

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, IN SUBSTANTIAL FORM, AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE CITY AND MIAMI BEACH TENNIS MANAGEMENT, LLC FOR TENNIS MANAGEMENT AND OPERATIONS SERVICES AT THE CITY'S FLAMINGO AND NORTH SHORE TENNIS CENTERS; SAID AMENDMENT, IN MATERIAL PART, REMOVING THE NORTH SHORE PARK TENNIS CENTER FROM THE SCOPE OF SERVICES, INCLUDING A REDUCTION IN THE MINIMUM GUARANTY PAYMENTS DUE TO THE CITY, SUBJECT TO FINAL NEGOTIATION BY THE ADMINISTRATION AND REVIEW AND FORM APPROVAL BY THE CITY ATTORNEY; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FINAL AMENDMENT.

WHEREAS, on April 26, 2017, City Commission referred the item regarding insourcing of North Shore Tennis to the Neighborhoods and Community Affairs Committee ("NCAC"), in light of several emails that Administration and Commission received regarding the teaching professionals at North Shore Tennis Center ("the Center"); and

WHEREAS, at the May 19, 2017 NCAC meeting, the Committee moved to refer the item to the Finance and Citywide Projects Committee ("FCWPC"), and directed staff to identify potential operating models, outlining their financial implications for consideration as part of the budgeting process; and

WHEREAS, in the essence of time, a special FCWPC meeting was noticed for June 5, 2017; and

WHEREAS, following direction from NCAC, Staff identified the outsourcing of programming and instruction and the insourcing of the Center's operations as a potential operating model; and

WHEREAS, in this model, the Center's hours of operation would be 7:30 a.m. to 9:30 p.m., 7 days a week and the City would be responsible for the front desk, reservation and software system, money collection, maintenance of courts and overall facility and other tasks or duties as needed; and

WHEREAS, additionally, all membership and court fees would stay with City and programming instruction would be contracted out through either Professional Service Agreements or Independent Contractor Agreements; and

WHEREAS, the FCWPC directed staff to implement this model and to work with the Office of Budget and Performance Improvement to allocate funding for positions and operating expenses in addition to working with the current Contractor of the North Shore Tennis Center (Miami Beach Tennis Management) to amend their current management agreement in order to make them whole; and

WHEREAS, Miami Beach Tennis Management has been the Contractor for the City providing professional tennis management and operation services at the City's Flamingo and North Shore Tennis Centers since 2014; and

WHEREAS, after several negotiations with Miami Beach Tennis Management, the Parks and Recreation Departments recommends the following amendments to the current management agreement to take place August 1, 2017:

SECTION 2. CENTERS TO BE MANAGED.

Remove Section 2.1.2 specifying the North Shore Tennis Center.

SECTION 4. FINANCIAL REQUIREMENTS.

Section 4.2.1

- (1) Reducing the current minimum monthly guaranteed payment of \$10,000 to \$6,000.
- (2) Changing the additional monthly payments based on the percentage of the total Gross Revenues as it cumulatively accrues during each Fiscal Year from:
 1. 3% of gross in excess of \$650,000.00 to \$1,000,000.00
 2. 4% of gross in excess of \$1,000,000.00 to 1,250,000.00
 3. 5% of gross in excess of \$1,250,000.00 or greater

To:

1. 3% of gross in excess of \$500,000.00 to \$850,000.00
2. 4% of gross in excess of \$850,000.00 to 1,000,000.00
3. 5% of gross in excess of \$1,000,000.00 to \$1,550,000.00
4. 6% of gross in excess of \$1,550,000.00 and higher

SECTION 9. HOURS OF OPERATION & COURT USAGE.

Section 9.1 Adjusting the hours of operation at the Flamingo Park Tennis Center from:

7:30 AM to 9:30 PM every day of the year

To:

7:30 AM to 10:00 PM Monday through Friday
7:30 AM to 9:00 PM Saturday and Sunday

Section 9.3.2 Revision of language to Third Party Professionals to include:

Independent/Sub-contractors/Third Party Professional shall not be permitted at the Center. Independent/Sub-contractors/Third Party Professionals include but are not limited to a resident/nonresident:

1. Who teaches or gives tennis lessons for a fee independent of Contractor.
2. Who teaches on a court with a ball basket and with more than three balls with one or more players independent of Contractor.
3. Who collects money for instruction and/or lesson independent of Contractor.

SECTION 10. TENNIS FEES, CHARGES AND PROGRAMS & RELATED SERVICES TO BE PROVIDED.

Section 10.1 Adjusting membership language to specify that memberships sold at the Flamingo Park Tennis Center will be for play at both Flamingo and North Shore Tennis Centers, while memberships sold at the North Shore Tennis Center will be solely for play at North Shore.

SECTION 11. ALTERATIONS, MAINTENANCE, AND REPAIRS & SECURITY.

Section 11.5 The City will credit Miami Beach Tennis Management in the amount of \$16,000.00 for equipment purchased by Miami Beach Tennis Management to operate and maintain the North Shore Tennis Center with the exception of the following:

Giliberti Tennis Cart
Court Grooming Tools
Court Umbrellas
HD Security Camera System.

WHEREAS, the Administration recommends approving, in substantial form, Amendment No. 1 to the Agreement, incorporated herein by reference and attached at Exhibit "1" hereto, subject to final negotiations by the Administration and review and form approval by the City Attorney.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve, in substantial form, Amendment No. 1 to the Agreement between the City and Miami Beach Tennis Management, LLC for tennis management and operations services at the City's Flamingo and North Shore Tennis Centers; said amendment, in material part, removing the North Shore Park Tennis Center from the scope of services, including a reduction in the minimum guaranty payments due to the City, subject to final negotiation by the Administration and review and form approval by the City Attorney; and further authorizing the Mayor and City Clerk to execute the final amendment.

PASSED and ADOPTED this 26th day of July, 2017.

ATTEST:

PHILIP LEVINE, MAYOR

RAFAEL E. GRANADO, CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION
DeL. Co. L. 7/18/17
City Attorney Date

AMENDMENT NO. 1 TO THE MIAMI BEACH TENNIS MANAGEMENT, LLC AGREEMENT TO PROVIDE PROFESSIONAL TENNIS MANAGEMENT AND OPERATIONS SERVICES AT THE CITY'S FLAMINGO AND NORTH SHORE TENNIS CENTERS

This Amendment No. 1 (Amendment) to the Agreement, dated _____, 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 (City), and Miami Beach Tennis Management, LLC, a Florida limited liability company, having its principal place of business at 1079 NE 96th Street, Miami Shores, Florida 33138 (Contractor), is entered into this ____ day of _____, 2017 (Effective Date):

RECITALS

WHEREAS, on April 23, 2014, the Mayor and City Commission adopted Resolution Number 2014-28572, approving the award of Invitation to Bid ("ITB") No. 13-095-01 for professional management and operation services at the City's Flamingo and North Shore Tennis Centers; and

WHEREAS, on July 14, 2014, the City and Contractor executed the Miami Beach Tennis Management, LLC Agreement to Provide Professional Tennis Management and Operations Services at the City's Flamingo and North Shore Tennis Centers Agreement (the Agreement); and

WHEREAS, on July 26, 2017, the Mayor and City Commission adopted Resolution No. _____ reducing the scope of the Agreement by removing the North Shore Tennis Center from the scope of the Agreement, as more particularly set forth herein.

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 Consultant 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.

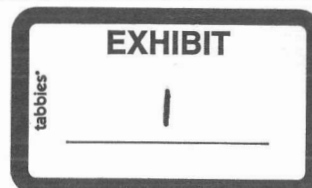
2. MODIFICATIONS.

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

(a) Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

2.1 The City has employed the CONTRACTOR, and CONTRACTOR agrees, to operate, manage and maintain, the following City-owned recreational facility:

That certain City-owned recreational facility commonly known as the Flamingo Tennis Center, located at 1200 Meridian Avenue, Miami Beach,



Florida 33139, together with all buildings, improvements and fixtures located thereon. The Center's premises are further delineated in Exhibit "A-1" (Site Map of Flamingo Tennis Center), attached hereto.

(b) Section 4.2.1 of the Agreement is hereby amended to read as follows:

4.2.1 Notwithstanding anything to the contrary in this subsection 4.2, the City shall, without limitation, withdraw or be paid from the established bank account, on the last work day of each month during the Term of this Agreement, the following amounts:

- 1) A minimum monthly guaranteed payment of ~~\$10,000~~ \$6,000 ("Minimum Guarantee" or "MG"); and
- 2) 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 fiscal year ("Fiscal Year Gross Revenues"), due upon the Fiscal Year Gross Revenues exceeding the threshold of ~~\$650,000~~ \$500,000 ("Percentage of Gross" or "PG"), as determined by the Fiscal year Gross Revenues accrued as of the last day of each month, as follows: a. a payment equal to 3% of Fiscal Year Gross Revenues when said Fiscal Year Gross Revenues exceed the total sum of ~~\$650,000~~ \$500,000, but are less than the total sum of ~~\$1,000,000~~ \$850,000; b. a payment equal to 4% of Fiscal Year Gross Revenues when said Fiscal Year Gross Revenues total at least ~~\$1,000,000~~ \$850,000 but are less than ~~\$1,250,000~~ \$1,000,000; or c. a payment equal to 5% of Fiscal Year Gross Revenues, when said Fiscal year Gross Revenues total ~~\$1,250,000~~ \$1,000,000 but are less than ~~\$1,550,000~~; or d. a payment equal to 6% of Fiscal Year Gross Revenues when said Fiscal Year Gross Revenues total \$1,550,000 or greater. Commencing October 1st of each fiscal year, Fiscal Year Gross Revenues reset to zero and start to accrue again for purposes of calculating PG.

(c) Section 9.1 of the Agreement is hereby amended to read as follows:

9.1 The CONTRACTOR shall open and operate the Centers for play from 7:30 A.M. to ~~9:30~~ 10:00 P.M. ~~every day of the year~~ Monday through Friday and 7:30 A.M. to 9:00 P.M. Saturday and Sunday, with the exception of closures due to weather conditions or events of force majeure permitting, and certain holiday agreed upon by the CONTRACTOR and the City of which proper signage and notification to patrons must be adhered to.

(d) Section 9.3.2 of the Agreement is hereby deleted in its entirety and replaced as follows:

9.3.2 Independent/Sub-contractors/Third Party Professional shall not be permitted at the Center. Independent/Sub-contractors/Third Party Professionals include but are not limited to a resident/nonresident:

1. Who teaches or gives tennis lessons for a fee independent of Contractor.
2. Who teaches on a court with a ball basket and with more than three balls with one or more players independent of Contractor.
3. Who collects money for instruction and/or lesson independent of Contractor.

Additional court usage for lessons, programs and clinics during non-peak hours shall be subject to the prior written approval of the City. At no time shall more than 50% of all courts be utilized for lessons, programs and clinics until 10 minutes after any non-peak hour and there are no tennis patrons waiting for a court, without the prior written approval of the City. CONTRACTOR must use due diligence when assigning courts for open play and lessons to include: (a) alternating courts where lessons are taught to avoid overplaying a court or battery of courts and (b) separating open play courts from lesson courts to avoid injury. CONTRACTOR can allow for court reservations to be made on hour or half hour intervals as appropriate. Reservations for doubles play shall be for up to two (2) hours.

(e) Section 10.1 of the Agreement is hereby amended to read as follows:

10.1 Prices charged shall comply with the City's established fees for hourly tennis court play, annual permits, other specialized play and the youth tennis policy, and shall be in accordance with the information included in Exhibit "J," attached hereto. Furthermore, CONTRACTOR agrees that annual memberships sold at the Flamingo Park Tennis Center will allow for play at both Centers while annual memberships sold at the North Shore Tennis Center will allow for play solely at that Center.

(f) Section 11.5 of the Agreement is hereby deleted in its entirety and replaced with the following:

11.5 Equipment.

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

- (A) Blowers
- (B) Trimmers
- (C) Hot/Water/Pressure Washing
- (D) Trash cans with Rollers
- (E) Brooms and Pans
- (F) Rakes

The City has supplied each Tennis Center (North Shore and Flamingo) with equipment such as a Gilliberti, drag rakes and tines, line brushes, Aussie sweep mats, etc. that will be left for the CONTRACTOR at each center in "as is" condition. Any maintenance to such equipment or the replacement of the

equipment shall be at the sole expense of the CONTRACTOR. An inventoried list of all equipment and quantities, identifying the equipment provided by the City upon Commencement Date of this Agreement and equipment to be purchased by CONTRACTOR is attached hereto as Exhibit "N", subject to periodic updates as the inventoried list changes. All equipment purchased for this Agreement shall be used by CONTRACTOR for performance of this Agreement and shall have a prominently displayed standardized logo to be approved the City. 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. The City will credit Miami Beach Tennis Management in the amount of \$16,000.00 for equipment purchased by Miami Beach Tennis Management to operate and maintain the North Shore Tennis Center with the exception of the following:

Giliberti Tennis Cart
Court Grooming Tools
Court Umbrellas
HD Security Camera System

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

Philip Levine, Mayor

Date

FOR CONTRACTOR:

**Miami Beach Tennis Management
LLC**

ATTEST:

By: _____
Secretary

President

Print Name

Howard Orlin
Print Name

Date