

**AMENDMENT NO. 4
TO VAN DAALEN TENNIS, LLC ONE (1) YEAR PILOT
AGREEMENT TO PROVIDE PROGRAMMING AT THE
CITY'S MIAMI BEACH TENNIS CENTER**

This Amendment No. 4 ("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 _____ day of _____, 2020.

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, at the April 11, 2018 City Commission Meeting, a discussion regarding a term extension of 6-months for Van Daalen Tennis, LLC. to provide programming, following the completion of the scheduled construction projects at the "Center" was referred to the Finance and Citywide Projects Committee ("FCWPC"); and

WHEREAS, on April 11, 2018, the City Commission adopted Resolution No. 2018-30279, changing the name from "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, including the following essential terms:

- (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, since Contractor took over the programming, the Center experienced an increase in participation numbers and therefore an increase in both programming and merchandise revenues; 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 Van Daalen Tennis, LLC ("Contractor") Pilot Agreement, providing programming at the City's Miami Beach Tennis Center, by shifting the responsibility of operating and personnel cost to the Contractor; and

WHEREAS, at the July 31, 2019 Commission Meeting, Resolution No. 2019-30923 was passed to amend the Pilot Agreement with Van Daalen Tennis, LLC. (Contractor) to provide programming at the City's Miami Beach Tennis Center; said amendment transferring, from the City to the Contractor, the responsibility for payment of operational and personnel expenses at the Center; and

WHEREAS, at the October 16, 2019 Commission Meeting, Resolution No. 2019-31029 was passed approving Amendment No. 3; and

WHEREAS, at the July 29, 2020 Commission Meeting, Resolution No. 2020-XXXX was passed accepting the written recommendation of the City Manager with respect to providing COVID-19 rent relief to the commercial tenants/operators of City-owned property, and approving the waiver of all rents and fees due to the City; and

WHEREAS, following this initiative, the Contractor's Minimum Guarantee will be lowered to \$3,000.00 monthly, providing relief to the Contractor beginning in October 2020 and ending once regular programming operations resume.

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:

Subsection 4.1.1 of the Agreement is hereby amended to read as follows:

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
- (C) In response to the COVID-19 pandemic, the Minimum Guarantee will be lowered to \$3,000.00, providing relief to the Contractor beginning in October 2020 and ending once regular programming operations resume. At that time, the Minimum Guarantee will return to the payment agreed upon under subsection 4.1.1 (A) and 4.1.1 (B).

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

FOR CONTRACTOR:

VAN DAALEN TENNIS, LLC

ATTEST:

By: _____

Director of Programming

Print Name and Title

Martin Van Daalen
Print Name

Date