

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

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 (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 _____, 2018.

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 for programming at the City's Miami Beach Tennis Center; and

WHEREAS, on August 22, 2017, the City and CONTRACTOR executed the Van Daalen Tennis, LLC. One (1) Year Pilot Agreement to Provide Programming at the City's Miami Beach Tennis Center (the "Agreement"); and

WHEREAS, on XXXXXX, the Mayor and City Commission adopted Resolution No. XXX-XXX, approving Amendment No. 1 to the Agreement, said Amendment, in material part, providing for the addition of language related to summer sports specialty camp, dual memberships, lighting fees, club baskets, rainchecks, requirements for tennis software, 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 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 2.1 of the Agreement is hereby amended to read as follows

The City owns and operates that certain recreational facility commonly known as the ~~North Shore Tennis Center~~, located at 501 72nd Street, Miami Beach, Florida 33141 (the "Center").

The City owns and operates that certain recreational facility commonly known as the Miami Beach Tennis Center, located at 501 72nd Street, Miami Beach, Florida 33141 (the "Center").

(b) Subsection 6.4.2 of the Agreement is hereby amended to read as follows:

CONTRACTOR agrees to provide free instructional lessons to after-school and summer camp participants, to be mutually agreed upon by the parties. Use of courts pursuant to the immediately preceding sentence shall be deemed to be the utilization of courts for public usage. Additionally, in connection with the Parks and Recreation Department's summer sports specialty camp program, CONTRACTOR agrees to provide two instructors, who will provide tennis classes for the participants enrolled in the summer sports specialty camp for one week during the scheduled summer sports specialty camp, for a total of ten (10) hours, typically between the hours of 9:30 am and 12:00 pm, for the total fee of \$850.00. CONTRACTOR and City shall reach an agreement with respect to the dates, times and locations for the summer sports specialty camp.

(c) Subsection 7.1 of the Agreement is hereby amended to read as follows:

The CONTRACTOR must comply with the fee schedule for professional tennis instruction that offers the tennis patron a choice in instructor level and hourly fee commensurate with the instructor's level, as agreed upon and listed in Exhibit "A" (to be provided by the CONTRACTOR) attached hereto. Any change of this said fee and instructor levels shall be approved by the City prior to implementation of fees.

CONTRACTOR shall also comply with the City's established fees for hourly tennis court play, annual permits and other specialized play. 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 for a fee of \$10.00 per hour for members, and \$20.00 per hour plus court fees for resident nonmembers. Usage of the club basket will be limited to no more than 2 players on a court.

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.

(d) Subsection 7.6 of the Agreement is hereby deleted in its entirety and replaced with the following:

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 Miami Beach 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. All revenue collected at the Center must go through the City's secured systems.

- (e) Subsection 14.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

Notwithstanding Subsection 14.1 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 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.

14 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

FOR CONTRACTOR:

Van Daalen Tennis, LLC

ATTEST:

By:

Director of Programming

Print Name and Title

Martin Van Daalen

Print Name

Date