

**AMENDMENT NO. 2 TO THE MIAMI BEACH TENNIS MANAGEMENT, LLC
AGREEMENT TO PROVIDE PROFESSIONAL TENNIS MANAGEMENT AND
OPERATIONS SERVICES AT THE CITY'S FLAMINGO TENNIS CENTER**

This Amendment No. 2 ("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 (the "City"), and Miami Beach Tennis Management, LLC, a Florida limited liability company, having its principal place of business at 19101 Mystic Pointe Drive, Apt. 2202, Aventura Florida 33180 ("CONTRACTOR"), is entered into this ____ day of _____, 2018.

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. 2017-29935, approving Amendment No. 1 to the Agreement, said Amendment, in material part, providing for the removal of the North Shore Tennis Center from the scope of the Agreement and reducing the Minimum Guarantee payments due to the City, as more particularly set forth herein.

WHEREAS, on XXXXXX, the Mayor and City Commission adopted Resolution No. XXX-XXX, approving Amendment No. 2 to the Agreement, said Amendment, in material part, providing for the addition of language related to dual memberships, lighting fees, club baskets, requirements for tennis software, maintenance repairs, equipment and court inspections and utilization of courts for City produced tennis related special events and/or other City sponsored special events such as local and international tennis tournaments to be added to the scope of the Agreement; and providing for the removal of language related to site inspection prior to Agreement commencement date, Food Service Management Certification, City issued ID badges, reconciliation of accounts, and migration of employees 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) Subsection 2.2 of the Agreement is hereby amended to read as follows

2.2 CONTRACTOR herein accepts the Centers, including, without limitation, all buildings, improvements, and fixtures located thereon, in their "as is" "where is" condition, and agrees that the City shall have no obligation to improve, repair, restore, refurbish, or otherwise incur any expense in improving or changing the condition of the Centers at any time during the Term of this Agreement.

~~Prior to the Commencement Date, City and CONTRACTOR shall conduct a site inspection of the Centers. CONTRACTOR shall, within ten (10) days of such inspection, notify the City of any necessary repairs, and the City shall make such repairs if, in its sole and reasonable discretion, it deems necessary. The City shall also, within ten (10) days of the inspection, notify CONTRACTOR of any initial necessary maintenance issues, such as lack of clay on courts, and the CONTRACTOR shall make such initial repairs within ten (10) days from notice. Notwithstanding the preceding, nothing in this Subsection 2.2 shall be deemed to release and/or excuse CONTRACTOR from its ongoing maintenance responsibilities throughout the Term of this Agreement including, without limitation, those prescribed in Section 11 hereof and Exhibit "M" attached hereto.~~

(b) Subsection 3.3.5 of the Agreement is hereby deleted in its entirety

(c) Subsection 3.4 of the Agreement is hereby amended to read as follows:

3.4 Sale of Tennis Pro Shop Related Items and Services.

CONTRACTOR may offer for sale those tennis related items such as tennis balls, tennis racquets, shoes, shirts, towels, etc., and offer related services such as equipment and ball machine rentals, racquet restringing, and grip replacement. Prices shall be substantially in accordance with the price ranges of other similar public tennis centers. A list of all items and services to be offered for sale, and the respective price ranges for same, must be approved in writing by the City Manager, prior to such sales and/or additions being implemented, and updated, as deemed necessary, at the discretion of the City Manager. As of the Commencement Date, the City and CONTRACTOR have approved the types of merchandise which may be sold at the pro shop ("Pro Shop Merchandise"), attached hereto and made a part hereof as Exhibit "F". CONTRACTOR will provide a club basket available for use on a first come first serve basis for members and resident nonmembers. Club Basket will be at no charge for members, and \$5.00 per hour plus court fees for nonmembers. Usage of the club basket will be limited to no more than 2 players on a court.

(d) Subsection 3.6 of the Agreement is hereby amended to read as follows:

3.6 Personnel Background Checks, ID Badge Requirements.

CONTRACTOR shall comply with the requirements of Sections 1012.32 and 1012.465, Florida Statutes, requiring that only those employees who have successfully passed the background screening required by the referenced statutes, and who meet the standards established by the statutes, be allowed access to any of the Centers and/or allowed to perform services under this Agreement. This requirement shall also extend to all Contractor representatives, agents, independent contractors, sub-contractors, or volunteers (such employees, representatives, agents, independent contractors, sub-contractors, or volunteers of CONTRACTOR shall be collectively referred to herein as "Personnel") performing duties under this Agreement.

The Personnel shall undergo the aforesated background screening and a drug screening, as well as a credit history check for those positions that require the handling of money (collectively referred to herein as "Background Check Process") prior to entering the Centers to begin employment and/or deliver services. The Background Check Process will be conducted by the City of Miami Beach Human Resources Department. Employment may be contingent upon satisfactory results as determined by the City. **The Personnel shall not be permitted to work at the Centers until such time as the Background Check Process has been completed and the Personnel cleared to perform duties under this Agreement.** If any Personnel is away from the job for a period of 45 or more days, the City will require a new Background Check Process.

The CITY and CONTRACTOR agree and acknowledge that the failure of CONTRACTOR to perform any of the duties described in Subsection 3.6 shall constitute a material breach of this Agreement, for which the City reserves the right to terminate immediately and without further liability to the City. CONTRACTOR agrees to indemnify and hold harmless the City, its officers and employees of any liability in the form of physical or mental injury, death or property damage resulting in CONTRACTOR's failure to comply with the requirements of this Subsection 3.6, or Sections 1012.32 and 1012.465, Florida Statutes.

~~Upon successful completion of the required Background Check Process, the City will issue ID badges to the Personnel at a nominal fee (currently \$10.00, but subject to change from time to time). CONTRACTOR agrees that no Personnel shall be allowed at the Centers without a City issued ID badge, which shall be worn at all times in a visible and easily readable location. The transfer of ID badge between Personnel is strictly prohibited and shall be cause for all Personnel responsible for such action to be immediately removed from the Centers, and CONTRACTOR fined in accordance with the provisions of Section 13.~~

CONTRACTOR agrees to require all of its Personnel to notify the CONTRACTOR and the City of any arrest(s) or conviction(s) of any offense within 24 hours of its occurrence. CONTRACTOR further agrees to immediately notify the City upon becoming aware that one of its Personnel, who was previously certified as completing the Background Check Process, is subsequently arrested or convicted of any disqualifying offense. **Failure by CONTRACTOR to notify the City of such arrest or conviction within 24 hours of being put on notice shall constitute a material breach of this**

**Agreement entitling the City to terminate this Agreement immediately,
without further liability to the City.**

- (e) Subsection 4.4 of the Agreement is hereby deleted in its entirety.
- (f) Subsection 8.6 of the Agreement is hereby deleted in its entirety.
- (g) Subsection 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 "B," attached hereto. Furthermore, ~~CONTRACTOR agrees that annual memberships sold at the Flamingo Park Tennis Center will be valid for use at the Center and at the North Shore Tennis Center; however, annual memberships sold at the North Shore Tennis Center will only be valid for use at the North Shore Tennis Center.~~ Furthermore, CONTRACTOR agrees that annual memberships sold at the Flamingo Park Tennis Center will be valid for use at the Center and at the North Shore Tennis Center. Dual Memberships will be offered to participants that use both the Flamingo Park Tennis Center and North Shore Park Tennis center. FY19 dual membership will be determined by FY18 data of dual member usage at the centers established by the CONTRACTOR. **Per the data collected during FY18 a dual member would have established play 60% of the time at one center and 40% of the time at the other center establishing the 60/40 center usage rule.**

If a tennis user of a court, lesson, clinic, etc. play is affected with less than 30 minutes of play due to weather, the user will be entitled to a reimbursements/pay-out/raincheck. If play exceeds 30 minutes it's at the discretion of the CONTRACTOR to offer a reimbursements/pay-out/raincheck. Furthermore, Light Fees will only be charged to non-members. Those purchasing memberships will not be required to pay light fees.

- (h) Subsection 10.7 of the Agreement is hereby deleted in its entirety and replaced with the following:

10.7 The CONTRACTOR shall utilize the City's current recreation software system (i.e. Rec Trac) for the purposes of tracking reservations, financials, memberships, concessions, merchandise, etc. The CONTRACTOR shall have Tennis Module rights to the Flamingo Park Tennis Center computer software system. Additionally, phone and in-person reservations must be provided for by the CONTRACTOR all of which must be cross referenced to avoid overbookings, no-shows, and adherence to prioritization and utilization of courts for public usage by restricting lesson/clinic/programming courts during peak hours.

- (i) Subsection 11.2 of the Agreement is hereby amended to read as follows:

11.2 Building(s) and Facilities 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 Centers, except for all costs in connection with the fulfillment of this Agreement including, without limitation, costs in connection with

operating and furnishing the Tennis Centers; 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 Centers including, without limitation, the following:

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

Notwithstanding the forgoing, the City shall continue to maintain all electrical, HVAC, plumbing and foundation and structural systems, roofs, exterior walls, and sports lighting at the Centers at its sole cost.

The City will maintain the grass areas in those portions surrounding the Centers but not within the Centers. The CONTRACTOR is responsible for servicing the landscaped area within the Center. ~~of both the Flamingo and North Shore Tennis Centers.~~ The City shall conduct monthly inspections to ensure landscaped areas such as grass, shrubbery and trees in accordance with City standards to include but not limited to healthy, green and vigorous plant material.

CONTRACTOR shall submit to the City (for review and approval prior to the initiation of contract activities), a communication plan addressing routine, scheduled, and emergency maintenance and repair activities that may impact the operation of the Tennis Centers. All communications shall be directed to the appropriate City staff.

(j) Subsection 11.5 of the Agreement is hereby amended to read as follows:

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
- (G) Ice Machine

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:~~

~~Gilberti Tennis Cart
Court Grooming Tools
Court Umbrellas
HD Security Camera System~~

- (k) Subsection 17.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

17.2 City Special Events

Notwithstanding Subsection 17.1 above, and in the event that the City, at its sole discretion, deems that it would be in the best interest of the City, the City reserves the right to utilize the Center for City produced tennis related special events and/or other City sponsored special events productions such as local and international tennis tournaments. In such cases, the City will coordinate with the CONTRACTOR to cooperatively produce such events. CONTRACTOR agrees that the number of courts utilized shall be determined by the City and that events will be held during the Center's operating hours. CONTRACTOR will provide for at no charge a minimum of 224 court days. Under certain circumstance and with City approval, the City may allow for the CONTRACTOR to negotiate a per court usage fee if additional courts are required that exceed the minimum of 224 court days. The City at any time may require the use of all courts at no cost to the City with the approval of the City Commission. CONTRACTOR shall retain any income related to the special event and/or production as it pertains to food and beverage concessions, stringing and merchandise sales. CONTRACTOR agrees that facility usage for events may include use of: locker rooms, activity rooms and office space, umpire chairs, umbrellas, coolers, scoreboards, net-sticks and the like. If negotiations between the City and the CONTRACTOR prove to be unsuccessful, the CONTRACTOR shall cease and desist operations during the term of, and in the area of the special event and/or production.

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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DRAFT

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