Print Name



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

REC-5
City Attorney

10-28-19
Date