

# Memorandum



**Date:** November 5, 2013

Agenda Item No. 14(A)(1)

**To:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

**Subject:** Resolution Approving Development, Tournament and Lease Agreements Between International Players Championship, Inc. and Miami-Dade County for Tennis Center at Crandon Park

## Recommendation

It is recommended that the Miami-Dade County Board of County Commissioners (Board) waive competitive bidding under Section 5.03(D) of the Miami-Dade County Charter and Section 2-8.1 of the County Code in order to select International Players Championship, Inc. (IPC) as the developer of new and expanded facilities at Crandon Park, as the operator of a tennis tournament at Crandon Park and as the year-round manager of the Crandon Park Tennis Center. It is further recommended that the Board adopt the attached resolution authorizing execution, after satisfaction of certain conditions precedent, of a Development Agreement, Amended and Restated Tournament Agreement (Tournament Agreement), and Lease Agreement for office space between Miami-Dade County (County) and IPC for the development and construction of new and expanded facilities and improvements to the Crandon Park Tennis Center and grounds, the continued operation of the Sony Open Tennis Tournament at the Crandon Park Tennis Center, the year-round management of the Tennis Center by IPC, and the lease of office space by IPC for its Tournament operations.

## Scope

The Crandon Park Tennis Center is located in unincorporated Miami-Dade County at 7300 Crandon Boulevard adjacent to Key Biscayne in Commission District 7, Commissioner Xavier L. Suarez, however Crandon Park and the Tennis Center are assets of regional significance.

## Fiscal Impact/Funding Source

### *Development Agreement - Capital Improvements to the Crandon Park Tennis Center*

All of the capital improvements to be built by IPC at the Tennis Center will be funded solely by IPC. Further, the Tennis Center improvements built by IPC will be thereafter maintained by IPC at its sole cost and expense. IPC will contribute a minimum of \$28 million towards capital improvements, and the County will receive a project management fee to oversee the development. IPC maintains that the Tennis Center Improvements will provide 175 direct and 500 indirect construction jobs to the local economy. Should IPC be unable to obtain financing, IPC can terminate the Development Agreement. Financial liabilities may exist for the County as a result of environmental conditions at the Site, which environmental liabilities are explained below in the Background section.

### *Tournament Agreement*

In the renegotiated agreement, IPC will be obligated to pay the County a base fee equal to the greater of \$1.487 million per year or a percentage of gross revenues. The percentage is a progressively tiered calculation, starting at 3.6% of IPC's gross revenue up to \$51.5 million plus an additional 1% for each additional \$5 million of incremental gross revenue beyond \$51.5 million up to a maximum of 10% of incremental gross revenue beyond \$76.5 million. The

County is currently undertaking an audit of IPC under its existing agreement. To the extent that the audit reveals additional revenue was due the County for prior years, IPC agrees to pay the County the deficiency and the percentage of gross revenues due the County and the new Tournament Agreement will be increased accordingly. In addition, the County's bond counsel is conducting a review of the tennis tournament agreements and a tax analysis to ensure that these proposed agreements do not impact the tax-exempt status of the outstanding bonds used to finance the construction of the existing tennis center. Should their review result in an unfavorable determination, then these agreements will not be effective and the County shall have the ability to renegotiate the agreements to address bond counsel's concerns.

IPC will contribute a total of \$500,000 over the first five years into a capital improvement and repairs reserve fund to provide for the replacement of new equipment and fixed assets. To meet its obligations with regard to the capital replacement, as needed, of existing assets, the County will contribute \$1 million annually for 14 years for a total of \$14 million to the capital improvement and reserve fund. Once existing capital assets for which the County remains responsible are replaced using this \$14 million fund, IPC will assume all responsibility for maintenance and replacement of these assets for the duration of the 30 year agreement and two 10 year options to renew.

IPC will operate the Sony Open Tennis Tournament and will manage the Crandon Park Tennis Center year-round as a public park and facility. In the Tournament Agreement, IPC will receive a fixed management fee of \$1.787 million per year to provide facility management services which include all expenses related to year round facility maintenance, operation, set up and breakdown of tennis center and parking facilities for the annual Sony Tennis Tournament, which are currently the County's responsibility, as well as the year round facility maintenance, operations and management of the tennis center for the public during the non-tournament periods. The County is expected to achieve an annual savings of at least \$850,000 (based on the 2013 actual costs) by contracting with IPC for the year-round management and maintenance of the tennis center and reducing PROS staffing burden for tournament and non-tournament periods. In addition to paying the aforementioned share of tournament gross revenues, IPC will pay the County 10% of all gross revenues earned by the tennis center during the non-tournament period.

Unless and until the County and IPC reach an agreement for the management of offsite parking operations, the County will continue to be responsible for offsite parking and charge a parking fee to offset expenses, which expenses shall not exceed parking revenues by more than \$150,000 annually, which amount is the average net cost of the parking operation over the last two tournament periods. IPC and the County are committed to establishing parking fees to meet operating costs and patron expectations.

#### ***Lease Agreement***

The County will receive \$90,444.75 yearly in rent for IPC's lease of 6,347 square feet of office space at the tennis center, at a fair market rent of \$19 per square foot for the nine month non-tournament period. The rent will be adjusted annually based on market rates, but in no event shall the increase exceed 5% of the prior year's rent. The fair market rent was determined by the Miami-Dade Internal Services Department.

### **Track Record/Monitor**

The Tournament Agreement and Lease Agreement will be monitored and managed by the PROS contract manager Jon Seaman and one on-site representative. The Development Agreement will be monitored by PROS project manager Maggie Tawil, P.E. The agreements include a provision allowing for the auditing of IPC's records.

### **Background**

#### ***History***

The County and IPC entered into an agreement in 1986, amended in 1988 and 1990, for the use of County facilities at the Crandon Park Tennis Center to conduct a major tennis tournament, now known as the Sony Open. The first tournament was held at the Crandon Park Tennis Center in 1986 and the Sony Open has grown in stature as an international event that brings the world's top tennis players to Miami and draws visitors from across the globe. Tournament attendance and international visitors who attend the event have risen steadily, and the Sony Open's evolution into a top-tier tournament has mirrored Miami's rise as a global city, broadcasting the Miami-Dade County brand around the world. What began as a regional event has grown to become one of the premier stops on the professional tour. The Sony Open, considered one of the most prestigious titles in professional tennis, has been awarded "Tournament of the Year" by the Association of Tennis Professionals (ATP) in nine of the last 13 years.

#### ***International Players Championship, Inc.***

IPC is uniquely qualified and has a proven track record to manage and operate a professional tennis tournament sanctioned by the ATP and Women's Tennis Association (WTA). The tournament is one of nine ATP World Tour Master's 1000 events and one of four WTA Premier Mandatory events, the highest level event outside of the Grand Slams. The tournament is one of just three combined men's and women's events that are both an ATP Master's 1000 and WTA Premier Mandatory (Indian Wells and Madrid). As an ATP World Tour Master's 1000 and WTA Premier Mandatory event the Tournament attracts over 300,000 visitors each year and generates over 11,000 hours of global television coverage in 193 countries and territories. This coverage gives the County tremendous media exposure including beautiful video and photographs of the city and beaches.

#### ***Referendum***

On August 23, 2012 the Board approved Resolution R-660-12 authorizing the placement of an Article 7 Charter referendum ballot question before voters during the November 6, 2012 General Election in order to obtain voter approval for the construction of additional and expanded facilities at the Crandon Park Tennis Center and the modification and extension of the tournament agreement with IPC. Article 7 of the County's Home Rule Charter required an affirmative vote of two-thirds of the voters in a countywide referendum. Miami-Dade County voters approved the measure by a margin of 73% meeting the required two-thirds threshold.

The upgrades and renovations to the Crandon Park Tennis Center and grounds include expanding the stadium court, adding new grandstands, covered pavilions, additions to house dining facilities, pro shop, offices, and other amenities including new green spaces, shaded areas, and landscaping with native plants and trees. The County will continue to own the Tennis Center,

including all of the improvements made to it by IPC, and the general public will be able to use the facility for 49 weeks of the year.

### ***Environmental History and Risks***

The Tennis Center Site has been previously used as a trash transfer station and a park maintenance facility and the Tennis Center complex sits above a landfill. IPC recently conducted a geotechnical survey which indicated the presence of paper, concrete, styrofoam and wood beneath the surface of certain areas. Since the Referendum, neither the County nor IPC have conducted environmental testing on the Tennis Center Site. To better understand the environmental risks associated with development, the County and IPC, working with the Department of Regulatory and Economic Resources, will perform environmental testing on the entire site before construction. IPC shall pay for environmental testing of the site, to be completed before the 120<sup>th</sup> day after the Development Agreement is executed by the County Mayor. If the cost estimate for remediation of the Site, as set forth in the environmental report exceeds \$1 million, IPC or the County may terminate the Development Agreement.

During construction, to the extent any remediation is needed, IPC shall be required to fund the first \$125,000 of remediation per element of the project and the County the next \$125,000. If the remediation costs per element of the project exceed \$250,000, either party can terminate the Development Agreement. The project has 22 elements. To the extent that the County has to pay any remediation costs, such costs shall be funded from an appropriate funding source to be identified by the County if and when needed. The County's liability for environmental remediation under applicable law may exceed \$125,000 per element. The Mayor has the delegated authority to contribute an additional \$250,000 toward remediation cost per element. At this time, it is difficult to assess and quantify the County's environmental liability.

In the Article VII referendum authorizing the development of the tennis center improvements and extension to the existing tournament agreement, the voters of Miami-Dade County were asked to approve a ballot question which stated that the development and construction of the additional tennis center improvements would be "funded solely by tennis center and tournament revenues and private funds." The Tennis Center Site is located over a former landfill that was opened, operated and closed by the County. As owner, the County would usually be responsible for the environmental conditions of its property. Although the County typically negotiates to shift the responsibility for environmental conditions in large-scale developments to developers, in this case, given the County's prior use of the Site as a landfill, the parties have negotiated a method for allocating the environmental risks. The County will only share risk for environmental concerns associated with its own prior use of the Site; any new environmental issues created by IPC in its development of the Site will be borne solely by IPC. The County's agreement to contribute to environmental remediation at the Tennis Center Site, in the event any remediation is ever needed, may result in additional litigation challenging whether the deal as presented is consistent with the referendum. Should a Court find that this agreement to contribute to environmental remediation violates the terms of the referendum, the electors of Miami-Dade County would need to re-approve this deal, the parties would need to renegotiate this term, or the relationship between the County and IPC would revert back to the existing contract for the remaining term.



*Agreements*

Attached are three tournament related agreements: the Development Agreement (Attachment A); the Amended and Restated Tournament Agreement (Attachment B); and the Lease Agreement (Attachment C). These agreements provide the following public benefits to the County and the taxpayers: 1) make the site a competitive long-term venue for the Sony Open tennis tournament in order to retain this signature event, continue to stimulate the local economy and enhance the reputation of Miami-Dade County as an international tourism destination; 2) reduce the expense and disruption of the annual staging, erection and striking of many of the temporary features which will be replaced by the proposed permanent improvements, thereby opening up the site for expanded recreational and landscaped uses and generating savings which can be used for improvement of the park; and 3) create new and attractive recreational features and enhanced environmental stewardship which will increase the public's ability to use and enjoy the site throughout the year outside of the tournament periods.

The bid waiver for the Development Agreement to select IPC as the developer is in the best interest of the County due to IPC's original role in the design and development of the stadium, their intimate familiarity with the site's infrastructure and environment and their commitment to financing all facilities at the site. This makes IPC uniquely qualified to develop the tennis center improvements. Under the Development Agreement, the improvements will be completed in phases, with the first phase scheduled to begin in April 2014. Phase 1 will be completed on or before 2019 and includes improvements to the main stadium and two additional smaller stadiums, pavilions, a clock tower, landscaped plaza, and 16 new or refurbished hard courts, to enhance the tournament and year-round use of the facility. Subsequent phases will follow during non-tournament periods. IPC will work with the County's Department of Regulatory and Economic Resources Small Business Development section to obtain Community Business Enterprise (CBE) goals for the design and Community Small Business Enterprise (CSBE) goals for the construction of the tennis center improvements under the proposed Development Agreement.

The Tournament Agreement has an initial term of 30 years with two 10-year options to renew. Currently, the County is responsible for the day-to-day operation and management of the tennis center. Under the Tournament Agreement, IPC will be responsible for the year-round operations, normal maintenance and repair of the tennis center facility during the tournament and non-tournament periods.

- The existing Tournament Agreement fee structure of 10% of ticket sales, broadcasting, food and beverage and soft goods is complicated by a series of allowable deductions, which reduces the revenue to the County, excludes sponsorship revenues entirely from the gross revenue calculations and has a minimum annual guarantee of \$533,000, as adjusted by CPI. Considering all of these allowable deductions, the existing agreement yields 3.4% of IPC's gross revenues. In contrast, the new tournament fee structure is simplified, and has a base-fee equal to the greater of \$1.487 million, or a percentage of IPC gross revenues, with the County receiving 3.6% of IPC's gross revenue up to \$51.5 million plus an additional 1% for each additional \$5 million of incremental gross revenue beyond \$51.5 million up to a maximum of 10% of incremental gross revenue beyond \$76.5 million.

- In the new Tournament Agreement, IPC will receive a fixed management fee of \$1.787 million per year for the term of the agreement, to provide facility management services which include all expenses related to year round facility maintenance, operation, set up and breakdown of tennis center and parking facilities for the annual Sony Tennis Tournament, which are currently the County's responsibility. The terms of the new agreement will reduce the PROS staffing burden for tournament and non-tournament periods and is expected to save the County at least \$850,000 in annual operating expenses.
- This bid waiver for the Tournament Agreement is in the best interest of the County because IPC, as the current operator, has exceptional credibility with international sanctioning bodies, with a proven track record of running a successful annual professional tennis tournament, and has long standing vendor relationships that are cost effective.

Under the Lease Agreement, the County will receive \$90,444.75 yearly in rent for IPC's lease of 6,347 square feet of office space at the tennis center and such offices can only be used for Tournament purposes.

#### ***Capital Improvement and Repair Reserve Fund***

A Capital Improvement and Repairs Reserve Fund (Reserve Fund) will be established as a segregated and interest bearing account. The Reserve Fund shall be designed to protect the County's ownership of the Tennis Center and will be used to fund capital repair and replacement of both existing assets and the new assets. To meet its obligations with regard to newly constructed and installed assets, IPC will deposit \$100,000 annually for the first five years. IPC's obligation to contribute to the Reserve Fund beyond the first five years will only be to the extent that it fails to maintain a minimum \$500,000 balance for the term of the Agreement. IPC will be responsible, at its sole expense, for the replacement of new assets, as defined in the Agreement. The balance of IPC's contribution to the Reserve Fund remaining after fulfillment of its obligations will be returned to IPC at the end of the term.

To meet its obligations with regard to existing assets, the County will deposit \$1 million annually for the first 14 years for a total of \$14 million which represents the estimated replacement cost of the existing assets as defined in the Tournament Agreement. Once existing capital assets for which the County is responsible are replaced using this \$14 million fund, IPC will assume all responsibility for maintenance and replacement of these assets for the duration of the 30 year agreement and two 10 year options to renew. Any funds remaining in the Reserve Fund at the end of the term from the County's contribution will be used by the County to fund capital improvements within Crandon Park.

#### ***Governmental Facilities Hearing***

At the November 5, 2013 Board meeting, a Governmental Facilities (GF) hearing application will be scheduled to appear on the agenda. The purpose of the GF application is to amend the Crandon Park Master Plan to allow these modifications to the Crandon Park Tennis Center. Should the Board approve the proposed amendments to the Master Plan, these amendments will

then be presented to the Crandon Park Amendment Committee (CPAC) pursuant to the 1992 Settlement Agreement between the County and the Matheson family. If the CPAC fails to approve these proposed amendments, IPC has indicated there is a high probability that the event will be relocated to another venue outside of Miami-Dade County in the future.

### ***Economic Development***

A market analysis and economic impact study conducted by Sports Management Research Institute contracted by IPC showed that full time equivalent jobs created from staging the 2012 tournament were an estimated 3,450 jobs. The total economic impact in the host community from the staging and execution of the 2012 tournament was estimated at \$386 million dollars. The targeted direct impacts and transient lodging and tourism tax infusion for Miami-Dade County was estimated at \$125 million and \$2.4 million, respectively. The targeted direct impacts and transient lodging tourism tax infusion received by the City of Miami was \$102 million and \$1.9 million, respectively. These economic benefits to the County justify the leasing of office space under Florida Statutes, section 125.045, which provides the County the ability to lease County property for economic development purpose, including in order to retain businesses. The risk of losing the annual 14-day Sony Open not only threatens the direct revenue to the County from the tournament, but also the economic impact to the local South Florida economy. Should IPC choose to relocate to another venue, the Crandon Tennis Stadium would remain vacant until an alternative agreement with a suitable promoter can be negotiated.

### ***Benefits To The County And Its Residents***

Approval of this agreement, in effect, an early contract extension with IPC, benefits the County by allowing new capital improvements to be constructed that improve the users experience, at no cost to the County, increases revenue to the County, and improves the amenities and level of service for tournament guests as well as residents during the 49 weeks of non-tournament use. Additionally, the agreement's new fee structure will increase County revenues as tournament revenue is anticipated to grow with the construction of the proposed improvements. It is an agreement structured to protect the County, with terms more favorable than the existing agreement, while having IPC privately finance improvements for the public tennis center. The County will have no risk with respect to debt service payments. Additionally, approving the Development Agreement will provide construction and tennis tournament related jobs to the local economy and allow for the continued production of a world-class, globally televised annual Sony Open that draws tourist revenue to the County. Improvements will be constructed without the use of public or taxpayer funds and fulfills what was promised to the voters in the 2012 referendum.

### ***Pending Litigation***

On December 6, 2012, Bruce Matheson filed a lawsuit against the County challenging the validity and effect of the Article 7 referendum that authorized the County to enter into these agreements ("Matheson Suit"). The Matheson Suit alleges, among other claims, that the ballot question was insufficient because it did not inform the voters of the existence of the Crandon Park Master Plan or provide the voters with a completed agreement between the County and IPC prior to the election. Matheson requests that the Court invalidate the approval granted by the electors of Miami-Dade County to enter into these agreements with IPC.


On February 6, 2013, IPC filed a lawsuit against both the County and Bruce Matheson challenging the validity of the Crandon Park Master Plan ("IPC Suit"). IPC requested that the Court declare the Crandon Park Master Plan illegal and that approval of the proposed improvements to the Tennis Center by the Master Plan Amendment Committee is unnecessary.

The Court dismissed the IPC Suit without prejudice and stayed the Matheson Suit pending approval of these agreements by the Board of County Commissioners. Upon approval of these agreements by the Board, it is anticipated that IPC will re-file its lawsuit against the County and that the Court will permit the Matheson Suit against the referendum to proceed. On September 20, 2013, the Third District Court of Appeal rendered a decision in *Let Miami Beach Decide v. City of Miami Beach*, 120 So. 3d 1282 (Fla. 3d DCA September 20, 2013) regarding what needed to be presented to voters on a referendum question under the City of Miami Beach charter. This recent decision may impact the outcome of the Matheson Suit.

Should Matheson prevail in the Matheson Suit, the prior authorization for these agreements pursuant to Article 7 of the Home Rule Charter will be invalidated and another referendum will be needed prior to these agreements taking effect. Should IPC prevail in the IPC Suit, the Crandon Park Master Plan will be invalidated and the Court will need to again address the deed restriction limiting the County's use of Crandon Park to public park purposes.

The proposed agreements with IPC will not take effect until these legal issues are resolved by a final non-appealable order of the Courts or by agreement among the parties.

Attachments

  
\_\_\_\_\_  
Lisa M. Martinez, Senior Advisor  
Office of the Mayor



# MEMORANDUM

(Revised)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** November 5, 2013

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 14(A)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's , 3/5's \_\_\_\_\_, unanimous \_\_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor

Agenda Item No. 14(A)(1)

Veto \_\_\_\_\_

11-5-13

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING AGREEMENTS WITH INTERNATIONAL PLAYERS CHAMPIONSHIP, INC. (IPC) FOR THE DEVELOPMENT AND CONSTRUCTION OF NEW FACILITIES AND EXPANDED FACILITIES AT THE CRANDON PARK TENNIS CENTER, THE HOSTING OF THE SONY OPEN TENNIS TOURNAMENT AT CRANDON PARK TENNIS CENTER, THE YEAR-ROUND MANAGEMENT OF THE CRANDON PARK TENNIS CENTER, AND LEASE OF OFFICE SPACE AT THE CRANDON PARK TENNIS CENTER IN ACCORDANCE WITH FLORIDA STATUTE SECTIONS 125.045 AND 125.35; WAIVING COMPETITIVE BIDDING FOR SELECTION OF IPC AS DEVELOPER OF TENNIS CENTER, AS OPERATOR OF TENNIS TOURNAMENT AND AS YEAR-ROUND MANAGER OF TENNIS CENTER BY A TWO-THIRDS (2/3) VOTE OF THE BOARD MEMBERS PRESENT; DELEGATING TO COUNTY MAYOR OR MAYOR'S DESIGNEE THE AUTHORITY TO EXERCISE CERTAIN RIGHTS IN THE AGREEMENTS; AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SUCH AGREEMENTS AFTER SATISFACTION OF CERTAIN CONDITIONS PRECEDENT

**WHEREAS**, on July 15, 1986, Miami-Dade County entered into an agreement with International Players Championship, Inc. ("IPC") in order to create a major tennis complex at Crandon Park, which complex would thereafter be the site of, and would host, the professional tennis tournament now known as the Sony Open Tennis Tournament ("Tournament"); and

**WHEREAS**, in 1995, the County completed the construction on the Crandon Park Tennis Center and it has been continuously used, since 1986, as the site of one of the four top professional tennis tournaments in the world; and

**WHEREAS**, the Tournament is a premier sporting event and showcases our community throughout the world; and

**WHEREAS**, preserving and promoting this annual event is of utmost importance to Miami-Dade County, its residents, the community, South Florida and Crandon Park; and

**WHEREAS**, IPC advised the County of the need to construct new facilities and expand its existing facilities and modify its existing agreements with the County in order to continue to provide for this community a world-class Tournament; and

**WHEREAS**, while the County has made a substantial investment in the facilities used by the Tournament and the public for recreation, in order to expand the recreational amenities for the community, to maintain the Tournament's status in the world and to continue the Tournament's presence long into the future, a variety of additional permanent structures must be constructed and maintained; and

**WHEREAS**, on November 7, 2012, 72.65% of the electors of Miami-Dade County voting in a referendum, authorized the County to enter into agreements with IPC for the development of the Tennis Center Improvements (as such term is defined in the Development Agreement) and for the extension and modification of the Tournament agreement; and

**WHEREAS**, the following agreements between the County and IPC are being presented to this Board for approval: the Development Agreement; the Amended and Restated Tournament Agreement; and the Lease Agreement for office space at the Tennis Center (jointly referred to as the "Tennis Center Agreements") each in substantially the form attached to this Resolution as Attachments "A", "B" and "C", respectively and incorporated herein by this reference; and

**WHEREAS**, the County Mayor has submitted to this Board a written recommendation that it is in the best interest of the County to waive formal bid procedures and the provisions of Section 5.03(D) of the Miami-Dade County Charter and Section 2-8.1 of the Miami-Dade

County Code in connection with the Tennis Center Agreements in order to select IPC as the developer of the Tennis Center Improvements, the operator of the Tournament and year round manager of the Tennis Center as a public park and recreation facility; and

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum from the County Mayor, a copy of which is incorporated herein by reference; and

**WHEREAS**, the economic benefit of the project is the creation of construction jobs for the tennis center improvements; and

**WHEREAS**, the economic benefit of the annual tennis tournament includes a direct positive fiscal impact to the County through increased lodging and tourist tax revenue collection and benefits to the community through the local spending of 300,000 spectators that attend the tournament,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:**

Section 1. The foregoing recitals are incorporated into this resolution and are approved.

Section 2. This Board finds that it is in the best interest of Miami-Dade County to waive formal bid procedures in accordance with the provisions of Section 5.03(D) of the Home Rule Charter, Section 2-8.1 of the Code of Miami-Dade County, and the requirements of Implementing Order 3-38 in connection with the selection of IPC as the developer of the Crandon Park Tennis Center Improvements (as such term is defined in the Development Agreement) for the reasons set forth in the accompanying memorandum, formal bidding being waived in this instance by a two-thirds (2/3) vote of the Board members present.



Section 3. This Board finds that it is in the best interest of Miami-Dade County to waive formal bid procedures in accordance with the provisions of Section 5.03(D) of the Home Rule Charter, Section 2-8.1 of the Code of Miami-Dade County, and the requirements of Implementing Order 3-38 in connection with the selection of IPC as the operator of the Tennis Tournament (as that term is defined in the Amended and Restated Tournament Agreement) and as the manager of the Crandon Park Tennis Center during on a year-round basis for the reasons set forth in the accompanying memorandum, formal bidding being waived in this instance by a two-thirds (2/3) vote of the Board members present.

Section 4. This Board approves the Development Agreement in substantially the forms attached as Attachment "A", and the Amended and Restated Tournament Agreement (inclusive of the Management Addendum) in substantially the form attached as Attachment "B",

Section 5. This Board finds, for the reasons set forth in the accompanying memorandum, that the Sony Open Tennis Tournament is a professional sports franchise facility, an important economic activity in Miami-Dade County and that it is in the best interest of Miami-Dade County to retain the Sony Open Tennis Tournament in the County for economic development purposes. Accordingly, this Board approves, pursuant to Sections 145.025 and 125.035, Florida Statutes, the Lease Agreement for office space at the Tennis Center attached as Attachment "C".

Section 6. The County Mayor or Mayor's designee shall have the authority to exercise such delegated authority as is specifically identified in the Development Agreement, Amended and Restated Tournament Agreement, and Office Space Lease Agreement ("Tennis Center Agreements") as capable of being exercised by the County Representative. The County Mayor or Mayor's designee shall be required to seek Board approval for any approvals, consents,

actions, events or undertakings that would violate, alter, or ignore the voter approval obtained in the November 6, 2012 referendum election pursuant to Resolution No. R-660-12, the Tennis Center Agreements, or that would create a financial obligation, cost or expense to the County beyond those specifically identified and set forth in the Tennis Center Agreements.

Section 7. This Resolution shall become effective only upon the occurrence of all of the following conditions: (a) the approval by the Crandon Park Amendment Committee of all of the proposed amendments to the Crandon Park Master Plan set forth in the General Facilities Resolution presented to, and adopted by this Board on November 5, 2013; (b) the entry of a final, non-appealable order or judgment in the case styled *Matheson v. Miami-Dade County*, Case No. 12-47448 CA 05 currently pending in the Eleventh Judicial Circuit Court of Florida upholding or validating Resolution No. R-660-12 and the results of the November 6, 2012 referendum election on the Tennis Center Improvements and Tennis Center Agreements; and (c) the receipt from bond and tax counsel of a favorable determination with respect to the tax-exempt status of the County's outstanding bonds for the Tennis Center in light of the proposed Tennis Center Agreements.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

	Rebeca Sosa, Chairwoman	
	Lynda Bell, Vice Chair	
Bruno A. Barreiro		Esteban L. Bovo, Jr.
Jose "Pepe" Diaz		Audrey M. Edmonson
Sally A. Heyman		Barbara J. Jordan
Jean Monestime		Dennis C. Moss
Sen. Javier D. Souto		Xavier L. Suarez
Juan C. Zapata		

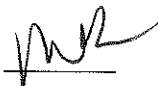
The Chairperson thereupon declared the resolution duly passed and adopted this 5<sup>th</sup> day of November, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, provided that by such date all of the conditions set forth in Section 7 above have been satisfied, and if not, by such later date as all of such conditions are satisfied. In no event, shall the conditions be satisfied later than December 31, 2014 or this resolution shall become null and void.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Monica Rizo

ATTACHMENT A  
DEVELOPMENT AGREEMENT

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**MIAMI-DADE COUNTY**

**AND**

**INTERNATIONAL PLAYERS CHAMPIONSHIP, INC.**

\_\_\_\_\_, 201\_

**TABLE OF CONTENTS**

	Page
ARTICLE 1 DEFINED TERMS .....	2
1.01 Defined Terms .....	2
1.02 References .....	8
ARTICLE 2 DESCRIPTION OF TENNIS CENTER IMPROVEMENTS .....	9
2.01 Ownership .....	9
2.02 Intent .....	9
2.03 Proposed Development Plan .....	9
2.04 GF Plan .....	9
2.05 Project Program Statement .....	10
2.06 Phased Development .....	10
ARTICLE 3 THE SITE AND TENNIS CENTER IMPROVEMENTS .....	10
3.01 The Site .....	10
3.02 Pre-Construction Environmental Due Diligence .....	10
3.03 Selection of Environmental Due Diligence Consultant .....	10
3.04 Scope of Environmental Due Diligence .....	11
3.05 Remediation/Mitigation Disclosed in the Environmental Due Diligence Report .....	11
3.06 Environmental Conditions Remediation/Mitigation Required for Construction of Tennis Center Improvements .....	11
3.07 Environmental Conditions Remediation/Mitigation Required for Site .....	11
3.08 Environmental Indemnities and Obligations .....	12
3.09 Site Conditions .....	12
3.10 Effect of Termination .....	12
3.11 Development Requirements .....	13
3.12 Access to Site .....	13
ARTICLE 4 PROJECT DEVELOPMENT .....	14
4.01 Phase 1 .....	14
4.02 Subsequent Phases .....	14

4.03	Project Management .....	15
ARTICLE 5 DESIGN.....		15
5.01	Architectural Style and Project Program Statement .....	15
5.02	Amendment to Project Program Statement .....	15
5.03	Design Professionals.....	16
5.04	Design Documents.....	17
5.05	Use of Plans .....	21
5.06	LEED Certification.....	21
ARTICLE 6 CONSTRUCTION.....		21
6.01	Construction Administration .....	21
6.02	Construction Manager .....	23
6.03	Change Orders .....	27
6.04	Project Coordination Team.....	27
6.05	Right to Inspect and Receive Information.....	28
6.06	Project Schedules.....	28
6.07	Permitting. ....	29
6.08	Procurement of Construction Materials.....	30
6.09	Construction.....	30
6.10	Punch List .....	31
6.11	Warranties.....	31
6.12	Liens .....	32
6.13	Art in Public Places .....	32
ARTICLE 7 TENNIS CENTER IMPROVEMENTS FUNDING .....		32
7.01	Sources of Funds.....	32
7.02	Funding Account .....	33
7.03	Cost Overruns .....	33
7.04	Developer to Keep Funding in Balance.....	33
7.05	Equipment Leasing .....	34
ARTICLE 8 INSURANCE.....		34
8.01	Insurance.....	34
8.02	General Insurance Provisions .....	36
8.03	Damage or Destruction .....	36

ARTICLE 9 REPRESENTATIONS, WARRANTIES AND COVENANTS .....	36
9.01 County Representations, Warranties and Covenants.....	36
9.02 Developer Representations, Warranties and Covenants.....	37
9.03 Mutual Covenants.....	38
ARTICLE 10 DEFAULTS AND REMEDIES .....	39
10.01 Developer Default.....	39
10.02 County Default.....	40
10.03 Remedies.....	40
10.04 Self-Help Remedies.....	41
ARTICLE 11 TERMINATION.....	42
11.01 Termination Rights for Default .....	42
11.02 Termination Rights for Unfavorable Court Decision .....	42
11.03 Termination Rights for Financing.....	43
11.04 Cross-Termination Provisions .....	43
11.05 Limitation of Liability .....	43
ARTICLE 12 INDEMNIFICATION .....	44
12.01 Indemnification by the Developer .....	44
12.02 Indemnification by County .....	44
12.03 Indemnification Procedures.....	44
12.04 Survival.....	46
12.05 Interpretation.....	46
ARTICLE 13 ALTERNATIVE DISPUTE RESOLUTION .....	46
13.01 Voluntary Trial Resolution.....	46
13.02 ADR Procedure.....	46
13.03 Venue; Waiver of Jury Trial .....	47
ARTICLE 14 PARTY REPRESENTATIVES.....	47
14.01 Designation of County Representative .....	47
14.02 Designation of the Developer Representative .....	48
ARTICLE 15 MISCELLANEOUS .....	49
15.01 Notices .....	49
15.02 Merger Clause.....	50
15.03 Amendment.....	50



15.04	Binding Effect.....	50
15.05	Waiver.....	50
15.06	Nonrecourse Liability of the Developer Personnel .....	50
15.07	Non-Recourse Liability of County Personnel.....	51
15.08	Assignment .....	51
15.09	Consent of Parties .....	51
15.10	Headings .....	52
15.11	Absence of Third-Party Beneficiaries .....	52
15.12	Governing Law .....	52
15.13	Time of Essence.....	52
15.14	Relationship of Parties.....	52
15.15	Antidiscrimination Clause .....	52
15.16	Sovereign Rights.....	52
15.17	Force Majeure .....	53
15.18	Inspector General and Independent Private Sector Inspector General. ....	53
15.19	Valid Agreement.....	55
15.20	County Approvals.....	55
15.21	Books and Records; Audit.....	56
15.22	Crandon Park Master Plan.....	56
15.23	Validity of Agreement .....	57
15.24	Controlling Agreement. ....	57
15.25	Counterparts.....	57

EXHIBIT “A” SITE PLAN

EXHIBIT “B” PROPOSED DEVELOPMENT PLAN

EXHIBIT “C” PROPOSED DEVELOPMENT PLAN NARRATIVE

EXHIBIT “D” PROPOSED PHASE 1 DEVELOPMENT PLAN

EXHIBIT “E” PROPOSED PHASE 1 DEVELOPMENT PLAN NARRATIVE

EXHIBIT “F” GENERAL FACILITIES PLAN

EXHIBIT “G” PROJECT BUDGET

EXHIBIT "H" NOT USED

EXHIBIT "I" LETTER OF PERMIT

EXHIBIT "J" CONSTRUCTION MANAGEMENT CONTRACT REQUIREMENTS

EXHIBIT "K" CADD STANDARDS

EXHIBIT "L" SAFETY PLAN REQUIREMENTS

## DEVELOPMENT AGREEMENT

This Development Agreement (the "Development Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 201\_\_ by and between Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County") and International Players Championship, Inc., a Florida corporation (the "Developer"). The County and the Developer constitute the "Parties".

### RECITALS

A. The Developer is engaged in operating and conducting a sanctioned men's and women's professional tennis tournament (the "Tournament") presently known as the "Sony Open."

B. The County owns certain property located adjacent to Key Biscayne which is appropriately located for development, redevelopment and continuing use as a tennis complex.

C. More than 20 years ago the Developer brought the Tournament to Crandon Park in Miami-Dade County with hope that the Tournament would showcase the community to a world-wide audience and provide a major boost to tourism and provide both financial support and awareness to improve one of the County's most important public parks;

D. With the exception of the Stadium Court, most of the facilities used by the Tournament are temporary, requiring substantial staging areas;

E. While the County has made a substantial investment in the facilities used by the Tournament and the public for recreation, including development years ago of a permanent tennis stadium, in order to expand the recreational amenities for the community, to maintain the Tournament's status in the world and to continue the Tournament's presence long into the future, a variety of additional permanent structures must be constructed and maintained;

F. The Developer desires to continue to operate and conduct the Tournament at the County owned site located within Crandon Park, which is known as the "Crandon Park Tennis Center," and which in this Development Agreement is referred to as the "Tennis Center."

G. Since 1990, wear and tear have combined with evolving standards in professional tennis so that the Tennis Center now requires significant improvement and redevelopment, which improvement and redevelopment will be made pursuant to this Development Agreement.

H. On July 15, 1986, the County entered into an agreement with the Developer (the "July 15, 1986 Agreement") which provided for the County's and the Developer's rights and obligations with respect to the annual Tournament.

I. On June 7, 1988, the County and the Developer entered into a First Amendment to the July 15, 1986 Agreement.

J. On November 6, 1990, the County and the Developer entered into a Second Amendment to the July 15, 1986 Agreement. The July 15, 1986 Agreement and its two subsequent amendments are referred to collectively as the "Existing Tournament Agreements".

K. On November 7, 2012, over two-thirds of the electors of Miami-Dade County authorized the County to enter into this Development Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and conditions contained in this Development Agreement, the County and the Developer agree as follows:

## ARTICLE 1

### DEFINED TERMS

1.01 Defined Terms. In addition to any other definitions contained elsewhere in this Development Agreement, the following terms, when used in this Development Agreement and its attachments, shall have the meanings indicated below. Unless a contrary definition is expressly set forth in this Development Agreement, capitalized terms used in this Development Agreement shall have the same meaning as defined in the Amended and Restated Tournament Agreement.

"ADR" means resolution of a dispute or claims by voluntary trial resolution as described in Article 13 of this Agreement.

"Applicable Law" means any applicable law, statute, code, ordinance, administrative order, implementing order, charter, resolution, order, rule, regulation, judgment, decree, writ, injunction, franchise, permit or license, of any Governmental Authority, now existing or hereafter enacted, adopted, promulgated, entered, or issued.

"Architect Contract" means the contract between the Developer and the Architect providing the architectural and engineering services for the Tennis Center Improvements.

"Architect" means BEA Architects of Miami, Florida, or such other architectural firm as the Developer may retain as the principal architect for the Tennis Center Improvements or any Phase thereof, and their respective successors or assigns.

"Board" means the Board of County Commissioners of Miami-Dade County.

"Business Day" means any day other than a Saturday, Sunday or legal or bank holiday in Miami-Dade County. If any time period set forth in this Development Agreement expires on a day other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

"Casualty" is defined in Section 8.03(a).

"Casualty Repair Work" is defined in Section 8.03(a).

“CBE-A/E Program” means the County’s Community Business Enterprise Program for architectural, engineering, landscape architectural, surveying and mapping professionals as set forth in Section 2-10.4.01 of the County Code.

“Certificate of Occupancy” means a certificate issued by RER permitting public occupancy and use of the Tennis Center Improvements.

“Change Order” means a written instrument signed by the Developer, and the Construction Manager authorizing a change in the scope of Work, the Construction Management contract price and/or the date of Substantial Completion for the Tennis Center Improvements, as the case may be.

“Claim” is defined in Section 12.03(a).

“Commencement of Construction” means a permit needed to begin construction of the applicable Phase of the Tennis Center Improvements has been issued by RER and the Developer has begun physical construction of that Phase of the Tennis Center Improvements.

“Construction Documents” means the architectural drawings, specifications and other documents, as may be amended from time to time in accordance with this Development Agreement, setting forth the design of the Tennis Center Improvements and the requirements for their respective construction in sufficient detail for the permitting and construction of the Tennis Center Improvements.

“Construction Management Contract” means the contract(s) between the Developer and the Construction Manager(s) providing construction management and/or general contracting services for the Tennis Center Improvements.

“Construction Manager” means an entity or entities selected by the Developer in accordance with Applicable Law to provide construction management and/or general contracting services with regard to the construction and development of the Tennis Center Improvements.

“Construction Schedule” means any of the construction schedules relating to the Work to be prepared by the Construction Manager pursuant to the requirements of the Construction Management Contract, as such schedules are updated in accordance with Section 6.06.

“County Default” is defined in Section 10.02.

“County Personnel” is defined in Section 15.07.

“County Representative” is defined in Section 14.01. The County Representative may be the same person as the “Project Manager” and may, from time to time, change.

“Court 1” and “Court 2” are defined in the Narrative Description attached as Exhibit “C”.

“Crandon Park Master Plan” or “CPMP” means the master plan governing the development and operations at Crandon Park, as such plan has and may be amended from time to

time, which plan was created and adopted pursuant to the 1993 Settlement Agreement between the County and the Matheson family.

“Default” means a County Default or a Developer Default.

“Design Documents” means the most recent (from time to time) of the Schematic Design Documents and Construction Documents.

“Design Professionals” means the Architect and the engineers and consultants retained by the Architect or the Developer, as the case may be, from time to time to provide architectural, design and design-related engineering services for the Tennis Center Improvements.

“Developer” means International Players Championship, Inc., a Florida corporation, and its permitted successors and assigns. The Developer is one of the Parties to this Development Agreement.

“Developer Default” is defined in Section 10.01.

“Developer Personnel” is defined in Section 15.06.

“Developer Representative” is defined in Section 14.02.

“Developer Soft Costs” means the Project Costs to be paid directly by the Developer to cover the fees and costs relating to the Design Professionals, permitting expenses, County’s project management, and the Developer’s Representative. The Developer Soft Costs exclude fees paid to lobbyists, auditors, accountants, legal or tax expenses (except for legal fees relating to preparation of contracts with the Construction Manager or design professionals), payments or commissions to brokers and salespersons, payments to sponsors or supporters, or any professional services not expressly enumerated in Florida’s Consultant’s Competitive Negotiation Act, Fla. Stat. Section 287.055. The Developer Soft Costs for any given Phase shall not exceed twelve percent (12%) of the Project Budget for such Phase.

“Development Agreement” means this agreement.

“Development Requirements” is defined in Section 3.03(a).

“Effective Date” shall mean the date on which the County Mayor executes this Development Agreement.

“Element(s)” is defined as those items identified as elements in Exhibit “C” to this Development Agreement.

“Environmental Conditions” means any environmental pollution, flammable materials, explosives, radioactive materials, infectious waste, hazardous materials, hazardous wastes, hazardous or toxic substances, or environmental contaminants which are or become defined under any Applicable Law including, without limitation, the following statutes or ordinances and the regulations promulgated under their authority: (a) the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.); (b) the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.); and (c) the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§ 6901 et seq.); (d) the Water Pollution Control Act (33 U.S.C. § 1317); (e) the Florida Resource Recovery and Management Act, Fla. Stat. § 403.702-403.7893; (f) the Pollutant Spill Prevention and Control Act, Fla. Stat. §§ 376.011-376.21; (g) any material defined as “petroleum” or “petroleum products” under Fla. Stat. § 376.301, (h) contaminant, or hazardous substance as defined in Fla. Stat. § 376.301 or Fla. Stat. § 403.031, wastes as defined in Fla. Stat. § 403.031; and (i) ground or water pollution as defined by Section 24-5 of the Miami-Dade County Code.

“Existing Tournament Agreement” is defined in the Recitals.

“Final Completion” means the occurrence of all of the following: (i) the Architect has signed and delivered to the Developer and the County Representative a certificate of final completion in accordance with the Construction Documents of the applicable Phase of the Tennis Center Improvements, (ii) a Certificate of Occupancy has been issued for the applicable Phase of the Tennis Center Improvements, and (iii) punch list items for that Phase have been completed.

“Force Majeure” means any act of God, earthquake, hurricane or other severe weather condition, flood, fire, epidemic, major accident, explosion, casualty, labor controversy (including but not limited to threatened or actual lockout, boycott or strike), riot, terrorism, civil disturbance, demonstrations, war or armed conflict, (or threats of the foregoing), delay of a common carrier, or by reason of any other cause or causes of any similar nature.

“General Facilities Plan” or “GF Plan” is described and depicted in Exhibit “F” and approved by the County’s Board of County Commissioners pursuant to Resolution No. [ ]. To the extent that a new general facilities plan for the Site is approved by the Board of County Commissioners after the effective date of this Development Agreement, for the purpose of including elements set forth in the Resolution, then such new general facilities plan shall be deemed to be the GF Plan for purposes of this Development Agreement.

“Government Relief Grant” means a financial grant or other non-refundable relief or assistance from the Federal Emergency Management Agency, the Department of Homeland Security, or any other federal, State or local Governmental Authority.

“Governmental Authority” means any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them.

“Grandstand Court” is defined in Exhibit “C”.

“Indemnified Party” is defined in Section 12.03.

“Indemnitor” is defined in Section 12.03.

“Insurance Policies” is defined in Section 8.01.

“Lien” means any encumbrance, lien, lis pendens, security interest, pledge, easement, license, right-of-way, covenant, condition, restriction or claim in, to, against or in any way applicable to any portion of the Site or the Tennis Center Improvements.

“Master Project Schedule” means the Project schedule using a critical path method, prepared by the Construction Manager, that identifies, coordinates and integrates the anticipated design and construction milestones for the applicable Phase of the Project, the Developer’s responsibilities, Governmental Authority reviews and other activities as are necessary for the timely completion of the Work, as such schedule shall be revised and updated in accordance with Section 6.06.

“Objectionable Elements” is defined in Section 3.02 of this Development Agreement.

“Party” and “Parties” refer to the County and the Developer.

“Person” means any natural person, partnership, association, corporation, limited liability company, trust, public body, authority, governmental unit or other entity.

“Phase” refers to a portion of the proposed Tennis Center Improvements.

“Phase 1” is the Phase described and defined in Exhibits “D” and “E”.

“Proposed Development Plan” is defined in Article 2 and depicted in Exhibit “B”.

“Project” means the design, renovation, development and construction of the Tennis Center Improvements (or any Phase thereof) in accordance with this Development Agreement.

“Project Budget” means the budget, as it may be modified from time to time, for the Project or any Phase thereof. The Project Budget is attached to this Development Agreement as Exhibit “G”.

“Project Coordination Team” is defined in Section 6.03.

“Project Costs” means all hard costs and the Developer Soft Costs incurred by the Developer in connection with this Development Agreement for the design, development, renovation, construction and completion of the Tennis Center Improvements or any Phase thereof. Project hard costs include only the cost of all labor, construction materials, furniture, fixtures, equipment, landscaping and hardscaping incorporated into the Tennis Center Improvements.

“Project Manager” means the County employee tasked with overseeing the Project on behalf of the County. The Project Manager shall be designated by the County from time to time and may be the same person as the County representative.

“Project Program Statement” means Exhibits “B” and “C”.



“Remediation Costs” means only the costs of correcting, eliminating, monitoring, remediating, or mitigating, any Environmental Conditions present on the Site as required by Applicable Law. To the extent the County has any obligations for Remediation Costs, the County shall determine in its sole and absolute discretion, the means and methods for complying with Applicable Law, regardless of whether the means and methods chosen for such correction, elimination, monitoring, remediation or mitigation work would result in a Site suitable for development of the Tennis Center Improvements.

“RER” means the Miami-Dade County Department of Regulatory and Economic Resources.

“Resolution” means Resolution No. R-660-12.

“Schematic Design Documents” means the then current conceptual design documents of the Tennis Center Improvements, as may be amended from time to time in accordance with this Development Agreement, illustrating the scale and relationship of the components of the Tennis Center Improvements.

“Site” means the area of land described in Exhibit “A.”

“Site Conditions” means any site conditions other than Environmental Conditions, including (i) Unforeseen Site Conditions; (ii) subsurface or otherwise concealed physical conditions which differ materially from those indicated or assumed in the Construction Documents; and (iii) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Construction Documents. Site Conditions shall include all conditions and information disclosed and set forth in the Universal Engineering Sciences Geotechnical Report for the Tennis Center at Crandon Park dated August 27, 2013.

“Stadium” whether used in the singular or the plural, is a collective term and means one or more of the Stadium Court, the Grandstand Court, Court 1 and Court 2.

“Stadium Additions” refers to the additions to the Stadium Court and is defined in the Narrative Description attached as Exhibit “C.”

“Stadium Court” means the approximately 13,500 seat (including 6,000 temporary seats) tennis stadium currently existing in the Tennis Center, as the same shall be renovated, expanded or replaced from time to time pursuant to this Development Agreement. The “Stadium Court” is described in the Proposed Development Plan Narrative attached as Exhibit “C” and includes the Stadium Additions.

“State” means the State of Florida.

“Subsequent Phases” is defined in Section 2.06.

“Substantial Completion” means the occurrence of both of the following: (i) the Architect has signed and delivered to the Developer and the County Representative a certificate certifying

that the Tennis Center Improvements have been substantially completed subject to the completion of minor punch list items that do not materially affect the use or occupancy of the Stadium or other improvement at the Tennis Center and (ii) a temporary or permanent Certificate of Occupancy has been issued for the Tennis Center, or any discrete part thereof (including the Stadium). The Project may be completed in Phases, and the substantial completion date need not be the same for each Phase of the Project.

“Targeted Completion Date” means, with respect to a particular phase of the Project, the targeted completion date for that phase as set forth in the Master Project Schedule. The Project may be completed in Phases, and the targeted completion date need not be the same for each Phase of the Project.

“Tennis Center” means the Crandon Park Tennis Center as identified in Recital F, and includes any modification made pursuant to this Development Agreement.

“Tennis Center Agreements” means, collectively, this Development Agreement and the Amended and Restated Tournament Agreement (including all exhibits, addenda and amendments) and the Space Lease Agreement.

“Tennis Center Improvements” means the improvements and renovations to the Site that are depicted in the Proposed Development Plan attached as Exhibit “B”, described in the Project Program Statement and Article 2, including but not limited to, the renovation, improvement and construction of the Stadium Court, the Stadium Additions, the Grandstand Court, Court 1 and Court 2, as contemplated by this Development Agreement.

“Tournament” means the tennis tournament currently known as the “Sony Open” and which is more particularly defined in the Amended and Restated Tournament Agreement.

“Tournament Agreement” or “Amended and Restated Tournament Agreement” means the agreement, executed on or about the date of this Development Agreement, between the County and International Players Championship, Inc., and which amends and restates the existing Tournament Agreement.

“Unforeseen Site Conditions” shall mean unsuitable soil conditions, man-made obstructions, abandoned foundations, utilities and natural underground obstructions or any other physical condition which may alter or delay any part of the Work.

“WASD” means the Miami-Dade Water and Sewer Department.

“Work” means all work to be performed to construct the Tennis Center Improvements, or any Phase thereof, in accordance with this Development Agreement.

1.02 References. All references in this Development Agreement to particular sections or articles shall, unless expressly otherwise provided or unless the context otherwise requires, be deemed to refer to the specific sections or articles in this Development Agreement. The words “hereof”, “herein”, “hereunder” and words of similar import refer to this Development Agreement as a whole and not to any particular section or article. All pronouns and variations

thereof used in this Development Agreement shall, regardless of the pronoun actually used, be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or entity may require in the context in which such pronoun is used. "Exhibits" refers to the exhibits attached to the body of this Development Agreement. Exhibits constitute part of this Development Agreement.

## ARTICLE 2

### DESCRIPTION OF TENNIS CENTER IMPROVEMENTS

2.01 Ownership. The Crandon Park Tennis Center shall be renovated and improved by IPC, its consultants and contractors as a first class tennis facility suitable for Masters Series top-level international tennis tournaments, and shall continue to be owned at all times by the County. The County shall own all Tennis Center Improvements developed and paid for by the Developer at the Site pursuant to this Development Agreement, including any permanent fixtures, furniture and equipment affixed to the Site. The Developer may remove any non-permanent fixtures, furniture and equipment such as IPC's phone and computer systems.

2.02 Intent. The Developer and the County agree and recognize that the development of the Site and Tennis Center as set forth within this Development Agreement is intended to: (a) ensure that the Tennis Center remains a competitive long term venue for the Tournament in order to stimulate the local economy, showcase the County and enhance the County's reputation as an international tourism destination; (b) reduce the expense and disruption of the annual staging, storing, erection and striking of many of the temporary features to be replaced by permanent improvements; (c) open up the Site for expanded recreational and landscaped uses and generate savings to be used for the improvement of Crandon Park; and (d) create new and attractive recreational features and enhance the public's ability to use and enjoy the Tennis Center throughout the year outside of the Tournament Period.

2.03 Proposed Development Plan. The Proposed Development Plan ("Proposed Development Plan") of the proposed redevelopment of the Site depicts the Tennis Center Improvements and is attached as Exhibit "B."

2.04 GF Plan. The approved master plan for the Site, and all requirements for developing the Site, are set forth in the GF Plan approved by the Board of County Commissioners pursuant to Resolution No. [ ] and the Crandon Park Amendment Committee pursuant to action taken at its meeting of [ ] and attached as Exhibit "F." The GF Plan depicts many, but not all of the elements set forth in the Proposed Development Plan. Therefore, in order to fully develop the Site as depicted in the Proposed Development Plan, the Developer shall be required to seek all development approvals, including but not limited to, a subsequent General Facilities hearing and approval. The Developer agrees that in order to develop the Site, the Developer must comply, and agrees to comply, with all requirements set forth the GF Plan. In developing the Project, the Developer agrees to include all requirements and specifications set forth in the GF Plan and to do so in the time and sequence mandated by the GF Plan.

2.05 Project Program Statement. Attached as Exhibits "B" and "C" is the Project Program Statement, which includes the narrative description of the renovations, improvements and construction constituting the Tennis Center Improvements which are the subject matter of this Development Agreement. The Project Program Statement is intended to address the programmatic goals of the Project and the approximate areas, heights and locations of its various components.

2.06 Phased Development. The Project may be developed in one or more Phases. The Developer shall develop and construct Phase 1 of the Project within the timeframe set forth in Exhibit H and in accordance with the terms and conditions set forth in this Development Agreement, including but not limited to Exhibits "D" and "E". The Developer shall develop, construct and complete the other elements depicted in the Proposed Development Plan and set forth in the Project Program Statement and Exhibit A to the Resolution, and not otherwise described in Phase 1, in subsequent Phases ("Subsequent Phases"). The Developer shall use its best efforts to complete all elements of the Subsequent Phases no later than December 31, 2043. To this end, the Developer agrees to meet with the County promptly and regularly after the execution of this Development Agreement to discuss Subsequent Phases and to report on its progress in completing the Subsequent Phases. If the Developer fails to complete all elements of the Subsequent Phases within such timeframe, then the County's sole remedy for such breach shall be: (a) the automatic termination of the Tournament Agreement, including all exhibits and addenda, at the end of its Initial Term, as that term is defined in the Tournament Agreement; and (b) the forfeiture by the Developer (referred to as IPC in the Amended and Restated Tournament Agreement) of its rights to exercise any of the options to renew.

### ARTICLE 3

#### THE SITE AND TENNIS CENTER IMPROVEMENTS

3.01 The Site. The County shall deliver physical possession of the Site to the Developer in an "as is" condition so that the Developer may commence construction of the Tennis Center Improvements within the Site. The Developer shall be responsible for the management of the design and construction of the Tennis Center Improvements.

3.02 Pre-Construction Environmental Due Diligence. Prior to the Developer obtaining any financing with respect to the Tennis Center Improvements and prior to the commencement of construction on Phase 1, but in no event any later than one-hundred and twenty (120) days from the Effective Date, the Developer and the County shall undertake and complete all environmental testing which is reasonably necessary and prudent to ascertain whether there are any Environmental Conditions present on the Site which require remediation or mitigation work ("Environmental Due Diligence").

3.03 Selection of Environmental Due Diligence Consultant. The County shall select and contract with the consultant that is to perform the Environmental Due Diligence. The Developer shall be responsible for the costs of the Consultant, which cost is estimated to be \$130,000. In conducting its Environmental Due Diligence, the consultant shall take direction from the County, which direction shall be given after consultation with the Developer.

Notwithstanding the foregoing, the Parties acknowledge and agree that the consultant is preparing its Environmental Due Diligence report for the benefit of both Parties and neither Party shall be liable to the other for any errors or omissions in such report or for either Party's reliance on the report.

3.04 Scope of Environmental Due Diligence. The Environmental Due Diligence shall include the entire Site and the consultant shall investigate and test, to the extent practicable, those areas of the Site where each Element is to be built. The Environmental Due Diligence report shall set forth the consultant's findings, and the report shall identify any Environmental Conditions present on the Site, the exact or presumed location or radius of any Environmental Conditions, and the anticipated impact of such Environmental Conditions in light of the Element proposed to be built on each such location within the Site.

3.05 Remediation/Mitigation Disclosed in the Environmental Due Diligence Report. If the Environmental Due Diligence report discloses Environmental Conditions on the Site requiring the expenditure of more than \$1,000,000 in Remediation Costs, as estimated in the Environmental Due Diligence report, then either Party may terminate this Development Agreement within 30 days of the receipt of the Environmental Due Diligence report. However, if such estimated Remediation Costs are less than \$1,000,000, as estimated in the Environmental Due Diligence report, then the Developer and the County shall be responsible for completing the required remediation or mitigation work to the extent required by Section 3.06 below.

3.06 Environmental Conditions Remediation/Mitigation Required for Construction of Tennis Center Improvements. If before, during, or after the commencement of construction of any Element, the Developer encounters Environmental Conditions, then on an Element-by-Element basis, the Developer shall be responsible for the first \$125,000 of Remediation Costs. To the extent Remediation Costs exceed \$125,000, the County shall be responsible for Remediation Costs up to \$125,000 beyond the Developer's \$125,000 initial responsibility. If Remediation Costs exceed \$250,000, the Parties shall:

(a) Work cooperatively with each other in order to mutually agree to either (i) move Elements around within the Site (subject to a modification of the GF Plan), or (ii) move one or more Element(s) from Phase 1 to the Subsequent Phases and move one or more cost-comparable Element(s) from the Subsequent Phases to Phase 1, all in order to reduce the Remediation Costs for that Element below \$250,000; or, if the Parties are unable to reach an agreement under this subparagraph,

(b) Terminate this Development Agreement.

Notwithstanding the foregoing, the County Mayor shall have the authority, in his/her sole and absolute discretion, to authorize the payment of an additional \$250,000 in Remediation Costs per Element.

3.07 Environmental Conditions Remediation/Mitigation Required for Site. If at any time after the Effective Date of this Development Agreement, the Developer causes a new Environmental Condition, the Developer shall be responsible to undertake and complete any

remediation and/or mitigation work that is required on the Site by Applicable Law, inclusive of any monitoring required thereafter, and to pay all Remediation Costs associated therewith. If at any time after the Effective Date of this Development Agreement, the Developer, with respect to an existing Environmental Condition, through gross negligence or willful misconduct, exacerbates or disturbs any existing Environmental Condition, then the Developer shall be responsible to undertake and complete any remediation and/or mitigation work that is required on the Site by Applicable Law, inclusive of any monitoring required thereafter, and to pay all Remediation Costs associated therewith. This obligation shall survive the termination or expiration of this Development Agreement and shall obligate the Developer to complete all required remediation activities including, but not limited to, all required testing, monitoring, and closure conditions.

3.08 Environmental Indemnities and Obligations. The Developer agrees to indemnify, defend, and hold harmless the County from and against any claims arising from new Environmental Conditions on the Site caused by the Developer, and/or its employees, agents, consultants, and/or contractors in performing its activities under this Development Agreement or under the Amended and Restated Tournament Agreement. The Developer agrees to indemnify, defend, and hold harmless the County from and against any claims arising from the exacerbation or disturbance of existing Environmental Conditions on the Site caused by the gross negligence or willful misconduct of the Developer, and/or its employees, agents, consultants and/or contractors in performing its activities under this Development Agreement or under the Amended and Restated Tournament Agreement. The indemnification provisions contained in this Article 3 shall survive the termination or expiration of this Development Agreement. This agreement shall not alter the Parties rights and obligations with respect to environmental issues, including Chapter 24 of the Code of Miami-Dade County, with the exception of the Environmental Conditions matters agreed to herein. Nothing herein shall relieve the Developer, and/or its employees, agents, consultants and/or contractors from the obligation to comply with Chapter 24 of the Code of Miami-Dade County and all other applicable environmental laws, including state and federal statutes and regulations.

3.09 Site Conditions. As necessary for the Developer to complete its construction obligations related to the Work, the Developer shall have the right to inspect the Site and to perform such tests as it deems necessary or appropriate from time to time to determine the existence of Site Conditions. Developer shall be responsible for all Site Conditions which Developer encounters, causes or contributes to at the Site, and Developer's responsibilities shall include but not be limited to, designing the Tennis Center Improvements taking such Site Conditions into account and removing any Site Conditions such as debris and non-hazardous materials necessary for construction of the Tennis Center Improvements. Developer's responsibility for Environmental Conditions is limited as set forth in this Article 3.

3.10 Effect of Termination. In the event this Development Agreement is terminated under this Article 3 because of Environmental Conditions, and the Developer has already obtained construction financing which is not callable or cannot be redeemed or repaid, then a termination or default of this Development Agreement shall not constitute a default or give rise to a termination right under the Tournament Agreement or Lease Agreement. To the extent this Development Agreement terminates under this Article, the Developer shall have a right to

terminate for convenience the Tournament Agreement (and its Management Addendum), but the Developer shall only have the right to exercise this termination right after the expiration of the Existing Tournament Agreement.

### 3.11 Development Requirements.

(a) The County, in consultation with and upon application by the Developer, shall use reasonable, good faith efforts to expeditiously process all applications for consents, approvals and permits necessary to allow for the construction of the Tennis Center Improvements, which may include, if applicable, without limitation: (i) major use special permit and any other special permits and/or special exception applications; (ii) road, alley, and/or public right of way closure(s) and relocation petitions; (iii) re-zoning or zoning variance applications; (iv) those from WASD and RER and/or the County departments overseeing environmental regulations and affairs; (v) petitions to relocate all public and private utilities, including, without limitation, electric, gas, cable, telecommunication, water, sewer, and storm drainage facilities located within the Site, provided the relocation will not materially and negatively impact any other public facilities; (vi) building permits; and (v) if (and when) any work is done to improve the lake and its channels, then such permits as may be required for such work (collectively, the "Development Requirements"). Notwithstanding the foregoing, any and all costs associated with the applications for the Development Requirements shall be borne exclusively by, and be the sole responsibility of, the Developer and in no event will the County be responsible for any of the costs associated therewith. The County staff shall serve as the applicant or co-applicant for any government approval processes relating to the Development Requirements. The County shall, within five (5) Business Days following receipt of a written request from the Developer, execute any applications, forms or petitions reasonably necessary to modify, renew, or obtain any Development Requirements for the Tennis Center Improvements prepared by the Developer or its consultant, as may be necessary from time to time. The County agrees not to act unreasonably, or unreasonably fail to act, in a manner that would substantially delay or place in jeopardy, or would reasonably be expected to jeopardize, the completion of any Phase of the Tennis Center Improvements by its Targeted Completion Date.

(b) Any County permit fees and other County Development Requirement fees applicable to the Project shall be customary and consistent with amounts charged for County-owned projects.

### 3.12 Access to Site.

(a) The County shall provide authorization for the Developer and its agents, consultants and contractors (including the Construction Manager and the Design Professionals) to, immediately upon the Effective Date, enter upon the Site in order for them to be able to perform various tests and studies of the Site, and other preconstruction work as contemplated by this Development Agreement. Prior to entering the Site, the Developer shall execute and comply with the conditions set forth in the letter of permit attached as Exhibit "I" and the Developer agrees to fully indemnify the County for personal injury or property damage arising out of its activities on the Site to the same extent contained in Section 12.01 of this Development Agreement. This right of access to the Site shall be exercised in such a manner as not to cause

any damage or destruction to Crandon Park or unreasonable interruption or interference with normal Crandon Park activities. The Developer shall immediately pay or cause to be removed any Liens filed against the Site as a result of any actions taken by it or on its behalf in connection with the work contemplated by this Section 3.13 and to repair such damage to the Site caused by said preconstruction work, which repair may include demolition or replacement as part of the Phase 1 work.

(b) The County shall make the Site fully available to the Developer for the construction of the Work. Upon the date set forth in the approved Master Project Schedule as the commencement of construction date for a particular Phase, the Developer shall be fully responsible for securing that part of the Site under construction for a particular Phase and providing the insurance required by this Development Agreement. The Developer shall schedule and coordinate its Work in consultation with the County so as to not materially or significantly impair the public's use of the Tennis Center during construction. The Developer shall only be permitted to fence off and/or exclude the public from those portions of the Site in which the Work and/or staging for the Work are being performed and in all instances such exclusion should be as limited as possible to allow the public to continue its year-round use of the Tennis Center facilities while it undergoes the development contemplated herein. All construction areas (including staging areas) shall be covered by the bonds and insurance required under this Development Agreement.

(c) The County, through its County Representative or any other representatives, shall continue to have access to the Site at all times, including those portions under construction.

#### ARTICLE 4

##### PROJECT DEVELOPMENT

4.01 Phase 1. The Developer has prepared a plan for Phase 1 of the Work that is attached hereto as Exhibit "D" and "E", which includes the Targeted Completion Date for Phase 1 of the Work, and all other important milestone dates for Phase 1 of the Work. The Project Budget and Project Costs for Phase 1 of the Work is projected to be approximately \$30,000,000.00 and in no event shall be less than \$28,000,000.00. In no instance shall Phase 1 ever be amended, modified or revised to reduce the scope of Work for Phase 1 and/or to reduce the Project Budget less than \$28,000,000 and/or to extend the Targeted Completion Date of Phase 1 for more than three hundred and sixty (360) days. Any amendment, modification or revision to the scope of Work for Phase 1 and any extension beyond three hundred and sixty (360) days requires the approval of the Board of County Commissioners.

4.02 Subsequent Phases. Prior to commencing development on the Subsequent Phases, the Developer shall prepare a phasing plan for the Subsequent Phases of the Work similar to that set forth in Exhibit "D" and "E" and shall present it to the County for approval. As part of the approval process for Subsequent Phases, a Master Project Schedule and Project Budget shall be established for such Subsequent Phases in consultation with the County, which budget shall be sufficient to pay for the Project Costs associated with the Work for the Subsequent Phases.



4.03 Project Management. The County, through its Park, Recreation and Open Spaces Department ("PROS"), shall provide oversight, general assistance and certain project management services for the Project as set forth in Articles 5 and 6. The Developer acknowledges and agrees that it shall pay PROS a monthly project management fee as consideration for these services during the development of Phase 1 and Subsequent Phases. For Phase 1, the project management fee shall be \$8,224.00 per month, commencing on December 1, 2013 (or later if agreed upon by the County and Developer) and shall be due the first day of every month thereafter until the Final Completion Date for Phase 1. Upon mutual agreement by the County and Developer, the Developer may at any time during Phase 1 opt to pay for these services on a work basis instead of a fixed monthly fee. For Subsequent Phases, the project management fee shall be negotiated in good faith between the Developer and PROS (or any successor department) and shall take into consideration the amount of time, effort, and skill required by PROS staff to provide its services and the complexity of the Subsequent Phases. If the Project is suspended at any time, this fee shall be equitably adjusted or abated. The County shall submit to the Developer summary reports of the work performed in the previous quarter.

## ARTICLE 5

### DESIGN

5.01 Architectural Style and Project Program Statement. The architectural style of the Tennis Center Improvements shall be "Florida vernacular," similar to that of the new clubhouse in the Crandon Park golf course adjacent to the Site. The Project Program Statement describes the programmatic goals of the Project and the approximate areas, heights and locations of its various components, all of which will constitute part of the Tennis Center Improvements.

5.02 Amendment to Project Program Statement. The Developer shall manage and control the design of the Tennis Center Improvements, including the hiring of the Design Professionals and the development of all of the Design Documents. The Developer shall direct the Design Professionals to prepare Design Documents that are consistent in all respects with the Project Program Statement and all Applicable Laws. The Developer may only amend the Project Program Statement with the prior written consent of the County. Each time the Developer proposes to amend the Project Program Statement, the Developer shall provide the County Representative the proposed amendment to the Project Program Statement detailing the reasons for the amendment and its effect on the Project. The County shall provide its response within ten (10) Business Days following receipt of the proposed amendment and the County's approval shall not be unreasonably withheld, conditioned or delayed. In the event that the County does not deliver written objections to the proposed amendment within such ten (10) Business Day period, then the Developer may send the County a notice of second request for approval of the amendment, with copies of the notice to each of the Director of Parks, the Assistant Director of Parks and the Project Manager, which request shall bear a caption in bold font of 12 points or larger which states substantially the following: **"NOTICE: THIS IS A SECOND REQUEST FOR APPROVAL OF THE COUNTY TO A PROPOSED AMENDMENT OF THE PROJECT PROGRAM STATEMENT FOR THE CRANDON PARK TENNIS CENTER DEVELOPMENT. FAILURE OF THE COUNTY TO SEND WRITTEN NOTICE OF ITS DISAPPROVAL, IDENTIFYING THE REASONS FOR SUCH DISAPPROVAL,**

**WITHIN FIVE (5) BUSINESS DAYS AFTER DELIVERY OF THIS SECOND NOTICE SHALL BE DEEMED TO CONSTITUTE THE APPROVAL OF THE COUNTY TO SUCH AMENDMENT.”** If, within five (5) Business Days after delivery of such second request bearing such caption, the County does not provide written notice of disapproval, identifying its reasons for disapproval, then the proposed amendment shall be deemed approved. Notwithstanding the foregoing, in no event, shall the Project Program Statement be amended in any way that is inconsistent with, or in violation of, Applicable Law, the Resolution and/or the CPMP. In the event the County elects not to approve the amendment, then the County shall provide to the Developer, within said ten (10) Business Day period, detailed comments outlining the reason why the County does not approve the proposed amendment.

5.03 Design Professionals. The Developer has retained the Architect for architectural and design services required in connection with the design and construction of the Tennis Center Improvements. All architectural and engineering fees and sums paid to the Architect and other Design Professionals shall be paid solely by the Developer with its funds. The Developer shall enter into an Architect Contract with the Architect, and may enter into other professional services agreements with other Design Professionals, for the architectural and design services required in connection with the design and construction of the Tennis Center Improvements. The Architect Contract and professional services agreements shall be consistent with the terms of this Development Agreement and shall at all times contain the requirements set forth below. The Developer shall submit to the County, for its review, the Architect Contract and professional services agreements at least ten (10) Business Days prior to its execution for review and approval. The County's approval shall be limited to the reasonable determination that the Architect Contract and professional services agreement complies with the express requirements set forth in this Development Agreement, and such approval (or responsive comments) shall be provided within such ten (10) Business Days. The County's approval of the Architect Contract shall not be deemed a waiver of any rights of the County contained in this Development Agreement. In the event that the County does not deliver written objections to the proposed Architect Contract and professional services agreement within such ten (10) Business Day period, then the Developer may send the County a notice of second request for approval of the Architect Contract and professional services agreement, with copies of the notice to each of the (1) Director of Parks, (2) the Assistant Director of Parks and (3) the Project Manager, which request shall bear a caption in bold font of 12 points or larger which states substantially the following: **“NOTICE: THIS IS A SECOND REQUEST FOR APPROVAL OF THE COUNTY TO A PROPOSED ARCHITECTURAL SERVICES AGREEMENT FOR THE CRANDON PARK TENNIS CENTER DEVELOPMENT. FAILURE OF THE COUNTY TO SEND WRITTEN NOTICE OF ITS DISAPPROVAL, IDENTIFYING THE REASONS FOR SUCH DISAPPROVAL, WITHIN FIVE (5) BUSINESS DAYS AFTER DELIVERY OF THIS SECOND NOTICE SHALL BE DEEMED TO CONSTITUTE THE APPROVAL OF THE COUNTY TO SUCH ARCHITECTURAL SERVICES AGREEMENT.”** If, within five (5) Business Days after delivery of such second request bearing such caption, the County does not provide written notice of disapproval, identifying its reasons for disapproval, then the proposed architectural services agreement shall be deemed approved. The Developer shall submit its proposed Architect Contract or other design-related contracts, as applicable, and the scope of Work to the County department responsible for

overseeing the County's Small Business division in order to obtain a CBE goal for the Work. The Architect Contract and such other design-related contracts, as applicable, shall include a provision requiring a CBE goal for the Work. The Developer shall include within its agreement(s) with its Architect and other Design Professionals, (a) an obligation that the Architect and Design Professionals, as applicable, will comply with the County's CBE-A/E Program specifically set forth in the County Code and Exhibit "J"; (b) provisions requiring the Architect and any other Design Professionals with which the Developer has any contracts to comply with other Applicable Laws, the Resolution and the CPMP; (c) provisions that such contracts are governed by Florida law and venue shall lie exclusively in Miami-Dade County, Florida; and (d) provisions under which the Architect Contract and any other contracts between the Developer and any other Design Professionals may be assigned to the County upon a default thereunder by the Developer. The Architect Contract and any other contracts between the Developer and any other Design Professionals may be assigned to the County upon a default under the respective contract by the Developer. The Developer shall not amend any of the above-referenced provisions of the Architect Contract relating to the Work without the consent of the County, through its Board of County Commissioners.

#### 5.04 Design Documents.

(a) Generally. The County Representative shall have the right to review and approve the Schematic Design Documents, the Design Documents and the Construction Documents for the Tennis Center Improvements. To assist the County in its review, the Developer shall cause the Architect to provide with any future Design Documents a summary of any changes that it reasonably believes would require the County's approval under this Development Agreement and the County's comments on previous submittals. Such review and approval (i) shall include a confirmation that the applicable Design Documents are consistent in all material respects with the Project Program Statement and the previously approved Design Documents, and (ii) shall not otherwise be unreasonably withheld, conditioned or delayed. All Design Documents shall be prepared by an architect or engineer licensed to practice in the State of Florida and must describe all elements of the Work including, but not limited to the limits of construction, pedestrian and vehicular circulation and locations of construction ingress and egress; all sufficient to enable the County to make an informed judgment about the proposed scope and any effect the Work will have on Crandon Park.

(b) Schematic Design Documents. The Schematic Design Documents, depicting all of the elements set forth in the Project Program Statement, including updated renderings, plans and elevations shall be submitted to the County Representative for review and approval no later than thirty (30) days after the Effective Date. The Schematic Design Documents shall be designed in accordance with all of the provisions of this Development Agreement, the CPMP, the Resolution, and Applicable Law. The County Representative shall have ten (10) Business Days after the receipt of the Schematic Design Documents to review and approve and/or provide comments. If the County Representative does not approve the Schematic Design Documents, then the County Representative shall provide to the Developer, within that ten (10) Business Day period, comments setting forth the reasons it disapproved the Schematic Design Documents. If the Developer disagrees with any of the County Representative's comments, then the Developer shall meet with the County Representative to resolve any items of

dispute to their reasonable satisfaction and each shall use good faith efforts to resolve any disagreements in an expeditious manner so as not to delay production of the Design Documents. In the event that the County Representative does not deliver written objections to the proposed Schematic Design Documents within such ten (10) Business Day period, then the Developer may send the County Representative a notice of second request for approval of the Schematic Design Documents, with copies of the notice to each of the (1) Director of Parks, (2) the Assistant Director of Parks and (3) the Project Manager, which request shall bear a caption in bold font of 12 points or larger which states substantially the following: **“NOTICE: THIS IS A SECOND REQUEST FOR APPROVAL OF THE COUNTY TO SCHEMATIC DESIGN DOCUMENTS FOR THE CRANDON PARK TENNIS CENTER DEVELOPMENT. FAILURE OF THE COUNTY TO SEND WRITTEN NOTICE OF ITS DISAPPROVAL, IDENTIFYING THE REASONS FOR SUCH DISAPPROVAL, WITHIN FIVE (5) BUSINESS DAYS AFTER DELIVERY OF THE SECOND NOTICE SHALL BE DEEMED TO CONSTITUTE THE APPROVAL OF THE COUNTY TO SUCH SCHEMATIC DESIGN DOCUMENTS.”** If, within five (5) Business Days after delivery of such second request bearing such caption, the County Representative does not provide written notice of disapproval, identifying his or her reasons for disapproval, then the proposed Schematic Design Documents shall be deemed approved. The Developer shall cause the Architect to revise the Schematic Design Documents to address any comments raised by the County Representative and shall submit revised Schematic Design Documents to the County Representative for his or her review and approval. The County Representative shall have five (5) Business Days from the receipt of the revised Schematic Design Documents to review and approve them. If the County Representative fails to deliver written objections to such revised Schematic Design Documents within such five (5) Business Day period, then the Developer may send a notice of second request for approval as provided above, and if the County Representative fails to provide written notice of disapproval, identifying his or her reasons for disapproval, the revised Schematic Design Documents shall be deemed approved.

(c) Within ninety (90) days after the final approval of the Schematic Design Documents, the Developer shall prepare and deliver to the County Representative the Master Project Schedule for the applicable Phase of the Work, its Project Budget for the applicable Phase of the Work and its proposed Substantial Completion date and Targeted Completion Date for the applicable Phase of the Work.

(d) Construction Documents. The Developer shall prepare the Construction Documents for each Phase of the Work (as applicable) at such time as the Developer is ready to proceed with the Work for that particular Phase, all in accordance with the Master Project Schedule. The Construction Documents shall strictly adhere to Applicable Law, the CPMP and the Resolution. The Developer shall be fully responsible for the undertaking and payment of all off-Site improvements required to accomplish the construction of the Work and occupancy of the Tennis Center Improvements, including utilities and infrastructure needs. All off-Site Work necessary to be performed by the Developer shall also be included in the Contract Documents. Prior to commencing the development of the Construction Documents for a particular Phase of the Work, the Developer shall schedule and coordinate a kick-off meeting with the Project Manager to review the Targeted Completion Date, the Construction Schedule and Master Project Schedule for the applicable Phase of Work.

(i) The Developer shall prepare and deliver to the Project Manager an update on its Master Project Schedule, including Targeted Completion Dates and one (1) set of the 50% Plans (together with a CD conforming to the County's CADD Standards for additional copies as needed) for the Phase at issue as well as the computer-aided design and drafting (CADD) file in compliance with the attached CADD standards (Exhibit "K"). The 50% Plans shall show, without limitation, any/all work to be performed in on the Site, including site plans; architectural, structural, mechanical, electrical, landscape and plumbing plans; preliminary grading and drainage plans; soil tests; utilities, sewer and service connections; vehicular and pedestrian traffic circulation plans including locations of ingress and egress to and from the Site and Work, curbs, gutters and parkways; lighting; locations for outdoor signs; and storage areas; all sufficient to enable the County to make an informed judgment about the schedule, estimate, design and quality of construction and about any effect the Work shall have on the Tennis Center and Crandon Park as a whole (hereinafter referred to as "50% Plans"). Such 50% Plans shall be based on the Schematic Design Documents previously submitted by the Developer, and as approved by the County. The County Representative shall have thirty (30) days after the receipt of the 50% Plans to review and either approve or comment on the 50% Plans. The Developer shall address the County's comments in the final Construction Documents.

(ii) Within one-hundred and eighty (180) days after the 50% Plans are submitted, and after all of the County's comments given at the time of such review of the 50% Plans have been addressed, the Developer shall prepare and deliver to the County Representative an update on its Master Project Schedule, including Targeted Completion Dates and Project Budget, and one (1) set of the final Construction Documents (together with a CD conforming with the County's CADD Standards for additional copies as needed) for the construction of the Phase at issue. The final Construction Documents must be consistent with the approved 50% Plans. If the final Construction Documents have no material changes from the approved 50% Plans with the comments addressed, then the Developer may submit the final Construction Documents to the applicable Governmental Authority for permitting. The County Representative will perform his or her review simultaneously with the Governmental Authority performing its plan review for purposes of issuing permits, and the Parties shall endeavor to resolve all comments simultaneously with such review. However, in no instance can the Developer obtain a permit to perform construction work from the Governmental Authority without addressing all comments to the Construction Documents, in a manner reasonably satisfactory to the County Representative. The final Construction Documents shall show without limitation any/all work to be performed in the field, including site plans; architectural, structural, mechanical, electrical, landscape and plumbing plans; preliminary grading and drainage plans; soil tests; utilities, sewer and service connections; vehicular and pedestrian traffic circulation plans including locations of ingress and egress to and from the Project, curbs, gutters and parkways; lighting; locations for outdoor signs; storage areas; and completed technical specifications; all sufficient to enable the Department to make an informed judgment about the schedule, estimate, design and quality of construction and about any effect the Work shall have on the Tennis Center and Crandon Park. The final Construction Documents shall be based on the Schematic Design Documents and the 50% Plans previously submitted by the Developer and as approved by the County. The County Representative shall have twenty (20) days after the receipt of the final Construction Documents to review and either approve or comment on the final Construction Documents. If the County

Representative does not approve the final Construction Documents, then the County Representative shall provide to the Developer, within that twenty (20) day period, detailed comments setting forth the reasons it disapproved the final Construction Documents. If the Developer disagrees with any of the County Representative's comments, then the Developer shall meet with the County Representative to resolve any items of dispute to their reasonable satisfaction and each shall use good faith efforts to resolve any disagreements in an expeditious manner so as not to delay production of the Construction Documents. The Developer shall cause the Architect to revise the final Construction Documents to address any comments raised by the County Representative and shall submit revised Construction Documents to the County Representative for their review and approval. In the event that the County Representative does not deliver written objections to the proposed final Construction Documents within such twenty (20) day period, then the Developer may send the County a notice of second request for approval of the final Construction Documents, with copies of the notice to each of the Director of Parks, the Assistant Director of Parks and the Project Manager, which request shall bear a caption in bold font of 12 points or larger which states substantially the following: **"NOTICE: THIS IS A SECOND REQUEST FOR APPROVAL OF THE COUNTY TO THE PROPOSED FINAL CONSTRUCTION DOCUMENTS FOR THE CRANDON PARK TENNIS CENTER DEVELOPMENT. FAILURE OF THE COUNTY TO SEND WRITTEN NOTICE OF ITS DISAPPROVAL, IDENTIFYING THE REASONS FOR SUCH DISAPPROVAL, WITHIN FIVE (5) BUSINESS DAYS AFTER DELIVERY OF THIS SECOND NOTICE SHALL BE DEEMED TO CONSTITUTE THE APPROVAL OF THE COUNTY TO SUCH FINAL CONSTRUCTION DOCUMENTS."** If, within five (5) Business Days after delivery of such second request bearing such caption, the County does not provide written notice of disapproval, identifying its reasons for disapproval, then the proposed final Construction Documents shall be deemed approved. The County Representative shall have five (5) Business Days from the receipt of the revised Construction Documents to review and approve them. If the County Representative fails to disapprove such revised final Construction Documents, identifying the reasons for disapproval, then the provisions above concerning notice of a second request and deemed approval for a failure to respond to such second request shall apply with respect to the revised final Construction Documents.

(iii) The Developer shall resolve all comments and requests for modifications by the County and obtain written approval from the County prior to submitting the Construction Documents to the regulatory agencies for permitting. When the Developer receives the County's written approval of the Construction Documents, the Developer shall immediately commence seeking from all regulatory agencies having jurisdiction over the Site and the Work all such required permits.

(e) The Developer may revise the Design Documents for the Tennis Center Improvements from time to time provided that they adhere to Applicable Law, the CPMP and the requirements in the Resolution, and remain consistent in all material respects with the Project Program Statement and the previously approved Design Documents, as applicable. Provided, however, that any revisions to the Design Documents which would require regulatory review and approval by any Governmental Authority for permitting or otherwise, shall simultaneously be submitted to the County Representative for concurrent review and approval.

(f) The Parties understand and agree that the purposes of the design process set forth in this Section 5.04 is to cause the Architect and the Parties to deliver a first-class tennis facility suitable for Masters Series top level play and consistent with the standard set forth in Article 2. The Developer shall cause its Construction Manager to develop the Site in strict adherence with the approved Construction Documents.

5.05 Use of Plans. The Architect Contract shall grant the Developer and the County and subject to the security and other procedures set forth in Chapter 119 Florida Statutes, a perpetual license to use the Design Documents in connection with the development, operation and modification of the Tennis Center Improvements; such license being conditioned, however, on the payment of all undisputed amounts due and owing under the Architect Contract. All construction documents, plans, specifications, drawings, models, samples and the like submitted to the County, and/or its representative pursuant to this Development Agreement are for informational purposes only, except to the extent (a) otherwise expressly provided herein, or (b) they are submitted to the County for regulatory or permitting purposes. The County and its representatives shall not use Design Documents produced or developed in connection with the design and construction of the Tennis Center Improvements for any purpose other than as contemplated by this Development Agreement and the other Tennis Center Agreements. This provision shall survive the expiration or earlier termination of this Development Agreement.

5.06 LEED Certification. The Developer shall comply with Section 9-71 through 9-75 of the County Code and Implementing Order 8-8 ("Sustainable Buildings Program"). The Developer shall comply with the determination of the County's Sustainability Manager with respect to LEED certification and/or compliance.

## ARTICLE 6

### CONSTRUCTION

6.01 Construction Administration. The Developer shall be responsible for managing, directing, supervising, coordinating, controlling and fully paying for and funding the planning, design and construction of the Tennis Center Improvements in accordance with, the Construction Documents, the Construction Schedule, the Master Project Schedule, and the Project Budget as any of the foregoing may be modified as permitted by this Development Agreement. Except as otherwise specifically provided in this Development Agreement, the Developer shall be responsible for taking all reasonable action for the orderly performance of all aspects of the Work required in connection with the construction of the Tennis Center Improvements, including, but not limited to:

- (a) retaining the services of the Architect, compliance with the requirements of the Architect Contract, and coordinating the design of the Tennis Center Improvements;
- (b) retaining, as necessary, the services of specialty consultants;
- (c) retaining the services of the Construction Manager pursuant to Section 6.02, who shall cause the Tennis Center Improvements to be constructed in accordance with the

requirements of this Development Agreement, the Construction Schedule, the Master Project Schedule, the Construction Documents, and the Construction Management Contract;

(d) preparing and updating, or causing to be prepared and updated, the Construction Schedule and the Master Project Schedule in accordance with Section 6.06, and delivering copies to the Project Coordination Team;

(e) retaining and supervising the personnel reasonably required by the Developer in order to properly perform or cause to be performed the Work;

(f) maintaining, or causing to be maintained, complete and accurate books and records, consistent with industry standards, regarding the design and construction of the Project, including but not limited to, the Construction Documents, shop drawings, testing, surveys, Change Orders, as-built drawings, applications for payment, permits, insurance policies, bills, vouchers, receipts, lien waivers, customary periodic reports, inspector daily reports, estimates, correspondence and bid calculation sheets;

(g) taking all action reasonably required to comply with all Applicable Laws, the CPMP, and the Resolution and taking all reasonable action required to cause the Architect and the Construction Manager and all other agents and contractors engaged by the Developer to design and construct the Tennis Center Improvements in accordance with Applicable Laws, the CPMP, the Resolution and the provisions of the Architect Contract and Construction Management Contract;

(h) furnishing promptly to the County Representative all documents and information required to be provided to them pursuant to this Development Agreement and all other information relating to the Project that they may reasonably request;

(i) providing the County Representative, upon Final Completion for each phase of construction in the Phasing Plan, with a hard copy and a CD of the "as-built" Construction Documents revised to show the "as-built" condition of the Tennis Center;

(j) managing and ensuring that all punch list and warranty work after Substantial Completion for each Phase undertaken is achieved;

(k) establishing and updating, as necessary and in accordance with the requirements of this Development Agreement, the schedule of dates for delivery of various Design Documents for review by the County Representative;

(l) inviting the County Representative and Project Manager to all Project meetings and preparing or causing to be prepared minutes for all scheduled project meetings (including construction meetings) and providing the County Representative with copies of any minutes prepared by the Developer, or by its contractors that are received by the Developer, with respect to all Project meetings for the Tennis Center Improvements, as the case may be;



(m) causing the completion of the Tennis Center Improvements in accordance with the Design Documents, the Construction Schedule, the Master Project Schedule and within the Project Budget;

(n) obtaining or causing to be obtained all permits necessary for construction of the Project;

(o) providing to the County Representative in hard copy an original, and by e-mail copies, of all contracts and amendments for informational purposes only (other than contracts and amendments thereto which shall be subject to approval by the County as provided in this Development Agreement and the other Stadium Agreements) relating to the Project;

(p) maintaining, or causing to be maintained, the Tennis Center Improvements construction sites in safe condition and properly secured against unpermitted access from and after the Commencement of Construction;

(q) providing the County Representative the monthly progress reports required by this Development Agreement and the Construction Management Contract as prepared by the Construction Manager;

(r) supervising and coordinating, or using reasonable efforts to cause the Construction Manager to supervise and coordinate, the construction of the Tennis Center Improvements, including the scheduling of all construction work on the Tennis Center Improvements, so that the Tennis Center Improvements are constructed, equipped, furnished and completed in a good and workmanlike manner, in accordance with the Design Documents and Master Project Schedule and otherwise in accordance with this Development Agreement; and

(s) causing the Construction Manager to coordinate work and grant appropriate access to the Site for contractors appropriately performing work.

The Developer shall not be paid a developer fee or compensated for its services as the developer of the Tennis Center Improvements. The Parties acknowledge and agree that the Developer's obligations under this Development Agreement are to manage, administer, and implement the development, design, renovation and construction of the Project. Notwithstanding any term or condition in this Development Agreement to the contrary, the intent of the Parties is that the Developer shall not perform any services (and shall not act) as a contractor within the meaning of Chapter 489, Florida Statutes, and that all such services shall be performed by licensed contractors (as so defined under Chapter 489, Florida Statutes).

#### 6.02 Construction Manager.

(a) The Developer shall competitively select the Construction Manager in accordance with, and as required by, Section 255.20, Florida Statutes when the construction is for a public improvement. Any Construction Manager selected by the Developer shall be in good standing with the County, cannot be an entity that is debarred from doing County work, and cannot be in arrears or delinquent in its obligations to the County.

(b) The Construction Manager shall oversee construction of the Tennis Center Improvements. The Developer represents and warrants that, to its knowledge, it did not, at any time prior to the execution of this Development Agreement, and shall not, at any time subsequent to its execution, confer any unfair competitive advantage to any contractor with respect to the Project in violation of Applicable Law. The Construction Manager shall select and engage such other service providers in connection with the Work as the Developer and the Construction Manager may deem necessary.

(c) The Developer shall enter into a Construction Management Contract with the Construction Manager to oversee the construction of the Tennis Center Improvements. The Construction Management Contract shall be consistent with the terms of this Development Agreement, Applicable Law, the CPMP and the Resolution and shall at all times contain the requirements set forth below. The Developer shall submit to the County, for its review and approval, the Construction Management Contract at least ten (10) Business Days prior to its execution. The County's review and any comments shall be completed and provided within those ten (10) Business Days. In the event that the County does not deliver written objections to the proposed Construction Management Contract within such ten (10) Business Day period, then the Developer may send the County a notice of second request for approval of the Construction Management Contract, with copies of the notice to each of the Director of Parks, the Assistant Director of Parks and the Project Manager, which request shall bear a caption in bold font of 12 points or larger which states substantially the following: **"NOTICE: THIS IS A SECOND REQUEST FOR APPROVAL OF THE COUNTY TO A PROPOSED CONSTRUCTION MANAGEMENT CONTRACT FOR THE CRANDON PARK TENNIS CENTER DEVELOPMENT. FAILURE OF THE COUNTY TO SEND WRITTEN NOTICE OF ITS DISAPPROVAL, IDENTIFYING THE REASONS FOR SUCH DISAPPROVAL, WITHIN FIVE (5) BUSINESS DAYS AFTER DELIVERY OF THIS SECOND NOTICE SHALL BE DEEMED TO CONSTITUTE THE APPROVAL OF THE COUNTY TO SUCH CONSTRUCTION MANAGEMENT CONTRACT."** If, within five (5) Business Days after delivery of such second request bearing such caption, the County does not provide written notice of disapproval, identifying its reasons for disapproval, then the proposed Construction Management Contract shall be deemed approved. The County's review of the Construction Management Contract shall not be deemed a waiver of any rights of the County contained in this Development Agreement. The Construction Management Contract shall include provisions requiring the Construction Manager to comply with Applicable Laws, including the County's Community Small Business Enterprise programs (CSBE, CBE and SBE), responsible wages and benefits as set forth in Section 2-11.16 of the County Code, the Sustainable Buildings Program, Chapter 119 of the Florida Statutes regarding public records laws, the State of Florida and the County's Prompt Payment laws, the County's Inspector General requirements set forth herein, the County's Art in Public places requirements, and provide the requisite bonding in accordance with Section 255.05, Florida Statutes (as provided in Sections 6.02(e) and (f)), the insurance requirements set forth in Sections 8.01 and 8.02 and provisions under which the Construction Management Contract may be assigned to the County in the event of a default by the Developer under this Development Agreement and/or the Construction Management Contract. The Construction Management Contract shall state that the County is an express third-party beneficiary of such contract. The CSBE and SBE goals for the

Project will be established for each construction trade package. The County shall set such CSBE and SBE goals in consultation with the County's Small Business division. The Developer agrees to include in the Construction Management Agreement a prohibition against imposing any requirements on CSBEs/SBEs that are not customary, not otherwise required by law, or impose a financial burden that intentionally impacts CSBEs and/or SBEs. The Construction Manager shall, at a minimum, use SBD's hiring clearinghouse, to recruit workers to fill needed positions for skilled laborers on the Project. The Developer shall further include in the Construction Management Contract that CSBE and SBE firms shall be paid promptly in accordance with the requirements of Sections 10-33.02 and 2-8.1.1.1.1, respectively, of the Miami-Dade County Code. The Construction Management Contract shall require the Construction Manager to indemnify and hold the County harmless to the same extent as the Developer is agreeing to indemnify and hold the County harmless in this Development Agreement. The Developer shall not amend the above-referenced provisions or materially amend the substantive provisions of the Construction Management Contract without the consent of the County, through its Board of County Commissioners.

(d) The Construction Management Contract shall require that each subcontractor of the Construction Manager indemnify the Developer and the County in the same manner and to the same extent that the Construction Manager indemnifies the Developer and the County under the Construction Management Contract.

(e) Before the Construction Manager commences its services related to the Tennis Center Improvements, including, but not limited to, entering into any subcontracts, purchasing or ordering any supplies, materials, or equipment, undertaking Site inspections or testing, and/or any construction, the Construction Manager shall execute, deliver to the County and the Developer, and record in the public records of the County, separate payment and performance bonds, in the forms attached hereto in Exhibit "J", in an amount equal to the total cost of the applicable Phase of the Tennis Center Improvements. Each payment and performance bond shall be in compliance with the terms of Section 255.05, Florida Statutes, specifically in compliance with the requirements of Section 255.05(1)(a) and (c), 255.05(3), and 255.05(6), and shall name the County and the Developer as beneficiaries thereof, as joint obligees.

(f) Before the Construction Manager commences its services related to the Tennis Center Improvements and before the Construction Manager and/or the Developer enter into any contracts or subcontracts, order any supplies, materials or equipment, undertake Site inspection or testing and/or undertake any construction, (i) the Developer shall execute, deliver to the County and record in the public records of the County, a separate payment and performance bond for the total cost of the applicable Phase of the Tennis Center Improvements in compliance with the terms of Section 255.05, Florida Statutes, naming the County as a beneficiary thereof, as obligee; or (ii) in lieu of such bond, the Developer shall file with the County an alternative form of security in the form of cash, irrevocable letter of credit, or other security of the type listed in Section 255.05(7) or Part II of chapter 625, Florida Statutes (the "CM Services Security"), in an amount equal to the total cost of the services to be performed by the Construction Manager (i.e., management fee, profit, office overhead, general conditions, and cost of work that is self-performed by the Construction Manager if the payment and performance

of such self-performed work is not covered by the payment and performance bond provided by the Construction Manager to the County as provided in Section 5.2(d)), all in accordance with the provisions of Section 255.05(7), Florida Statutes. The amount of the CM Services Security shall be increased or decreased, as applicable, to the extent the total cost of the construction management services are adjusted by Change Order. The Developer shall be permitted to use the CM Services Security to make its final payment to the Construction Manager for the Tennis Center Improvements. In the event the CM Services Security is used to cover the cost associated with the construction management services as contemplated herein, the Developer shall replenish the CM Services Security in an amount equal to such draws such that the CM Services Security at all times is equal to the amount required by this section. To the extent that the Developer contracts with any other entity for construction services on the Site, the Developer shall likewise provide a separate payment and performance bond to the County for the full amount of such Work, and such bond shall be in accordance with the requirements set forth in this Section and Section 255.05, Florida Statutes. The bonding requirement may be waived for subcontracts for work costing \$200,000.00 or less.

(g) Subject to the applicable provisions of Section 255.20, Florida Statutes, regarding qualification requirements, the Developer shall require the Construction Manager to include the following provision in each subcontract bid package:

“Any sub-contractor or contractor submitting a bid must acknowledge that in performance of a subcontract, contract or any subcontract thereof, no apprentices or trainees may be utilized in a particular recognized trade/work classification as otherwise provided for in Section 6 A-E, Apprentices and Trainees, of the Supplemental General Conditions to Bidders of the Miami-Dade County Responsible Employer Ordinance, Section 2-11.16 of the Code of Miami-Dade County, unless at the time of bid submission they establish and certify for that particular trade/work classification:

That the firm participates in an Apprenticeship Program and shall continue to participate in such program or programs for the duration of the project for those trade/work classifications in which apprentices or trainees may be used.

An Apprenticeship Program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor or with a State Apprenticeship Agency and has graduated apprentices to journeymen status for at least two of the past five years.

The firm shall provide, with this Certification, a list of all trade/work classifications of craft employees it will employ with apprentices on the Project and documentation verifying it participates in an Apprenticeship Program for each trade/work classification listed and that the apprentices are attending school.”

(h) The Developer shall cause the Construction Manager to comply with all of the CSBE and SBE requirements set forth in Section 6.02(c) above during each phase of the construction of the Work. Should the Construction Manager fail to comply with all of the CSBE

and SBE requirements set forth in Section 6.02(c) above, the Developer shall cause the Construction Manager to make up the deficit on future phases of the construction of the Work. If the Construction Manager is unable to make up the deficit on future phases of the construction of the Project and the Construction Manager had failed to exercise reasonable good faith efforts to achieve such goals, then the Developer agrees to make a contribution equal to 150% of the deficit percentage of the construction phase(s) in question into the Department of Business Development's Compliance Trust Fund. In the event any such payment becomes due, the Developer agrees that it will not pass the expense of such payment onto any CSBE or SBE that is in compliance with its contractual obligations.

6.03 Change Orders. Change Orders by the Developer relating to the Work shall not require advance notice or approval by the County provided that: (a) the Change Order does not delay or further delay the Substantial Completion date beyond the Targeted Completion Date for each Phase of the Work; (b) the Change Order does not pose a material risk to public safety; (c) the Change Order does not (i) eliminate, alter, revise or otherwise modify an element from the Project Program Statement, or (ii) materially alter the design of the Tennis Center Improvements, or any part thereof, as depicted in the most recent approved Design Documents for that Phase; (d) the Change Order does not exceed the Developer Funds and/or the Project Budget for the Phase in question, and (e) the Change Order does not conflict with, and is fully consistent with the CPMP, the Resolution, Applicable Law and this Development Agreement. In addition, the Developer shall make any Change Orders that are required to comply with the final permitted set of Construction Documents and Applicable Law. Any Change Order that is not permissible as provided in clauses (a) through (e) above shall be subject to the written approval of the County Representative, which approval shall not be unreasonably withheld, delayed or conditioned. The County Representative shall review any such Change Order within five (5) Business Days from receipt of written notice of the Change Order. In the event that the County Representative does not deliver written objections to the proposed Change Order within such five (5) Business Day period, then the Developer may send the County a notice of second request for approval of the Change Order, with copies of the notice to each of the Director of Parks, the Assistant Director of Parks and the Project Manager, which request shall bear a caption in bold font of 12 points or larger which states substantially the following: **"NOTICE: THIS IS A SECOND REQUEST FOR APPROVAL OF THE COUNTY TO A PROPOSED CHANGE ORDER FOR THE CRANDON PARK TENNIS CENTER DEVELOPMENT. FAILURE OF THE COUNTY TO SEND WRITTEN NOTICE OF ITS DISAPPROVAL, IDENTIFYING THE REASONS FOR SUCH DISAPPROVAL, WITHIN FIVE (5) BUSINESS DAYS AFTER DELIVERY OF THIS SECOND NOTICE SHALL BE DEEMED TO CONSTITUTE THE APPROVAL OF THE COUNTY TO SUCH CHANGE ORDER."** If, within five (5) Business Days after delivery of such second request bearing such caption, the County does not provide written notice of disapproval, identifying its reasons for disapproval, then the proposed Change Order shall be deemed approved. In the event the County Representative rejects the proposed Change Order, such representative shall provide to the Developer; within said five (5) Business Day period, detailed comments outlining the reason why such County Representative rejected the proposed Change Order.

6.04 Project Coordination Team. The Parties have formed an administrative committee that includes representation from the County, including the Director of the Park,

Recreation and Open Spaces Department along with any members of the Director's staff or other County employees the Director may request, and a representative for the Developer including the President of the Developer and any the Developer staff (the "Project Coordination Team") to perform the following functions: (a) receive an updated Construction Schedule; (b) receive reports pertaining to the Project Budget and any other aspects of the Project; (c) receive other reports and information from the Design Professionals and the Construction Manager as provided in this Development Agreement; (d) maintain clear lines of communication to facilitate a successful Project; (e) receive and review Change Orders; and (f) receive reports and records pertaining to the utilization of the CSBE, SBE and CWP programs. The Project Coordination Team shall have periodic meetings, on an as-needed basis, and special meetings upon reasonable prior notice from any member of the Project Coordination Team during the construction of the Tennis Center Improvements. Project Coordination meetings may be requested by either party. The party receiving the request shall make every reasonable effort to attend the meeting(s) or send a responsible representative of the Project Coordination Team.

6.05 Right to Inspect and Receive Information. The County Representative shall be given an opportunity to attend all project meetings, visit the site, monitor and inspect the Work and materials and to review construction documents to verify that the Work and materials are in conformance with this Development Agreement, the Project Program Statement and the Design Documents. In addition, the County shall be given the opportunity to review any and all documents reasonably necessary to verify compliance with the CSBE, SBE and CBE programs and responsible wages. The County Representative shall receive in writing from the Developer on a regular basis, and within the time frames expressly set forth elsewhere in this Development Agreement or no less than monthly, information regarding the progress of the Work through each design phase and the construction of the Tennis Center Improvements. Further, the Developer shall provide the County Representative with monthly progress reports, in a form acceptable to the County Representative, relating to the budget for the Work, including all expenditures by the Developer during the preceding month. During construction, the County Representative shall receive advance notice of and have the right to attend all scheduled Project meetings, and the right to visit the Site, monitor and inspect the Tennis Center Improvements at all reasonable times, subject to reasonable restrictions imposed by the Developer or the Construction Manager. The Developer shall make itself available to the County Representative throughout the duration of the Work in order to keep the County Representative informed throughout the duration of the Work. Any rights that the County Representative has under this Section shall not be the basis for any liability to accrue to the County from the Developer or third parties for such monitoring or investigation or for the failure to have conducted such monitoring or investigation.

6.06 Project Schedules.

(a) The Parties have attached a Preliminary Milestones Schedule for the Tennis Center Improvements as Exhibit "H." The Developer shall, prior to preparing the final Construction Documents, obtaining permits, commencing construction or purchasing any supplies or materials, prepare or cause its Construction Manager to prepare, and submit to the County a Critical Path Method schedule for the entire scope for the Phase of the Work to be performed ("Master Project Schedule"). The County shall have the right to approve or

disapprove the Master Project Schedule which approval shall not be unreasonably withheld, delayed or conditioned. In the event that the County does not deliver written objections to the proposed Project Schedule within ten (10) Business Days after the Developer's written request for approval, then the Developer may send the County a notice of second request for approval of the Project Schedule, with copies of the notice to each of the Director of Parks, the Assistant Director of Parks and the Project Manager, which request shall bear a caption in bold font of 12 points or larger which states substantially the following: **"NOTICE: THIS IS A SECOND REQUEST FOR APPROVAL OF THE COUNTY TO THE PROPOSED PROJECT SCHEDULE FOR THE CRANDON PARK TENNIS CENTER DEVELOPMENT. FAILURE OF THE COUNTY TO SEND WRITTEN NOTICE OF ITS DISAPPROVAL, IDENTIFYING THE REASONS FOR SUCH DISAPPROVAL, WITHIN FIVE (5) BUSINESS DAYS AFTER DELIVERY OF THIS SECOND NOTICE SHALL BE DEEMED TO CONSTITUTE THE APPROVAL OF THE COUNTY TO SUCH PROJECT SCHEDULE."** If, within five (5) Business Days after delivery of such second request bearing such caption, the County does not provide written notice of disapproval, identifying its reasons for disapproval, then the proposed Project Schedule shall be deemed approved. The Parties shall act reasonably in reaching agreement on the Project Schedule and shall give due consideration to the recommendations of the Construction Manager. The Developer shall update the Project Schedule monthly to reflect changes to the milestone dates reflected in the respective construction schedules relating to the Work. Copies of the monthly updates shall be provided to the County Representative for review. The Developer shall provide the County Representative with a copy of any proposed amendments to any milestone date contained in the Project Schedule and the County shall have the right to disapprove and reject any modifications to the Project Schedule which would, in the County's belief, materially and negatively impact the County's operation of Crandon Park and/or the public's access to Crandon Park and/or the Tennis Center, or which would otherwise have a significant impact on the proper functioning of Crandon Park. Other than for extensions resulting from Force Majeure, neither the Targeted Completion Date nor the date set forth in the Project Schedule for Substantial Completion of the applicable phase of the Tennis Center Improvements shall be extended without the prior written approval of the County Representative, which approval shall not be unreasonably withheld, delayed or conditioned.

(b) The Developer shall use commercially reasonable efforts to achieve Substantial Completion prior to the Targeted Completion Date, subject to extensions resulting from Force Majeure.

#### 6.07 Permitting.

(a) The Developer shall keep the County Representative informed of the progress of the Work during the permitting phase and shall coordinate with the County Representative to ensure that permitting requirements are acceptable to the County.

(b) Within ten (10) days from the date that the Developer obtains all permits, the Developer shall submit copies of all permits to the County Representative. The obtaining of such permits shall not be considered as complete until any review and/or appeal is final by the highest body authorized to determine same or until the time for such appeal or review has

expired, whichever date is later. If suit or other proceedings are brought to invalidate any permit, the obtaining of the permits shall not be considered as complete until final judgment, decree, or other appropriate decision has been entered and the time for appeal therefrom shall have expired, or if any appeal has been taken, until the appeal has been finally determined. In the event of an unforeseen delay, the Developer will be entitled to a day for day extension beyond the ten (10) days to provide a copy of the permits until such final determination.

6.08 Procurement of Construction Materials. The Developer and the County shall consider implementing a sales tax exempt procurement program in order to allow the County to purchase all or some of the construction materials and equipment for the Tennis Center Improvements on a tax-exempt basis with funds from the Developer. Such consideration shall include the feasibility of same, a determination by the County and the Developer of their respective costs to implement the program, and any savings to be realized by the Parties by implementing such a program. To the extent that the Developer and the County agree on the implementation of this program, this Development Agreement will be amended accordingly to include all legal requirements of such program as well as an agreement on the reimbursement by the Developer to the County of its expenses relating to such program.

6.09 Construction.

(a) Within 30 days from the date that the Developer obtains all permits, the Developer shall submit to the County Representative evidence of compliance with the requisite contractor selection process, SBD Schedule Of Intent (SOI is Attachment 1 to Exhibit "J"), and satisfy the requirements in 6.02(e), (f), and (g) and Schedule of Values for the Work ("Compliance Evidence"). Within ten (10) Business Days after the County receives same, the County Representative shall either approve them or deliver to the Developer specific written corrective comments. The County shall not be unreasonable in exercising their approval rights hereunder. If corrective comments are issued as provided above, then once all comments have been satisfactorily addressed by the Developer, the County shall issue a Notice-to-Proceed to the Developer. In the event that the County Representative does not deliver written corrective comments to the proposed Compliance Evidence within such ten (10) Business Day period, then the Developer may send the County a notice of second request for approval of the Compliance Evidence, with copies of the notice to each of the Director of Parks, the Assistant Director of Parks and the Project Manager, which request shall bear a caption in bold font of 12 points or larger which states substantially the following: **"NOTICE: THIS IS A SECOND REQUEST FOR APPROVAL OF THE COUNTY TO COMPLIANCE EVIDENCE FOR THE CRANDON PARK TENNIS CENTER DEVELOPMENT. FAILURE OF THE COUNTY TO SEND WRITTEN NOTICE OF ITS DISAPPROVAL, IDENTIFYING THE CORRECTIVE COMMENTS OR OTHER REASONS FOR SUCH DISAPPROVAL, WITHIN FIVE (5) BUSINESS DAYS AFTER DELIVERY OF THIS SECOND NOTICE SHALL BE DEEMED TO CONSTITUTE THE APPROVAL OF THE COUNTY TO SUCH COMPLIANCE EVIDENCE."** If, within five (5) Business Days after delivery of such second request bearing such caption, the County does not provide written notice of disapproval, identifying its reasons for disapproval or corrective comments, then the proposed Compliance Evidence shall be deemed approved.



(b) The Developer shall schedule a pre-construction meeting between its Construction Manager and the County's Project Manager prior to mobilization. The pre-construction meeting shall serve to review and discuss the upcoming construction activities and its impact to Crandon Park operations. Upon agreement between the Developer, its Construction Manager and the County as to all construction work activities and the associated logistics and timing, the County will issue an authorization to occupy the Site. Upon issuance of the authorization to occupy the Site, the Developer shall be fully responsible for securing the Site and all construction activities occurring therein.

(c) The Developer shall be responsible for the construction of the Work in accordance with the approved Construction Documents, and the quality and workmanship shall meet or exceed the specifications. Further, all Work shall comply with all Applicable Laws. All construction shall be performed by licensed contractors and subcontractors approved by the County, and such approval shall not to be unreasonably withheld, conditioned or delayed.

(d) The Developer shall work closely with the County in scheduling and engaging in the construction activity so as not to disrupt Crandon Park special events outside of the Site, including but not limited to Special Events, as such term is defined in Implementing Order 8-3. Where conflict may occur, then the PROS Director shall reasonably make the determination as to the Developer's right to continue the Work and the necessity of temporarily halting or continuing activity by the Developer. The County shall provide the Developer with thirty (30) days prior notice of all special events. The Developer shall be liable for any damage, loss, action, costs (including costs to defend any action) caused by the Developer's failure to cease work after written notice from the County.

6.10 Punch List. The Architect and the Developer, in consultation and with input from the County Representative, shall cause to be prepared a punch list of items to be completed by the Construction Manager after Substantial Completion so that the Work will be in general conformity with the Construction Documents. The Developer shall provide the County Representative with a copy of the punch list and shall incorporate all comments from the County into the punch list. The Developer shall use reasonable efforts to cause the Construction Manager to complete the punch list items as soon as reasonably practicable in accordance with Construction Management Contract. All work shall be performed by the Construction Manager in a good and workmanlike manner in conformity with the Construction Documents so that on the Final Completion date the Tennis Center Improvements are in good working order and condition and ready for immediate use. The County Representative shall be provided with a copy of the punch list items by the Construction Manager upon completion of all work items.

6.11 Warranties. To the extent practicable, all the Construction Manager warranties and the relevant subcontractor, supplier and manufacturer warranties with respect to the Tennis Center Improvements shall name the Developer and the County as intended beneficiaries of the warranties. The Developer shall not knowingly take any action negating the Construction Manager and any subcontractors', suppliers' and manufacturers' warranties, except for emergencies, matters of public safety and, with the prior consent of the County Representative (which shall not be unreasonably withheld, denied or delayed), in connection with the settlement of warranty claims. One original document of each warranty shall be delivered to the County

Representative upon the earlier of the date of Final Completion or within sixty (60) days of the date of completion of punch list items.

6.12 Liens. The Developer shall cause the Tennis Center Improvements to be constructed in accordance with the Construction Documents free and clear of any and all Liens arising from the Work that encumber the property comprising the Site or the Tennis Center Improvements. In the event any such Lien is filed by the Architect, the Construction Manager, or any subcontractors or suppliers, the Developer shall cause said Lien to be discharged or transferred to appropriate bond within thirty (30) days of recording. If the Developer does not discharge or transfer to appropriate bond any such Lien within thirty (30) days of recording, then the County shall have the right, but not the obligation, to cause the Lien to be released by any means the County reasonably deems proper, including payment of the Lien and the Developer shall immediately reimburse County for same. The Developer shall have the right to contest any such Lien in good faith.

6.13 Art in Public Places. The Project shall be subject to the Art in Public Places provisions set forth pursuant to Section 2.11.15 of the Miami-Dade County Code (the "Code"), and pursuant to the Dade County Guide to Art in Public Places (the "Guide") which provisions of the Code and Guide are incorporated herein by reference. The Developer shall transmit 1.5% of all capital costs (as defined by the Code) of the then applicable Phase of the Project to Miami-Dade County Department of Cultural Affairs for Art in Public Places for the implementation of the Art in Public Places program and the contract(s) with the artist(s) for the Project shall be between the artist(s) and the Art in Public Places Trust in accordance with the Code and Guide. Art in Public Places will work collaboratively with the Developer on the implementation of Art in Public Places program pursuant to the requirements of the Code and pursuant to the Guide.

## ARTICLE 7

### TENNIS CENTER IMPROVEMENTS FUNDING

7.01 Sources of Funds. The Tennis Center Improvements to be constructed pursuant to this Development Agreement and as contemplated by the Resolution shall be fully and solely funded by the Developer and/or any affiliates of the Developer. The Developer may seek to finance the construction of the Tennis Center Improvements through bonds issued by the Industrial Development Authority, private bank financing, and/or any other reasonable and commercially prudent and acceptable financing vehicle. The Developer understands and agrees that the County shall not, in any event, contribute any money, either directly or in-kind, towards the construction of the Tennis Center Improvements. Moreover, any financing issued or and/or obtained by the Developer to fund the Tennis Center Improvements shall be secured and/or repaid solely from the Developer funds, including but not limited to certain Tournament revenues; in no instance shall the County ever secure, repay and/or be required to secure and/or repay any loan, bonds, and/or other financing obtained by the Developer to fund the Tennis Center Improvements. The Developer shall provide the County with reasonable evidence that it has obtained all of the funding necessary for the Developer to complete Phase 1 of the Work as soon as reasonably practicable after the Effective Date, but in no event any later than two-hundred and seventy (270) days after the Effective Date. The Developer shall diligently seek

funding for Phase 1 and the Subsequent Phases of the Project on reasonable and commercially prudent terms. With respect to the Subsequent Phases, the Developer shall notify the County when the Developer has obtained such financing. The Developer commits to agree to pay to the lender debt service of \$2,100,000 per year for the Phase 1 financing and obtain at least \$28,000,000 in financing proceeds, exclusive of any required debt service reserve, to use for the construction Phase 1. Developer shall structure its financing to maximize the amount of financing proceeds it obtains while keeping its annual debt service payments at \$2,100,000. The County agrees to act reasonably and cooperatively in connection with the Developer's efforts to obtain funding for Phase 1 and Subsequent Phases, but such cooperation shall not require the County to undertake any liability with respect to the debt or other obligations incurred by the Developer under such financing.

7.02 Funding Account. The Developer shall establish and maintain a segregated deposit account funded and maintained by the Developer with a reputable bank or other financial institution ("Funding Account"), and shall maintain such Funding Account until all funds deposited therein are applied in accordance with this Development Agreement. The Developer shall deposit all of the funds to be used to construct the Tennis Center Improvements into the Funding Account. The Funding Account and monies on deposit therein (i) shall be withdrawn, used and applied solely for the payment of Project Costs, (ii) shall be invested solely in conservative investments that may not reduce the amounts deposited into the Funding Account and may be immediately withdrawn for the purposes contemplated by this Development Agreement, and (iii) shall be free and clear of all liens, claims, charges, security interests and encumbrances ("encumbrances"), except for encumbrances in favor a provider, guarantor or insurer of financing to the Developer. The Funding Account may be maintained with such provider, guarantor or insurer of financing, or its designee, pursuant to the terms of such financing.

7.03 Cost Overruns. The Developer shall be solely responsible for, and shall fund or cause to be funded, all Cost Overruns. "Cost Overruns" means all costs necessary to complete the then current Phase of the Project (including without limitation, all such costs of planning, designing, constructing, and equipping the Tennis Center Improvements and all related indemnity and damage obligations to, and amounts due and owing to, contractors, subcontractors, suppliers, architects, engineers and other vendors), in excess of the total Project Budget. The Construction Management Contract shall require that the Construction Manager submit and implement a construction recovery schedule in each instance where a critical path deadline has been missed due to unexcused delay on the part of the Construction Manager.

7.04 Developer to Keep Funding in Balance. The Developer shall maintain a true, accurate, complete and up-to-date record that reconciles each line item of the Project Budget for the then current Phase against (a) the total amount of the Project Costs for each line item that is covered by contracts in force, including adjustments due to amendments and/or Change Orders; (b) the amount of Project Costs for each line item disbursed to date; (c) the estimated amount of Project Costs for each line item necessary to be disbursed in the future to complete (in accordance with the Design Documents) the design services, the construction work, materials and other services covered by that line item; and (d) the variance between the sum of items (b), and (c) for that line item versus the Project Budget for that line item. The Developer shall be

entitled to adjust the Project Budget by reallocating amounts between line items, subject to the Change Order approval process, when applicable, in Section 6.03. A copy of the record shall be furnished at least quarterly to the County. The Developer shall be permitted to apply value engineering techniques to limit or prevent Cost Overruns where in its judgment practical, subject to the Developer's obtaining approval of Change Orders to the extent required under Section 6.03. The funding of the Tennis Center Improvements shall be deemed to be "in balance" at a particular time of determination if the sum of the following equals or exceeds the amount necessary to pay when due the total of the estimated remaining amount of Project Costs necessary to complete the then current Phase of the Tennis Center Improvements in accordance with the Design Documents, namely the sum of (i) the then current balance of the Funding Account-, plus (ii) the CM Services Security, plus (iii) the reasonable projected investment earnings on the Funding Account. The amounts in clause (iii) above shall be determined in good faith by the Developer based on reasonable assumptions. If and whenever the funding of the Tennis Center Improvements is not in balance as provided in this Section, the Developer shall report the details to the County and, upon the written demand by the County, shall be obligated to bring the funding of the Tennis Center Improvements in balance within three (3) months following the demand.

7.05 Equipment Leasing. The County Representative shall have the right to review all leases and related documents associated with the leasing of material equipment and system components of the Tennis Center Improvements that are permanently affixed to the Site. The County Representative shall have the right to approve any leasing of material equipment or system components which are permanently affixed, which approval shall not be unreasonably withheld, conditioned, or delayed. Any request for approval shall be accompanied by a term sheet for the proposed lease(s) containing all material business terms and economic terms of the proposed lease. Approval shall be granted or denied within five (5) Business Days of the written request for such approval. The failure of the County Representative to respond in writing within five (5) Business Days shall be deemed to be approval. With respect to all such leases, upon the termination of the Amended and Restated Tournament Agreement, the County shall have the right, at its sole discretion, to assume such leases and the Developer shall cause all such leases to be assignable to the County.

## ARTICLE 8

### INSURANCE

8.01 Insurance. In addition to the insurance required in the Tournament Agreement, the Developer shall purchase and maintain, or cause the Architect, the Construction Manager or Contractors and subcontractors (as appropriate) to purchase and maintain, the insurance policies described in this Section (the "Insurance Policies"). The premiums for the Insurance Policies shall be included in the Project Cost paid by the Developer. The Developer shall furnish to Miami-Dade County, c/o PROS, 275 NW 2<sup>nd</sup> St, Miami, Fl 33128, with Certificate(s) of Insurance, by the earlier to occur of (A) thirty (30) days after the Effective Date and (B) the date the Developer first undertakes any testing or Site preparation work on the Site, which indicate that insurance coverage has been issued in the name of the Developer and the County and which meets the requirements as outlined below:

(a) Builder's Risk Insurance: Builder's risk insurance for direct physical loss or damage resulting from an insured peril to the building, structures and other improvements comprising all or part of the Work, including materials and equipment that are intended for incorporation into the Stadium or Park Improvements (as the case may be), whether located at the Site, in storage, or in transit. The policy shall include coverage for physical loss or damage from fire and other perils as are included under an "all risk" or "special form" policy to include named windstorm and flood insurance. Policy limits shall be equal to 100% of the insurable value of the structures. The Builder's Risk Insurance policy shall be in the name of Developer and the County. The builder's risk insurance shall specifically insure the construction materials and equipment purchased for the Tennis Center Improvements for incorporation in the Work.

(b) Professional Liability Insurance: Professional liability insurance for losses that arise out of the professional services of the Architect and other professionals working on the Tennis Center Improvements shall be provided with policy limits no less than \$5,000,000.00 per claim/annual aggregate. If the Developer obtains Contingent Professional Liability Insurance or Owners Protective Professional Indemnity insurance in order to comply with this coverage requirement then the County shall be an additional insured to such professional liability insurance policy. If this option is exercised, a certificate of insurance for the architect will also be provided. Required professional liability insurance shall provide coverage from the commencement of the design work for the applicable Phase and shall continue for no less than five (5) years after the completion of each Phase of the Project.

(c) Workers' Compensation: Workers' compensation insurance meeting the statutory requirements of the State, including, as applicable, Chapter 440, Florida Statutes.

(d) General Liability: Commercial general liability insurance coverage for third party bodily injury or property damage claims (i) arising out of services performed by the Developer or the Construction Manager, Contractors, and subcontractors for a combined single limit for bodily injury and property damage of not less than \$5,000,000.00 each occurrence/annual aggregate. Products and completed operations coverage under the commercial general liability insurance relating to construction services performed on the Site shall continue for a period of not less than five (5) years after Substantial Completion. Miami-Dade County shall be shown as additional insured with respect to this coverage

(e) Business Automobile Liability Insurance: Automobile liability insurance covering all owned, non-owned and hired vehicles used in connection with this Development Agreement in an amount not less than \$1,000,000.00 policy shall be endorsed to provide Broadened Coverage for Covered Autos – Endorsement CA 9948 (–or equivalent) for the Business Auto, Motor Carrier and Truckers Coverage Forms, if applicable.

(f) Environmental Liability Insurance in an amount no less than \$ 5,000,000 per occurrence: Miami-Dade County shall be named as additional insured with respect to this coverage. This policy will be subject to the approval of the County, which approval shall not be unreasonably withheld, delayed or conditioned.

The foregoing policy limits may be achieved by any combination of primary and excess policies so long as the overall minimum limits are procured. The County acknowledges that the Developer may consider a "developer controlled" insurance program, which meets the requirements as set forth in Article 8.

8.02 General Insurance Provisions. The Insurance Policies required in Sections 8.01(a), (d), (e), and (f) shall name the County and the Developer as additional insured contain waivers of subrogation where appropriate in favor of the County and the Developer, and shall be maintained and kept in force at least through Final Acceptance with the exception of Builder's Risk which will be kept in force through substantial completion. The County shall be named as a loss payee on the Builders Risk Policy required in Section 8.01(a). The Developer shall provide the County Representative written notice of any material changes to the Insurance Policies within thirty (30) days prior to the date the change becomes effective, if practicable, but in no instance later than the date such changes become effective. The Insurance Policies shall be obtained from financially sound insurance companies rated not less than A-; VII by A.M. Best & Company (or any equivalent rating agency approved by the County Risk Management Division, which approval shall not be unreasonably withheld, delayed or conditioned) and authorized to do business in the State. Any and all costs incurred by the Developer in discharging obligations under this Article 8 shall be included as Project Costs. The policy limits stated in this Article 8 apply to Phase 1. For Subsequent Phases, the Parties agree to negotiate in good faith and establish appropriate limits based on customary County practice for similar risks at the time of commencement of the Subsequent Phases. Notwithstanding the foregoing, the County will be the final arbiter and decision-maker as to the appropriate and required insurance for the Subsequent Phase.

8.03 Damage or Destruction.

(a) If at any time after Commencement of Construction, all or any part of the Work shall be damaged or destroyed by a casualty of any nature (a "Casualty"), the Developer shall, to the extent Applicable Laws permit, promptly restore, replace, rebuild, repair and/or alter (such work being "Casualty Repair Work") in general conformance with the Design Documents all or such portion of the Work as shall have been damaged or destroyed in general conformance with the Design Documents. If the Casualty occurs prior to the completion of a then current Phase, and if this Agreement is terminated, then the obligation to perform such Casualty Repair Work shall survive such termination.

(b) The Developer shall be responsible to fund all deductibles and amounts exceeding any sub-limits due under the Property Insurance Policy.

## ARTICLE 9

### REPRESENTATIONS, WARRANTIES AND COVENANTS

9.01 County Representations, Warranties and Covenants. The County represents, warrants and covenants to the Developer that the County has full power and authority to enter into this Development Agreement, and the execution, delivery, and performance of this

Development Agreement by the County have been duly authorized by all necessary governmental action (other than all of the other various customary regulatory approvals, licenses and permits which are required for the development, construction, use and operation of the Tennis Center Improvements). The County Mayor or his designee is the party duly authorized to execute and deliver this Development Agreement on behalf of the County and has so executed and delivered this Development Agreement. All necessary governmental action required by the County has been taken to duly authorize the execution, delivery and performance by the County pursuant to this Development Agreement. This Development Agreement is a valid and binding obligation of the County, enforceable against the County in accordance with its terms. The County Representative has been duly authorized to act on behalf of the County as provided in this Development Agreement.

9.02 Developer Representations, Warranties and Covenants. The Developer represents, warrants and covenants to the County that:

(a) The Developer is a corporation, duly formed and validly existing under the laws of the State of Florida, and has all requisite limited liability company power and authority to enter into this Development Agreement. This Development Agreement is a valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms.

(b) The execution, delivery and performance by the Developer of this Development Agreement have been duly authorized by all necessary limited liability company action of the Developer and will not violate the Developer's certificate of formation or result in the breach of or constitute a default under any loan or credit agreement, or other agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected. All consents and approvals of any Person required in connection with the Developer's execution of this Development Agreement have been obtained.

(c) The Developer has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Development Agreement or the Tournament Agreement, other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

(d) The execution, delivery and performance of this Development Agreement and the Tournament Agreement are not prohibited by and do not conflict with any other agreements, instruments, judgments or decrees to which the Developer is a party or is otherwise subject.

(e) The Developer has received no notice as of the date of execution of this Development Agreement asserting any noncompliance in any material respect by the Developer with any Applicable Laws with respect to the transactions contemplated in and by this Development Agreement and the other Tennis Center Agreements.

The Developer is not in default with respect to any judgment, order, injunction or decree of any Governmental Authority which is in any respect material to the

transactions contemplated in and by this Development Agreement and the other Tennis Center Agreements.

9.03 Mutual Covenants.

(a) The Parties, whenever and as often as each shall be reasonably requested to do so by the other Party shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Development Agreement, subject, however, in all instances to any necessary Board approvals.

(b) In exercising its rights and fulfilling its obligations under this Development Agreement, each of the Parties shall act in good faith.

(c) No Party shall terminate this Development Agreement on the ground of ultra vires acts or for any illegality or on the basis of any challenge to the enforceability of this Development Agreement, except as otherwise permitted in this Development Agreement or in the Amended and Restated Tournament Agreement. Subject to the preceding sentence, no such challenge may be asserted by any Party except by the institution of a declaratory action in which the Parties are parties.

(d) Should either Party receive knowledge about any matter which may constitute a breach of any of its warranties or covenants set forth in this Article 9 which arises after the date of this Development Agreement, it shall promptly notify the other Party of the same in writing.

(e) During the term of this Development Agreement, the Parties shall comply with all Applicable Laws relating to its ownership of the Site and the Tennis Center Improvements, and comply with Applicable Laws with respect to the use, operation, development, occupancy and/or construction of the Tennis Center Improvements by the Developer. The Parties shall comply with all Applicable Laws relating to the exercise of their rights and performance of their obligations under the Development Agreement, but not with respect to the use, operation, development, occupancy and/or construction of the Tennis Center Improvements by the Developer (which shall be the responsibility of the Developer). The County in its capacity as owner of the Tennis Center Improvements and Site shall execute such documents and file such documents and reports as may be reasonably necessary to enable the Developer to obtain and maintain all necessary permits and licenses that are required of an owner of the Tennis Center Improvements and/or Site.

(f) All covenants, representations and warranties contained in this Development Agreement shall survive the execution and delivery of this Development Agreement. No action taken pursuant to or related to this Development Agreement, including any investigation by or on behalf of a Party shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition or agreement in this Development Agreement.



(g) In exercising its rights and fulfilling its obligations under this Development Agreement, the County and the Developer shall act in good faith. Notwithstanding the foregoing, each Party acknowledges that in each instance under this Development Agreement where a party is obligated to exercise good faith or to use good faith efforts, such party shall not be required to expend any funds, or grant any other consideration of any kind, in the performance of such undertaking, and each party further acknowledges that the obligation of any party to act in good faith, or undertake good faith efforts does not constitute a warranty, representation or other guaranty that the result which the Parties are attempting to achieve will be successfully achieved and no Party shall be liable for any failure to achieve the result or results intended so long as the Party has complied with its obligation to act in good faith.

(h) By execution of this Development Agreement, the County hereby authorizes the County Mayor or his designee to execute on behalf of the County any additional documents, subject to Board approval where required by Applicable Law or where, in the discretion of the County Mayor or his designee, in consultation with the County Attorney's Office, the County Mayor or his designee determines that Board approval is necessary or desirable. Notwithstanding the foregoing, (a) each Party shall have reasonable approval rights over the form and substance of all documents which it is asked to execute; (b) no Party shall be required to fundamentally change any rights, duties or obligations of such Party under this Development Agreement or any other agreement; and (c) such documents may, if required by Applicable Law or the County Mayor or his designee, after consultation with the County Attorney's Office, deems necessary or desirable, require approval of the Board.

## ARTICLE 10

### DEFAULTS AND REMEDIES

10.01 Developer Default. Each of the following shall constitute a default by the Developer hereunder (a "Developer Default"):

(a) If any representation or warranty made by the Developer in this Development Agreement shall at any time prove to have been incorrect in any material respect as of the time made, and the Developer fails to cause such representation or warranty to become correct within thirty (30) days after written notice thereof is given to the Developer by the County Representative; provided, however, that if it is not reasonably possible to cause such representation or warranty to become correct within such thirty (30) day period, then the Developer can request an extension of such cure period from the County for good cause shown and provided that the Developer has commenced the cure during the initial thirty (30) day period and diligently continues to cause such representation or warranty to become correct. However, in no event shall the County extend the cure period beyond one hundred eighty (180) days following the date of the original notice without prior Board approval.

(b) If the Developer fails to pay any amount payable by the Developer under this Development Agreement and fails to cure the same within thirty (30) days after written notice to the Developer from the County Representative.

(c) If the Developer shall breach any of its other covenants or agreements in this Development Agreement other than as referred to in Sections 10.01(a) and (b) and such breach is not cured within thirty (30) days after written notice thereof is given to the Developer by the County Representative; provided, however, that if it is not reasonably possible to cure such breach within such thirty (30) day period, the Developer can request an extension of such cure period from the County for good cause shown and provided that the Developer has commenced the cure during the initial thirty (30) day period and diligently continues to cause such representation or warranty to become correct. However, in no event shall the County extend the cure period beyond one hundred eighty (180) days following the date of the original notice without prior Board approval.

10.02 County Default. Each of the following shall constitute a default by the County under this Development Agreement (a "County Default"):

(a) If any representation or warranty made by the County in this Development Agreement shall at any time prove to have been incorrect in any material respect as of the time made, and the County fails to cause such representation or warranty to become correct within thirty (30) days after written notice thereof is given to the County by the Developer; provided, however, that if it is not reasonably possible to cause such representation or warranty to become correct within such thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the County commences and thereafter diligently continues to cause such representation or warranty to become correct.

(b) If the County shall breach any of the other covenants or provisions in this Development Agreement other than as referred to in Sections 10.02(a) and such breach is not cured within thirty (30) days after written notice thereof is given to the County by the Developer; provided, however, that if it is not reasonably possible to cure such breach within such thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the County commences and thereafter diligently continues to cure such breach; provided, further, that no cure period shall not apply to, and no rights to cure exists for, any covenant that is required to be performed by a specified date or during a specified period of time.

10.03 Remedies.

(a) Except as otherwise specifically provided in this Development Agreement, either Party may institute litigation to recover damages for any Default or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy) consistent with the purposes of this Development Agreement. To the extent applicable, neither the existence of any claim or cause of action of a Party against the other Party, whether predicated on this Development Agreement or otherwise, nor the pendency of arbitration proceedings involving the other Party, shall (a) constitute a defense to specific enforcement of the obligations of such other Party under this Development Agreement or (b) bar the availability of injunctive relief.

(b) Except with respect to rights and remedies expressly declared to be exclusive in this Development Agreement or the Tournament Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default.

(c) Any failure of a Party to exercise any right or remedy as provided in this Development Agreement shall not be deemed a waiver by that Party of any claim for damages it may have by reason of the Default.

(d) Damages to be paid by the County under this Article 10 shall be payable from Non-Ad Valorem Revenue sources.

#### 10.04 Self-Help Remedies.

(a) If a court of competent jurisdiction has determined pursuant to a final judgment or award that a the Developer Default has occurred and such the Developer Default is continuing, or if the Developer has abandoned the Work for a period of sixty (60) consecutive days without providing to the County reasonable assurances as to the Developer's ability to proceed with the Project, then, in addition to any other remedy available to the County under this Development Agreement, the County may pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

(b) Take possession of the Site and the Tennis Center Improvements and complete the construction and the equipping of the Tennis Center Improvements and do anything required, necessary or advisable in the County's sole judgment to fulfill the obligations of the Developer under this Development Agreement, including the rights to avail itself of or procure performance of the Construction Management Contract or the Architect's Contract, as the case may be, to let any contracts with the same contractors, architects, subcontractors or others and to employ watchmen to protect the Tennis Center Improvements from injury. Without restricting the generality of the foregoing and for the purposes aforesaid, the Developer hereby appoints and constitutes the County as the Developer's lawful attorney-in-fact with full power of substitution in the Site to perform the following actions:

(i) to complete construction and equipping of the Tennis Center Improvements;

(ii) to make changes in the Design Documents which shall be necessary or desirable to complete the Tennis Center Improvements, as the case may be;

(iii) to retain or employ new contractors, subcontractors, architects, engineers and inspectors;

(iv) without inquiring into and without respect to the validity thereof, to pay, settle or compromise all existing bills and claims which may be Liens, or to avoid such bills and claims becoming Liens, against the Site and Tennis Center Improvements or as may be

necessary or desirable for the completion of the construction and equipping of the Stadium, and Park Improvements;

(v) to prosecute and defend actions or proceedings in connection with the Site and Tennis Center Improvements;

(vi) to take action and require such performance as the County deems necessary or advisable under any of the payment and/or performance bonds to be furnished by the Construction Manager under the Construction Management Contract and to make settlements and compromises with the surety or sureties there under, and in connection therewith, to execute instruments of release and satisfaction; and

(vii) to do any and every act which the Developer might do in its own behalf with respect to the construction of the Tennis Center Improvements it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked.

(c) Exercise or pursue any other remedy or cause of action permitted at law or in equity or under this Development Agreement or the Tournament Agreement.

(d) If a court of competent jurisdiction or the judge selected under Article 13 has determined pursuant to a final judgment or award that a County Default has occurred and such County Default is continuing, in addition to any other remedy available to the Developer under this Development Agreement, the Developer shall have the right, but not the obligation, to render the performance required to cure a County Default. If a court of competent jurisdiction or the judge selected under Article 13 has determined pursuant to a final judgment or award that a Developer Default has occurred and such Developer Default is continuing, in addition to any other remedy available to the County under this Development Agreement, the County shall have the right, but not the obligation, to render the performance required to cure a Developer Default.

## ARTICLE 11

### TERMINATION

11.01 Termination Rights for Default. This Development Agreement shall terminate upon written notice from the Developer to the County after a County Default which the County has failed to cure within the applicable cure period, or upon written notice from the County to the Developer after a Developer Default which the Developer has failed to cure within the applicable cure period.

11.02 Termination Rights for Unfavorable Court Decision. Both the Developer and the County shall have the right, within sixty (60) days following finality of any appeals taken following a decision by a court of competent jurisdiction which: (a) determines that the Project, in whole or in part, cannot be constructed, operated or managed pursuant to the terms of this Development Agreement or the Amended and Restated Tournament Agreement; or (b) determines that the referendum approval per the Resolution was not properly obtained, provided

that each Party has used reasonable efforts to modify this Development Agreement and the Amended and Restated Tournament Agreement in order to bring such agreements into compliance with the law, as set forth in the above-referenced final unappealable decision, for a period of not less than thirty (30) days. If this Development Agreement terminates under this Section 11.02, the Developer shall be responsible for all costs, expended through the date of termination for the Tennis Center Improvements under this Development Agreement. If this Development Agreement terminates under this Section 11.02, the Amended and Restated Tournament Agreement, including all attachments thereto, and the "Lease Agreement" (as defined in the Amended and Restated Tournament Agreement) shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance by the Parties (except for the rights and obligations that expressly are to survive termination as provided in this Development Agreement and those agreements). In the event that the Developer and/or the County elects to so terminate those agreements, then the rights and obligations of the Parties will be those provided by the Existing Tournament Agreement without regard to the Amended and Restated Tournament Agreement.

11.03 Termination Rights for Financing. If the Developer is unable to obtain at least \$28,000,000.00 in financing proceeds, excluding any required debt service reserve, for Phase 1 of the Project as required by, and within the timeframe set forth in Section 7.01 of the Development Agreement, the Developer shall have the right, upon written notice to the County, to terminate this Development Agreement. The termination of this Development Agreement pursuant to this Section 11.03 shall result in the automatic termination of the Amended and Restated Tournament Agreement, its Management Addendum, and the Space Lease Agreement. In the event that the Developer and/or the County elects to so terminate those agreements, then the rights and obligations of the Parties will be those provided by the Existing Tournament Agreement without regard to the Amended and Restated Tournament Agreement.

11.04 Cross-Termination Provisions. The occurrence of any default under this Development Agreement shall likewise be deemed a default under the Amended and Restated Tournament Agreement, including the Management Addendum, and the Space Lease Agreement and a termination of this Development Agreement shall result in the right to terminate all of those agreements as well. Similarly, a default under the Amended and Restated Tournament Agreement, including the Management Addendum, shall be deemed a default under this Development Agreement and the termination of the Amended and Restated Tournament Agreement shall result in the County's right to terminate this Development Agreement.

11.05 Limitation of Liability. Notwithstanding anything else in this Development Agreement, in no event shall any Party be liable under any provision of this Development Agreement for any lost profits, special, indirect, incidental, consequential, exemplary, treble or punitive damages, in contract, tort or otherwise, whether or not provided by statute and whether or not caused by or resulting from the sole or concurrent negligence or intentional acts of such Party or any of its affiliates or related parties. Further, in no event shall the County ever be liable for repayment of any financing obtained by IPC for the development and construction of the Tennis Center Improvements nor for the direct nor depreciated cost of those Tennis Center Improvements. This provision shall survive the expiration or earlier termination of this Development Agreement.

## ARTICLE 12

### INDEMNIFICATION

12.01 Indemnification by the Developer. To the maximum extent permitted by State law, the Developer shall indemnify, defend and hold harmless The County, and its officers, employees, attorneys, agents and instrumentalities from and against any claim, loss, damage, liability, cost or expense, including reasonable attorneys' fees, directly arising out of (a) any breach, default or misrepresentation by the Developer under this Development Agreement or (b) any personal or bodily injury, including death, to any person and destruction of property resulting from the negligent performance (or failure to perform) by the Developer of the Work; provided, however, that the foregoing indemnification shall not extend to those claims, losses, damages, liabilities, costs or expenses asserted against or suffered by the County (or its officers or employees) which are due to the negligent acts or omissions of the County (or its officers or employees), or to any action taken by the County in violation of this Development Agreement or any action not taken that is required under this Development Agreement. Notwithstanding the foregoing, the Developer shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including reasonable attorneys' fees and expenses) arising from or in connection with any loss or liability due to Force Majeure.

12.02 Indemnification by County. The County does hereby agree to indemnify and hold harmless the Developer and its officers, employees, attorneys or agents (the "Developer Indemnitees") to the extent and within the limitations of Section 768.28 Fla. Stat., and subject to the provisions of that Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum set forth in said statute, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum set forth in said statute, from any and all personal injury or property damage claims, liabilities, losses and causes of action arising from the same claim which may arise solely as a result of the negligence of the County in connection with its rights and obligations under this Development Agreement. However, nothing herein shall be deemed to indemnify the Developer Indemnitees from any liability or claim arising out of the negligent performance or failure of performance of the Developer or its employees, agents, servants, partners, principals or subcontractors, or any unrelated third party. The Developer expressly understands and agrees that any insurance protection required by this Development Agreement or otherwise provided by the County shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Developer Indemnitees as herein provided. Notwithstanding the foregoing, the County shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including reasonable attorneys' fees and expenses) arising from or in connection with any loss or liability due to Force Majeure.

#### 12.03 Indemnification Procedures.

(a) If any Person entitled to indemnification pursuant to this Article 12 (an "Indemnified Party") shall discover or have actual notice of facts that have given rise, or which may give rise to, a claim for indemnification under this Article 12, or shall receive notice of any action or proceeding of any matter for which indemnification may be claimed (each, a "Claim"),

the Indemnified Party shall, within twenty (20) days following service of process or other written notification of such claim (or within such shorter time as may be necessary to give the Person obligated to indemnify the Indemnified Party (the "Indemnitor") a reasonable opportunity to respond to such service process or notice of claim), and within twenty (20) days after any other such notice, notify the Indemnitor in writing thereof together with a statement of such information respecting such matter as the Indemnified Party then has; provided, however, the failure to notify the Indemnitor shall not relieve the Indemnitor from any liability which it may have to the Indemnified Party except and solely to the extent that such failure or delay in notification shall have adversely affected the Indemnitor's ability to defend against, settle or satisfy any such Claim.

(b) The Indemnitor shall be entitled, at its cost and expense, to contest or defend any such Claim by all appropriate legal proceedings through attorneys of its own choosing, provided the Indemnitor shall have first notified the Indemnified Party of its intention to do so within twenty (20) days after its receipt of such notice from the Indemnified Party. If within twenty (20) days following such notice from the Indemnified Party, the Indemnified Party has not received notice from the Indemnitor that such claim will be contested or defended by the Indemnitor, the Indemnified Party shall have the right to (i) authorize attorneys satisfactory to it to represent it in connection therewith and/or (ii) subject to the approval of the Indemnitor, which approval shall not be unreasonably withheld or delayed, at any time settle, compromise or pay such Claim, in either of which events the Indemnified Party shall be entitled to indemnification thereof as provided in this Article 12. These provisions in no way prevent the Indemnified Party from taking whatever actions are necessary to defend the Claim during the time before the Indemnified Party learns whether the Indemnitor will contest or defend the Claim. Attorneys' fees and costs accrued by the Indemnified Party during this time are indemnifiable. If required by the Indemnitor, the Indemnified Party shall cooperate fully with the Indemnitor and its attorneys in contesting or defending any such Claim or, if appropriate, in making any counterclaim or cross complaint against the Person asserting the Claim against the Indemnified Party, but the Indemnitor will reimburse the Indemnified Party for any expenses reasonably incurred by the Indemnified Party in so cooperating.

(c) The Indemnitor shall pay to the Indemnified Party in cash all amounts to which the Indemnified Party may become entitled by reason of the provisions of this Article 12, such payment to be made within thirty (30) days after such amounts are finally determined either by mutual agreement or by judgment of a court of competent jurisdiction. Notwithstanding that the Indemnitor is actively conducting a defense or contest of any Claim against an Indemnified Party, such Claim may be settled, compromised or paid by the Indemnified Party without the consent of the Indemnitor; provided however that if such action is taken without the Indemnitor's consent, its indemnification obligations with respect thereto shall be terminated and the Indemnitor shall have no obligation to the Indemnified Party. The Indemnitor shall have the right to settle, compromise or pay any Claim being defended by the Indemnitor without the Indemnified Party's consent so long as such settlement or compromise does not cause the Indemnified Party to incur any present or future material costs, expense, obligation or liability of any kind or nature, or require any admission or action or forbearance from action by the Indemnified Party that would have a material adverse effect on the Indemnified Party.

12.04 Survival. The obligations contained in this Article 12 will survive the expiration or earlier termination of this Development Agreement but only with respect to an event that may give rise to a Claim that in turn gives rise to a right of indemnification under this Article 12 and which such event occurs prior to such expiration or termination.

12.05 Interpretation. To the extent these indemnification clauses or any other indemnification clause in this Development Agreement do not comply with Chapter 725, Florida Statutes, as may be amended, these provisions shall hereby be interpreted as the Parties' intention to provide the maximum indemnification allowed by Chapter 725, Florida Statutes, as may be amended.

## ARTICLE 13

### ALTERNATIVE DISPUTE RESOLUTION

13.01 Voluntary Trial Resolution. Any dispute or claim between the Parties under this Development Agreement shall be submitted to voluntary trial resolution by a retired Miami-Dade County judge and otherwise in accordance with Fla. Stat. § 44.104 ("ADR"). Either Party may initiate ADR by written notice to the other Party, identifying the claim or dispute and the specific sections of this Agreement under which it arises ("an ADR Election Notice").

13.02 ADR Procedure. The Parties agree that: (i) the speedy resolution of any disputes or claims between them pursuant to this Article 13 is a mutual and material inducement to enter into this Agreement; (ii) the Party initiating and filing for voluntary trial resolution shall pay all filing fees associated therewith; (iii) each Party shall pay one-half of the cost of the trial resolution judge and court reporter required for the proceedings; (iv) each Party, in any such proceedings, shall pay for its own costs and expenses incurred in the prosecution and defense, as applicable, of any dispute or claim filed hereunder, including attorneys' fees and costs; and (v) voluntary trial resolution pursuant to this Article 13 is intended to be the sole and exclusive dispute resolution mechanism of the Parties with respect to disputes or claims between them under this Development Agreement. The Parties' sole avenue for equitable or monetary relief shall be through the ADR process described in this Article 13. Without limiting the foregoing:

(a) With respect to any voluntary trial resolution hereunder and regardless of any contrary provision of law, (i) such trial shall be conducted by a retired Miami-Dade County judge having no less than five (5) years' Civil Division experience in such judge's final ten (10) years of his/her tenure; (ii) the Parties hereby expressly retain all appeal rights afforded by law; and (iii) if the Parties are unable to agree upon and appoint a retired judge within thirty (30) days from the effective date of ADR Election Notice, then either Party may submit a request to the court for the appointment of the voluntary trial resolution judge pursuant to Fla. Stat. § 44.104(4). Pending the appointment of voluntary trial judge under ADR, either Party, where warranted under the circumstances, may petition the appropriate court sitting in Miami-Dade County Florida for injunctive relief until the matter can be resolved pursuant to the ADR procedures described above.



(b) The voluntary trial judge shall be bound by the provisions of this Development Agreement and shall not have the power to add to, subtract from or otherwise modify such provisions, and shall consider only the specific issues submitted to him/her for resolution.

(c) Within ten (10) days of the selection of a trial resolution judge, the trial resolution judge shall be required to consult with the Parties and issue a trial schedule setting forth deadlines for discovery, dispositive motions and the final hearing, which final hearing shall occur no later than one-hundred and eighty (180) days after the selection of the trial resolution judge. Unless otherwise agreed to by both parties in advance and in writing, the final hearing shall not exceed two days in length, with one day allotted to each party to present its case, including any opening and closing arguments.

(d) The trial resolution judge shall issue written findings and conclusions of law within thirty (30) days after the trial resolution hearing.

13.03 Venue; Waiver of Jury Trial. If any claim or dispute between the Parties under this Agreement is found not to be subject to ADR, then each Party submits to the exclusive jurisdiction of any court of competent jurisdiction sitting in Miami-Dade County. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection to venue in Miami-Dade County, including objections based on lack of personal jurisdiction or the doctrine of forum non conveniens. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT WHICH ANY PARTY MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY DISPUTE OR CLAIM SUBJECT TO ADR UNDER THIS DEVELOPMENT AGREEMENT.

## ARTICLE 14

### PARTY REPRESENTATIVES

14.01 Designation of County Representative. The PROS Director or his designee ("County Representative") shall act as liaison and contact person between the Developer and the County in administering and implementing the terms of this Development Agreement. The County Mayor shall notify the Developer in writing if he or she designates or redesignates another individual to serve as the County Representative. The County Representative shall have the power, authority and right, on behalf of the County, and without any further resolution or action of the Board, except as otherwise specifically provided in this Development Agreement, and so long as such actions or approvals do not cause the expenditure of any County funds, violate the CPMP, violate Applicable Law, and/or violate the Resolution , to do any of the following:

(a) review, approve and consent, in writing, to documents, plans, applications, and requests required or allowed by the Developer to be submitted to the County Representative, the County pursuant to this Development Agreement, including the Design Documents and forms of the Architect Contract or Construction Management Contract;

(b) consent to and approve, in writing, actions, events and undertakings by the Developer or other Persons for which consent and/or approval is required from the County Representatives, the County under this Development Agreement;

(c) sign any and all documents on behalf of the County necessary or convenient to the foregoing approvals, consents and appointments and shall sign said document in a timely manner; and

(d) grant written extensions of time that extend deadlines or time periods by up to 120 days and that do not otherwise materially affect the rights or obligations of the Developer or the County under this Development Agreement.

Any consent, approval, decision, or determination under this Development Agreement by the County Representative shall be binding on the County. The Developer and any other Person dealing with the County in connection with this Development Agreement or any matter governed by this Development Agreement may rely and shall be fully protected in relying upon the authority of the County Representative to act for and bind the County in any such matter. The County shall cause its County Representative to comply with all of the provisions of this Development Agreement.

14.02 Designation of the Developer Representative. The Developer shall name a representative within thirty (30) days of the Effective Date (the "Developer Representative") who shall act as liaison and contact person between the Developer and the County in administering and implementing the terms of this Development Agreement. The Developer Representative shall have the power, authority and right, on behalf of the Developer, and without any further resolution or action of the Developer, except as otherwise specifically provided in this Development Agreement to do any or all of the following:

(a) review, approve and consent to documents, plans, applications, and requests required or allowed by the County Representative, the County to be submitted to the Developer pursuant to this Development Agreement, including Design Documents and forms of the Architect Contract or Construction Management Contract;

(b) consent to and approve actions, events and undertakings by the County Representative or the County or other Persons for which consent and/or approval is required from the Developer under this Development Agreement;

(c) sign any and all documents on behalf of the Developer necessary or convenient to the foregoing approvals, consents and appointments and shall sign such documents in a timely manner.

Any consent, approval, decision, determination, waiver or amendment under this Development Agreement by the Developer Representative shall be binding on the Developer. The County and any other Person dealing with the Developer in connection with this Development Agreement or any matter governed by this Agreement may rely and shall be fully protected in relying upon the authority of the Developer Representative to act for and bind the

Developer in any such matter. The Developer shall cause the Developer Representative to comply with all of the provisions of this Development Agreement.

## ARTICLE 15

### MISCELLANEOUS

15.01 Notices. Any notice, consent or other communication under this Development Agreement shall be in writing and shall be considered given when delivered in person or sent by facsimile or electronic mail (provided that any notice sent by facsimile or electronic mail shall simultaneously be sent by personal delivery, overnight courier or certified mail as provided herein), one (1) Business Day after being sent by reputable overnight carrier, or three (3) Business Days after being mailed by certified mail, return receipt requested, to the Notified Party, with the copies indicated, at the addresses set forth below (or at such other address as a Party may specify by notice given pursuant to this Section to the other Party): If a notice is sent by email or facsimile on a day that is not a Business Day (or after 5:00 P.M. local time on a Business Day), then such notice shall be deemed given on the next Business Day.

If to County:

To the attention of:

Jack Kardys, Director  
275 NW 2 Street, Suite 516  
Miami, Florida 33128  
Attn: Freda Jordan

With a copy to:

County Attorney  
111 NW 1<sup>st</sup> Street, Suite 2810  
Miami, Florida 33128  
Attn: Monica Rizo

If to the Developer:

To the attention of:

International Players Championship, Inc.  
1360 E. 9<sup>th</sup> Street, Suite 100  
Cleveland, Ohio 44114  
Attention: John Raleigh

and to:

International Players Championship, Inc.  
1500 Douglas Road, Suite 230  
Coral Gables, Florida 33134  
Attention: Adam Barrett

With a copy to:

Stearns Weaver Miller  
Weissler Alhadeff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
Attention: Richard E. Schatz, Esq.

Notwithstanding the foregoing, periodic and ordinary course notices, deliveries and communications between the Developer and the County Representative or the Project Coordination Team may be given (and shall be considered given when provided) by any of the means set forth above, and to the address provided by any of the latter parties to the Developer from time to time.

15.02 Merger Clause. This Development Agreement, including the Exhibits to this Development Agreement and the Amended and Restated Tournament Agreement contain the sole and entire agreement among the Parties with respect to their subject matter, are fully integrated, and supersede all prior written or oral agreements among them relating to that subject matter, (but not including the Architect Contract and the Construction Management Contract which do include certain understandings of the Parties, as specifically set forth in this Development Agreement). Except as specifically set forth in this Development Agreement and the Amended and Restated Tournament Agreements, there shall be no warranties, representations or other agreements among the Parties or their affiliates in connection with the subject matter hereof or thereof.

15.03 Amendment. This Development Agreement may not be amended or modified except in a writing signed and duly executed by the Parties.

15.04 Binding Effect. This Development Agreement shall be binding upon the Parties and their respective successors and assigns, subject to the limitations on Transfer stated herein.

15.05 Waiver. Waiver by any Party of any breach of any provision of this Development Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Development Agreement. Any waiver must be in writing and signed by all Parties whose interests are being waived.

15.06 Nonrecourse Liability of the Developer Personnel. Notwithstanding and prevailing over any contrary provision or implication in this Development Agreement and except for their criminal acts with respect to this Development Agreement (i.e., acts which would constitute crimes were they prosecuted for and convicted of such acts), the officers, directors, partners, shareholders, members, employees and agents of the Developer (the "Developer Personnel") shall not in any way be liable under or with respect to this Development Agreement; and no deficiency or other monetary or personal judgment of any kind shall be sought or entered against any of the Developer Personnel with respect to liability under or with respect to this Development Agreement. The limitations of this Section 15.06 shall in no way limit the County's rights as provided in this Development Agreement (a) to specific performance of each and every provision of this Development Agreement or in any other instrument or document executed in connection with this Development Agreement (provided that specific performance shall in no event require the Developer or the Developer Personnel to make additional capital contributions), (b) to recover damages against the Developer for any breaches of this Development Agreement (provided that collection of damages is subject to the restrictions of this provision), or (c) to enforce remedies against all assets of the Developer.

15.07 Non-Recourse Liability of County Personnel. Notwithstanding and prevailing over any contrary provision or implication in this Development Agreement or in any other instrument or document executed in connection with this Development Agreement, except for their criminal acts with respect to this Development Agreement (i.e., acts which would constitute crimes were they prosecuted for and convicted of such acts), no member, elected or appointed official, officer, employee, agent, independent contractor or consultant of the County ("County Personnel") shall be liable for any of the County's obligations under this Development Agreement or any instrument or document executed in connection with this Development Agreement. Except for their criminal acts with respect to this Development Agreement (i.e., acts which would constitute crimes were they prosecuted for and convicted of such acts), no County Personnel shall be liable to the Developer, or any successor in interest to the Developer, for any amount which may become due to the Developer or any successor in interest to the Developer, or for any other obligation, under the terms of this Development Agreement. The limitations of this Section 15.07 shall in no way limit the Developer's rights as provided in this Development Agreement (a) to specific performance of each and every provision of this Development Agreement or in any other instrument or document executed in connection with this Development Agreement, (b) to recover damages against the County for any breaches of this Development Agreement (provided that collection of damages is subject to the restrictions of this provision), or (c) to enforce remedies against the County.

15.08 Assignment. The Developer shall not sell, assign, convey, transfer, pledge, encumber or otherwise dispose of voluntarily or involuntarily (each, a "Transfer") this Development Agreement or any of its rights under this Development Agreement without the prior written consent of the County, which consent shall not be unreasonably withheld or conditioned. The transferee shall assumed all of the Developer's obligations under this Development Agreement arising after the effective date of the assignment and the Developer shall be relieved of its obligations under this Development Agreement from and after the date of the assignment. Any assignment or attempted assignment by a Party in violation of this Section 15.09 shall be void.

15.09 Consent of Parties. Whenever in this Development Agreement the consent or approval of a Party is required, such consent or approval:

(a) shall be made in the case of the County by the County Representative on behalf of the County to the extent this Development Agreement does not specify otherwise, except for approvals or consents specifically requiring Board approval or consent under (i) this Development Agreement, (ii) any other agreement or (iii) pursuant to Applicable Law;

(b) shall not be unreasonably or arbitrarily withheld, conditioned or delayed unless specifically provided to the contrary in this Development Agreement;

(c) shall not be effective unless it is in writing; and

(d) shall apply only to the specific act or transaction so approved or consented to and shall not relieve the other Parties of the obligation of obtaining the consenting Party's prior written consent or approval to any future similar act or transaction.

15.10 Headings. The headings in this Development Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Development Agreement or of its provisions.

15.11 Absence of Third-Party Beneficiaries. Nothing in this Development Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Development Agreement as a third-party beneficiary or otherwise except as specifically provided in this Development Agreement; or (b) authorize anyone not a party to this Development Agreement to maintain an action pursuant to or based upon this Development Agreement.

15.12 Governing Law. This Development Agreement and the interpretation of its terms shall be governed by the laws of the State, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Development Agreement or arising from or relating to this Development Agreement shall lie exclusively in Miami, Florida. In the event that the County enacts an Applicable Law that amends or alters (or purports to amend or alter) the terms of this Development Agreement, the Developer reserves all rights, and by entering into this Development Agreement does not waive any rights, to assert a breach of this Development Agreement and to contest the validity, enforceability or applicability of such Applicable Law, including on the basis that such Applicable Law is discriminatory, retroactive or would serve to amend or alter the terms of this Development Agreement.

15.13 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Development Agreement.

15.14 Relationship of Parties. No partnership or joint venture is established among the Parties under this Development Agreement. Except as expressly provided in this Development Agreement, no Party or its officers, elected or appointed officials, employees, agents, independent contractors or consultants shall be considered employees or agents of the other Party or to have been authorized to incur any expense on behalf of the other Party or to act for or to bind the other Party. No Party shall be liable for any acts, omissions or negligence on the part of the other Party or their employees, officials, agents, independent contractors, licensees and invitees. The Developer is an independent contractor of the County.

15.15 Antidiscrimination Clause. In accordance with Applicable Laws, the Parties shall not discriminate against any person or group of persons on the basis of race, sex, religion, national or ethnic origin, age or disability.

15.16 Sovereign Rights. The County retains all of its sovereign prerogatives and rights as a county under State law with respect to the planning, design, construction, development and operation of the Tennis Center Improvements. It is expressly understood that notwithstanding any provisions of this Development Agreement and the Amended and Restated Tournament Agreement and the County's status thereunder:

(a) The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under State law and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations whatever nature of general applicability which is applicable to the planning, design, construction and development of the Tennis Center Improvements, the Site, or the operation thereof, or be liable for the same, including any approvals needed under a Government Facilities hearing; and

(b) The County shall not by virtue of this Development Agreement or the Amended and Restated Tournament Agreement be obligated to grant the Developer any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature of general applicability which is applicable to the planning, design, construction, development and/or operation of the Tennis Center Improvements or the Site, including any necessary Governmental Facilities hearing.

(c) Notwithstanding and prevailing over any contrary provision in this Development Agreement, any County covenant or obligation that may be contained in this Development Agreement shall not bind the Board of County Commissioners, the County's Planning and Zoning Department, RER, or any other County, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power. Further, notwithstanding and prevailing over any contrary provision in this Development Agreement or the Amended and Restated Tournament Agreement, any County covenant or obligation that may be contained in this Development Agreement or the Amended and Restated Tournament Agreement shall not bind the County Mayor, Board of County Commissioners or Elections Department to hold any future elections.

15.17 Force Majeure. If any Party shall be delayed in the performance of any obligation hereunder as a result of a Force Majeure, then the performance of such obligation shall be extended by the length of such delay. In response to and during any delay caused by a Force Majeure, the Parties shall at all times act diligently and in good faith to bring about the termination or removal of the Force Majeure as promptly as reasonably possible and any party seeking an excuse of performance due to such Force Majeure shall work diligently and in good faith to reduce or eliminate any damage, cost or delay caused by such Force Majeure. Without limiting the foregoing, if a Party fails to meet a deadline specified in this Development Agreement due to another Party's failure to meet a prior and related deadline, such subsequent deadline shall be extended by the number of days the delay was attributable to the prior deadline failure, and the Party failing to meet the prior deadline shall not be relieved of liability for such breach.

15.18 Inspector General and Independent Private Sector Inspector General.

(a) Office of Inspector General. The attention of the Parties is hereby directed to Section 2-1076 of County Code establishing the Miami-Dade County Office of the Inspector General, which has the authority and power to investigate County affairs and review past, present

and proposed County programs, accounts, projects, contracts and transactions. According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below.

The Inspector General shall have the power and authority to perform audits on all County contracts. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Developer, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Developer from the Inspector General or IPSIG retained by the Inspector General, the Developer shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Developer's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

The Inspector General shall have any and all other rights of an IPSIG as set forth below.

(b) Independent Private Sector Inspector General.

(i) Pursuant to Board Resolution No. R-516-96 and Administrative Order 3-20, the County may authorize, retain and coordinate the services of an independent private sector inspector general ("IPSIG") for construction, capital development, procurement, retail, concession, lease and management agreements and/or contracts and other agreements exceeding \$1 million. The County has, at its expense, appointed the Inspector General as its IPSIG for the Project. The IPSIG may audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Developer and the County in connection with project



design and construction matters under this Development Agreement. The scope of services performed by the IPSIG may include, but are not limited to, monitoring and investigating compliance with contract specifications; project costs; and investigating and preventing corruption and fraud.

(ii) The IPSIG may perform its services at all levels of the construction contracting and procurement process under this Development Agreement, including but not limited to, project design, establishment of bid specifications, bid submittals, activities of the Developer and their officers, agents and employees, lobbyists and the County staff and elected officials. Upon fifteen (15) days' written notice to the Developer from the IPSIG, the Developer shall make all requested non-proprietary project-related records and documents available to the IPSIG for inspection and copying.

(iii) The IPSIG shall have the right to examine all documents and records in the Developer's possession, custody or control which, in the IPSIG's reasonable judgment, pertain to the Project design and performance of construction matters under this Development Agreement, including but not limited to, original estimate files; Change Order estimate files; worksheets; proposals and agreements from and with subcontractors and suppliers; all Project related correspondence, memoranda, instructions, financial documents, construction documents, bid and contract documents; back-charge documents; documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received; payroll and personnel records; and supporting documentation for the aforesaid documents and records.

(iv) The provisions in this Section shall apply to the Developer and its officers, agents and employees. The Developer shall incorporate the provisions in this Section in all subcontracts executed by the Developer in connection with the performance of this Agreement.

(v) Nothing in this Section shall impair any independent right the Developer may grant to the County to conduct audit or investigative activities. The provisions in this Section are neither intended nor shall they be construed to impose any liability on the County, the Developer or third parties.

15.19 Valid Agreement. The County agrees for the benefit of the Developer that the Developer shall have the right to collect damages and otherwise enforce this Development Agreement against the County with respect to any breach of this Development Agreement by the County including damages from any third party claims arising from a breach of this Development Agreement by the County. The Developer agrees for the benefit of the County that the County shall have the right to collect damages and otherwise enforce this Development Agreement against the Developer with respect to any breach of this Development Agreement by the Developer including damages from any third party claims.

15.20 County Approvals. The County Representative's approval of the Design Development Documents and the Construction Documents and any other documents pursuant to this Development Agreement (as the same may be amended from time to time pursuant to this Development Agreement) shall not relieve the Developer of its obligations under law to file such

plans with any department of the County or any other governmental authority having jurisdiction over the issuance of building or other permits and to take such steps as are necessary to obtain issuance of such permits. The Developer acknowledges that any approval given by the County Representative pursuant to this Development Agreement shall not constitute an opinion or agreement by the County that the plans are structurally sufficient or such plans and any other documents are in compliance with any laws, ordinances, codes or other applicable regulations, and no such approval shall impose any liability upon the County.

15.21 Books and Records; Audit. The Developer shall keep and maintain all books, records and documents of all kinds in any way related to the Developer's rights and obligations under this Development Agreement separate and identifiable from its other books, records, and documents. The County shall have the right to audit the books of the Developer relating to the planning, design, development and construction of the Tennis Center Improvements. The County shall not commence an audit during the Tournament Period. The attention of the Parties is hereby directed to Section 2-481 of County Code. The County shall have the right to audit the books, records and documents of the Developer relating to the hiring and work of CSBEs, SBEs, CBEs and responsible wages paid to workers pursuant to the requirements of the County Code. The Developer shall provide in the Construction Management Agreement that the Construction Manager and its subcontractors shall also keep and maintain all books, records, and documents of all kinds related to their obligations under the Construction Management Agreement and any related subcontracts and that the County shall have the right to audit the Construction Manager's and subcontractor's books.

15.22 Crandon Park Master Plan. The County and the Developer acknowledge and agree that this Agreement is subject to and governed by, the provisions of the Crandon Park Master Plan and the Declaration of Restrictions implementing such plan (CPMP"), as such plan may be amended from time to time, and that all development and construction performed by Developer and its Construction Manager at the Site shall be in full conformance with the requirements and provisions of the CPMP. To the extent any term or provision of this Development Agreement conflicts with a term or provision of the CPMP, the CPMP shall prevail. To the extent that there is a conflict between this Development Agreement and the Resolution, the Resolution shall prevail. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to limit, waive the rights of, preclude, or estop IPC from instituting a suit to challenge the validity of the 1993 Settlement Agreement, including the CPMP and the process that allows it to be amended, consistent with the decisions in *White v. Metropolitan Dade County*, 563 So. 2d 117 (Fla. 3d DCA 1990) and *Dade County v. Matheson*, 605 So. 2d 469 (Fla. 3d DCA 1992), either as to it specifically or the public generally and such right is expressly reserved by IPC. If a court of competent jurisdiction issues a final, non-appealable order in accordance with and/or consistent with the decisions in *White* and *Matheson*, which order invalidates, declares illegal, and/or voids the 1993 Settlement Agreement between the County and the Matheson family and the CPMP, then the Parties shall no longer be required to comply with the CPMP and, all references in this Agreement to the Crandon Park Master Plan shall cease to be effective. In such event, the Master Plan as proposed to be amended in connection with this Agreement shall be contractual provisions governing the Developer's use and operation of the Tennis Center for the Tournament.

15.23 Validity of Agreement. The Developer and the County acknowledge that the Site may only be used for “public park purposes” and used and developed in accordance with the Crandon Park Master Plan and all Applicable Laws. IPC and the County agree that if a court of competent jurisdiction determines that the operation and conduct of the Tournament as contemplated in the Amended and Restated Tournament Agreement, the management by IPC of the Site as contemplated by the Management Addendum, the development of the Site by the Developer as contemplated by this Development Agreement, and/or the lease of space within the Site on a year-round basis by IPC as contemplated by the Space Lease Agreement is not in accordance with public park purposes, the Crandon Park Master Plan and/or all Applicable Laws, and if IPC and the County are unable to otherwise mutually agree as to any required changes necessary to make the operation and conduct of the Tournament, the management of the Site, the redevelopment of the Site, and/or the lease of space at the Site consistent with public park purposes, the Crandon Park Master Plan and/or Applicable Law, as applicable, the Developer and the County shall each have the right, upon written notice to the other, to terminate this Development Agreement. Upon such termination, neither party shall have any rights or obligations against the other. If the Tournament Agreement, Management Addendum, Development Agreement, and/or Space Lease Agreement are terminated pursuant to this Section 15.23, then the Parties agree to continue performance under the July 15, 1986 Agreement, as amended. However, if the term of the July 15, 1986 Agreement, as amended, has lapsed, then upon termination pursuant to this Section 15.23, the Parties shall have no further obligation or liability to one another.

15.24 Controlling Agreement. This Development Agreement sets forth the entire agreement and understanding between the parties relating in any way to the subject matter contained in this Development Agreement and merges all prior discussions between the Developer and the County. Neither party shall be bound by any agreement, condition, warranty or representation other than as expressly stated in this Development Agreement and this Development Agreement may not be amended or modified except by written instrument signed by both Parties. While this Development Agreement constitutes the full and complete understanding of the Parties, the parties agree to act in good faith with respect to all matters under this Development Agreement with a view to making the Project and the Tournament a success for both the Developer and the County.

15.25 Counterparts. This Development Agreement may be executed in any number of counterparts with the same effect as if the Parties had executed the same document. All counterparts shall be construed together and shall constitute one instrument.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed by appropriate officials of each of them, as of the date first above written.

**"COUNTY"**

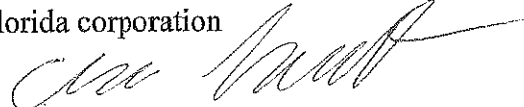
MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

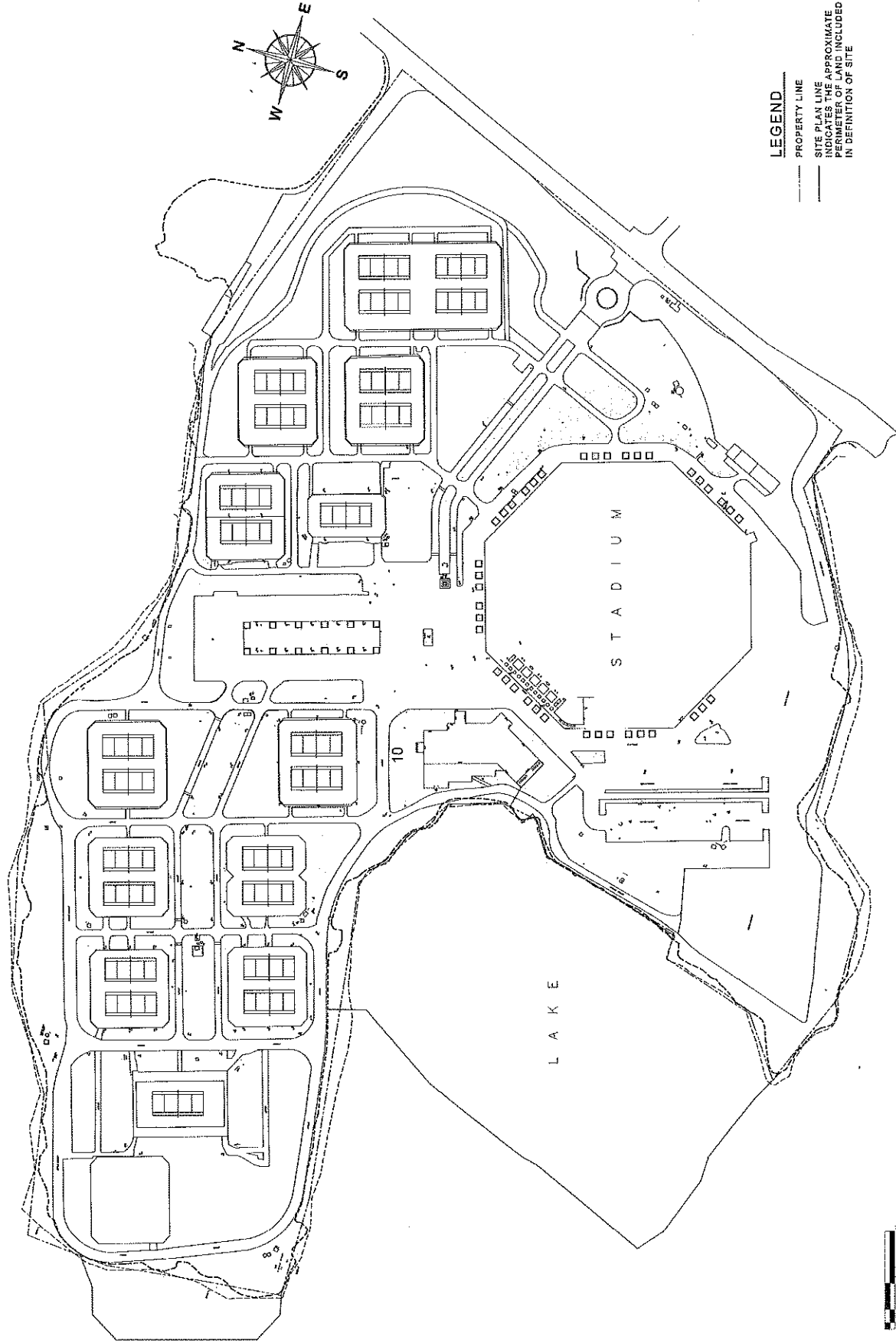
By: \_\_\_\_\_  
\_\_\_\_\_, Clerk of the Board

**"DEVELOPER"**

INTERNATIONAL PLAYERS CHAMPIONSHIP INC., a Florida corporation

By: \_\_\_\_\_ 

# EXHIBIT A



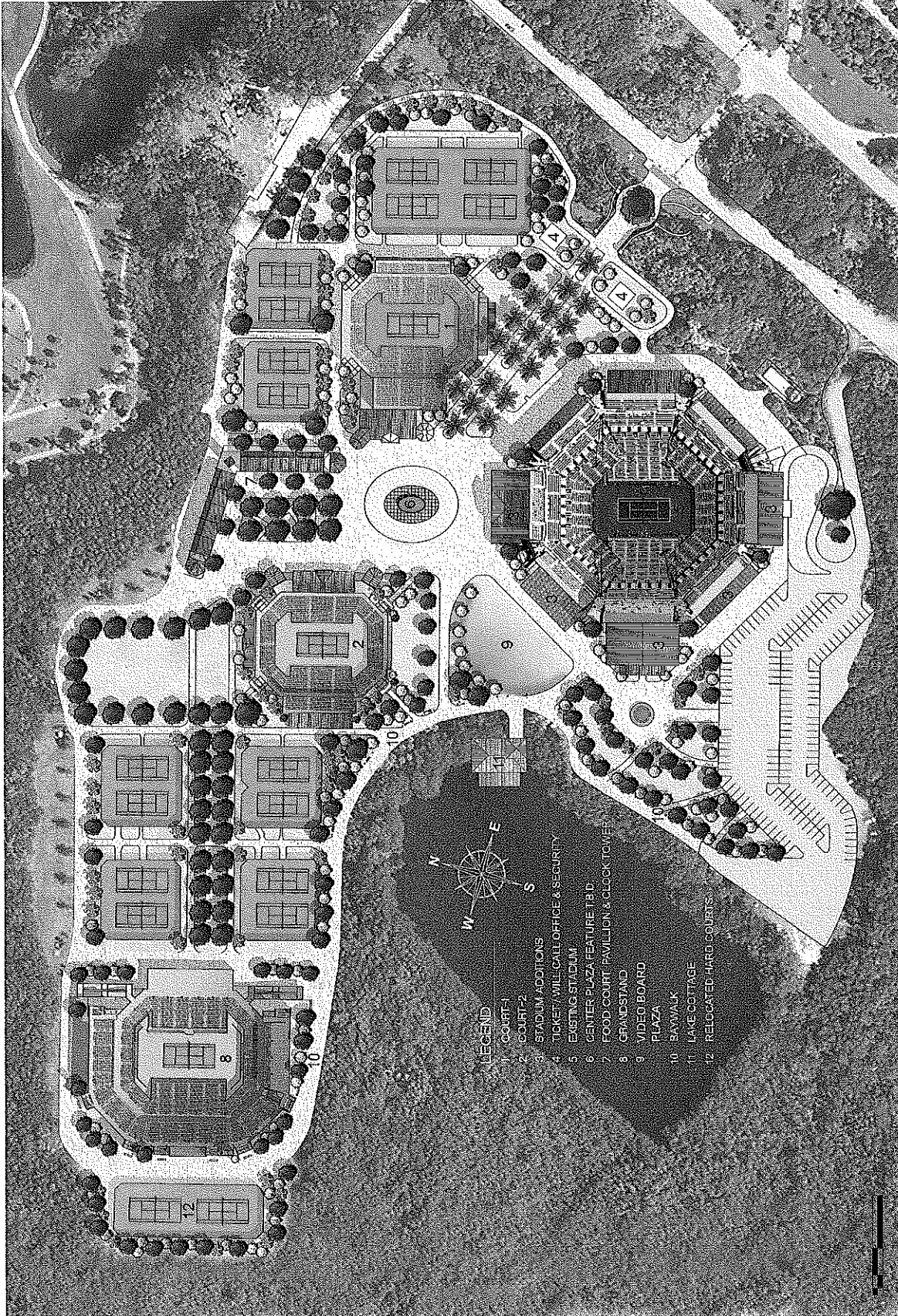
© COPYRIGHT BEA Architects, Inc. These documents are the property of BEA Architects, Inc. Any reproduction without the written consent of BEA Architects, Inc. is prohibited. architects

- EXHIBIT A -

TENNIS CENTER AT CRANDON PARK  
SITE PLAN  
OCTOBER 3, 2013



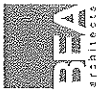
# EXHIBIT B



- LEGEND
- 1. COURT-1
  - 2. COURT-2
  - 3. STADIUM ADDITIONS
  - 4. TICKET WALK, CALL OFFICE & SECURITY
  - 5. EXISTING STADIUM
  - 6. CENTER PLAZA FEATURE TB D
  - 7. FOOD COURT, PAVILION & CLOCK TOWER
  - 8. GRANDSTAND
  - 9. VIDEO BOARD
  - 10. FLAZA
  - 11. BAYWALK
  - 12. RELOCATED HARD COURTS

- EXHIBIT B -

TENNIS CENTER AT CRANDON PARK  
 PROPOSED DEVELOPMENT PLAN  
 OCTOBER 3, 2013



© COPYRIGHT BEA Architects, Inc. These documents are the property of BEA Architects, Inc. Any reproduction without the written consent of BEA Architects, Inc. is prohibited. 4/13/11/02/13

**EXHIBIT C**  
**Proposed Development Plan Narrative**

**Site Development**

The site plan includes the removal of the existing clubhouse, the selective replacement of all asphalt pavement, six tennis courts with either green space, pervious paver hardscape systems, landscaping, and environmental enhancements (see below) and all of the elements described below pursuant to the terms development agreement. It further includes a separation between onsite parking areas and the park, upgrading existing electrical and plumbing systems to code compliance, upgrading the on-site sanitary force main system, upgrading the on-site fire main distribution, upgrading the irrigation system to allow the landscaping to thrive, and providing site and sports lighting systems, soil treatment, and storm drainage systems. The proposed development plan consists of the following elements:

**Element A. Main Entrance**

At the main entrance to the site, there will be constructed a permanent entrance feature, including structures on either side of the walkway. On the north side of the main entrance there will be constructed a building of 1,000 to 1,600 square feet and a height not to exceed 18 feet. This structure will be provided with utility services. Interior functions of the north structure may include, among others, retail space, bag check, security offices and storage areas. On the south side of the main entrance there will be constructed a building of 1,000 to 1,600 square feet and a height not to exceed 18 feet. This south structure will be provided with utility services. Interior functions of the south structure may include, among others, box office services and storage. During tournament periods, the two structures may be joined by temporary arches or canopies projecting above the permanent structures and over the walkway.

**Element B. Stadium Court**

The permanent height of the existing stadium will not be increased. The number of permanent spectator seats will not be increased. However, during the tournament period, temporary grandstands will be erected in the stadium to increase spectator seating, as provided in the operating agreement. There will be constructed several stadium additions described below. None of the stadium additions will exceed the height of the existing stadium.

**Element C. Main Stadium West Wing**

This is a two-story addition to be constructed on the western elevation of the existing stadium. This structure will be provided with utility services. The first floor will enclose 5,700 to 7,600 square feet, and the second floor will enclose 5,700 to 7,600 square feet. Interior functions of the first floor of the west wing may include, among others, catering and hospitality areas. Interior functions of the second floor of the west wing may include, among others, a kitchen and members restaurant.

**Element D. Main Stadium Northwest Wing**

This is a one-story addition with a second level open deck, to be constructed on the northwest elevation of the existing stadium. This structure will be provided with utility services. The first floor will enclose 2,550 to 3,400 square feet, and the second floor deck will enclose



**EXHIBIT C**  
**Proposed Development Plan Narrative**

2,550 to 3,400 square feet. Interior functions of the first floor of the northwest wing may include, among others, Pro shop and check-in; several offices; lounge; staff lockers and toilets. Functions of the second level deck of the northwest wing may include, among others, a seating and concessions area (with or without shading) and viewing areas for a video board/television screen.

**Element E. Main Stadium North Wing**

This is a one-story addition with a second level deck, to be constructed on the north elevation of the existing stadium. This structure will be provided with utility services. The first floor will enclose 4,900 to 6,600 square feet, and the second floor deck will consist of 4,900 to 6,600 square feet. Interior functions of the first floor of the north wing may include, among others, a retail area. Functions of the second level deck of the north wing may include, among others, a television broadcast structure of 400 to 600 square feet and a terrace area with open or shaded seating.

**Element F. Main Stadium Northeast Wing**

This is a one-story addition with a second level deck, to be constructed on the northeast elevation of the existing stadium. The northeast wing will enclose 2,000 to 3,200 square feet. This structure will be provided with utility services. Uses of the northeast wing may include, among others, a player area and offices, and a terrace area with open or shaded seating.

**Element G. Main Stadium East Wing**

This is a one to three-story addition to be constructed on the east elevation of the existing stadium. This structure will be provided with utility services. Each of the three floors will enclose 2,500 to 3,600 square feet. Interior functions of the first floor of the east wing may include, among others, a player dining area and buffet. Interior functions of the second floor of the east wing may include, among others, a kitchen and public sports bar. Interior functions of the third floor of the east wing may include, among others, a player lounge.

**Element H. Main Stadium Southeast Wing**

This is a one-story addition with a second level open deck, to be constructed on the southeast elevation of the existing stadium. This structure will be provided with utility services. The first floor will enclose 2,000 to 3,200 square feet. The second level deck will consist of 2,000 to 3,200 square feet. Interior functions of the first floor of the southeast wing may include, among others, catering services. Uses of the second level deck of the southeast wing may include, among others, a terrace area with shaded or open seating.

**Element I. Main Stadium South Wing**

This is a permanent canopy to be constructed on the south elevation of the existing stadium. The canopy will cover the private vehicle drop-off area. The combined canopy and enclosed space will be 2,400 to 3,200 square feet. This structure may be provided with utility



**EXHIBIT C**  
**Proposed Development Plan Narrative**

services. Uses of the south wing may include, among others, a player entrance canopy and player lounge area.

**Element J. Main Stadium Southwest Wing**

This is a one-story addition with an open deck on the second level, to be constructed on the southwest elevation of the existing stadium. The first floor will enclose 2,000 to 3,200 square feet. This structure will be provided with utility services. Uses of the first floor of the southwest wing may include, among others, a credential office and conference rooms. The second level deck will consist of 2,000 to 3,200 square feet that which may be open or shaded.

**Element K. Grandstand Court with South, East, West and North Buildings**

A new, permanent, exhibition match play court with spectator grandstands and ancillary structures and facilities will be constructed on the northwest portion of the site. The grandstand court will be equipped and lighted to television broadcast standards during tournament periods. The spectator seating capacity of the grandstand court will consist of 4,500 to 6,000 permanent seats. The height of the grandstand court will not exceed 35 feet, exclusive of lighting features. The grandstand court structure will be provided with utility services, and will include facilities of one and two stories of enclosed space of 13,000 to 19,000 square feet in total. Interior functions of the first floor of the structure may include men's and women's locker rooms, food and beverage hospitality areas and concession stands, public restrooms for men and women, loading dock, storage areas, secured storage area, staff offices and work areas, staff restrooms, entrance area for officials and ball persons. Interior functions of the second floor of the structure may include retail area, television broadcast booth, radio broadcast booth, scoring and A/V booth and a hawk-eye booth.

**Element L. Court 1 with West, South, North and East Buildings**

A new, permanent exhibition match play court with spectator grandstands and ancillary structures and facilities will be constructed northeast of the existing main stadium. Court 1 will be equipped and lighted to television broadcast standards during the tournament period. The height of Court 1 will not exceed 30 feet, exclusive of lighting features. The spectator seating capacity of Court 1 will consist of 3,000 to 4,000 permanent seats. The Court 1 structure will be provided with utility services, and will include facilities of one and two stories of enclosed space of 10,000 to 14,500 square feet in total. Interior functions of the first floor of the structure may include players area waiting room, off court treatment room, restrooms, public restaurant, kitchen, concessions area, court maintenance room, court storage, function areas for volunteers including open areas, offices, meeting rooms, restrooms, concessions and clothing distribution and storage. Interior functions of the second floor of the structure may include television broadcast booth, radio broadcast booth, scoring and A/V booths and a hawk-eye booth.

**Element M. Court 2 with East, West, North and South Buildings**

A new, permanent exhibition match play court with spectator grandstands and ancillary structures and facilities will be constructed northwest of the existing main stadium. Court 2 will be equipped and lighted to television broadcast standards during tournament periods. The

**EXHIBIT C**  
**Proposed Development Plan Narrative**

spectator seating capacity of Court 2 will consist of 2,250 to 3,000 permanent seats. The height of Court 2 will not exceed 24 feet, exclusive of lighting features. The Court 2 structure will be provided with utility services, and will include facilities of one and two stories of enclosed space of 12,000 to 17,000 square feet in total. Interior functions of the first floor of the structure may include players' area waiting room, off court treatment room, restrooms, concessions stand, retail area, food and beverage outlet, ball person areas and offices, staff restroom and public restrooms. Interior functions of the second floor of the structure may include television broadcast booth, scoring and A/V booths and a hawk-eye booth.

**Element N. Lake Cottage**

A Lake Cottage is proposed for the area northwest of the Stadium Court located on piers in the existing lake. The Lake Cottage would be provided with utility service. Interior functions of the Lake Cottage may include, among others, a television broadcast studio and lounge. The Lake Cottage would contain 3,500 to 5,200 square feet of enclosed space on one or more levels. The height of the Lake Cottage would not exceed 24 feet above high tide means sea level. The Lake Cottage may have decks, docks, ramps or piers and shall be connected to land for pedestrian access. During non-Tournament time, the County may designate uses of the lake and Lake Cottage, including, for example, use by canoes and kayaks.

**Element O. Center Plaza**

The proposed permeable and integrally colored, hardscaped roadway and pedestrian walkways shown on the Proposed Development Plan (Exhibit B) will be installed to provide ingress, egress, circulation, recreational, retail and hospitality uses as well as access for emergency vehicles to service the various facilities spread out throughout the site. The hardscaped roadway and pedestrian areas may be modified or relocated over time as experience and prudent management of the site dictate. The Center Plaza will include a signature feature, such as a water fountain and wet paver area with water jets, or similar focal point of interest feature to facilitate way-finding during tournament events. With the professional guidance of botanists and other qualified experts from the Fairchild Tropical Botanic Garden or similar institution, the concept will be further developed and refined by the design team during a future permitting phase.

**Element P. Baywalk**

A 1,100 foot Bay Walk along the western boundary of the site, landward of the fringe of the existing thick Mangrove growth. The proposed Bay Walk will incorporate sustainable features such as pervious paver hardscape systems, seating areas, trash receptacles, low intensity lighting, and public access signage. The Bay Walk will be accessible to the public during hours of park operation.

**Element Q. Pavilions**

1. Permanent, Open Pavilion Structures

**EXHIBIT C**  
**Proposed Development Plan Narrative**

Up to ten open Pavilion structures would be grouped about a hardscaped pedestrian court, will be erected north of the Center Plaza. These structures may be temporarily enclosed with materials to form enclosed pavilions when needed by the tournament for retail, hospitality or other tournament related purposes, including use as a food court. The height of the permanent pavilion structures (exclusive of the Clock Tower) shall not exceed 18 feet. The initial total footprint of the Pavilions will be 7,200 to 9,600 square feet; with the future potential to expand the area if actual park usage justifies such expansion. The structures will have stubbed utilities services such as propane, three phase and single phase electrical, waste water lines, plumbing, grease interceptors, exhaust fans amongst other utilities required for food and beverage operations and code compliance. During tournament periods, the utilities will be connected and the structures may be covered with temporary enclosures to form pavilions for hospitality, concessions, retail or other uses ancillary to the tournament. The open Pavilions may be used for gathering or meeting areas or birthday parties outside of the tournament periods.

2. Clock Tower

To further facilitate way-finding during tournament use, the Pavilion facility will feature a distinctive Clock Tower structure. The Clock Tower structure may be free standing or connected to one or more of the Pavilions. The upper portion of the tower structure will have a large clock as its signature feature. The ground level of the Clock Tower structure will be enclosed, and contain 800 to 1,200 square feet of secured space, which may be used for storage or other ancillary purposes for the tournament. The height of the Clock Tower structure will not exceed 35 feet.

**Element R. Unenclosed Courts**

The Site will contain eighteen (18) additional unenclosed, hard-surface courts, which may include a combination of newly constructed courts and refurbishing of existing courts. The approximate location of these courts is shown in the Proposed Development Plan (Exhibit B). These courts may be fenced or screened, but will not be located within permanent enclosed structures. These courts will not have permanent spectator grandstand seating, but temporary seating may be erected from time to time. All of these courts will be equipped with lighting to a standard suitable for recreation play or better. Initially, no less than four (4) of these courts will be equipped with permanent lighting structures to television broadcast standards; with the future potential to equip additional courts to television broadcast standards on a temporary or permanent basis.

**Element S. Lawns and Open Area**

There will be constructed a large open lawn area, as shown on the Proposed Development Plan (Exhibit B) as three-aligned fields with pedestrian walkways, located on the north of Court 2 and to the west of the Pavilions.

**Element T. Site Landscaping**

**EXHIBIT C**  
**Proposed Development Plan Narrative**

Throughout the areas of the Site available to the general public there will be constructed additional landscaping features and attractions, substantially as shown on the New Site Plan. These will include the Video Board Plaza adjacent to the Northwest Wing as a sloped lawn or landscape plaza and various informal green space and other gathering areas for the recreational use of the general public throughout the year.

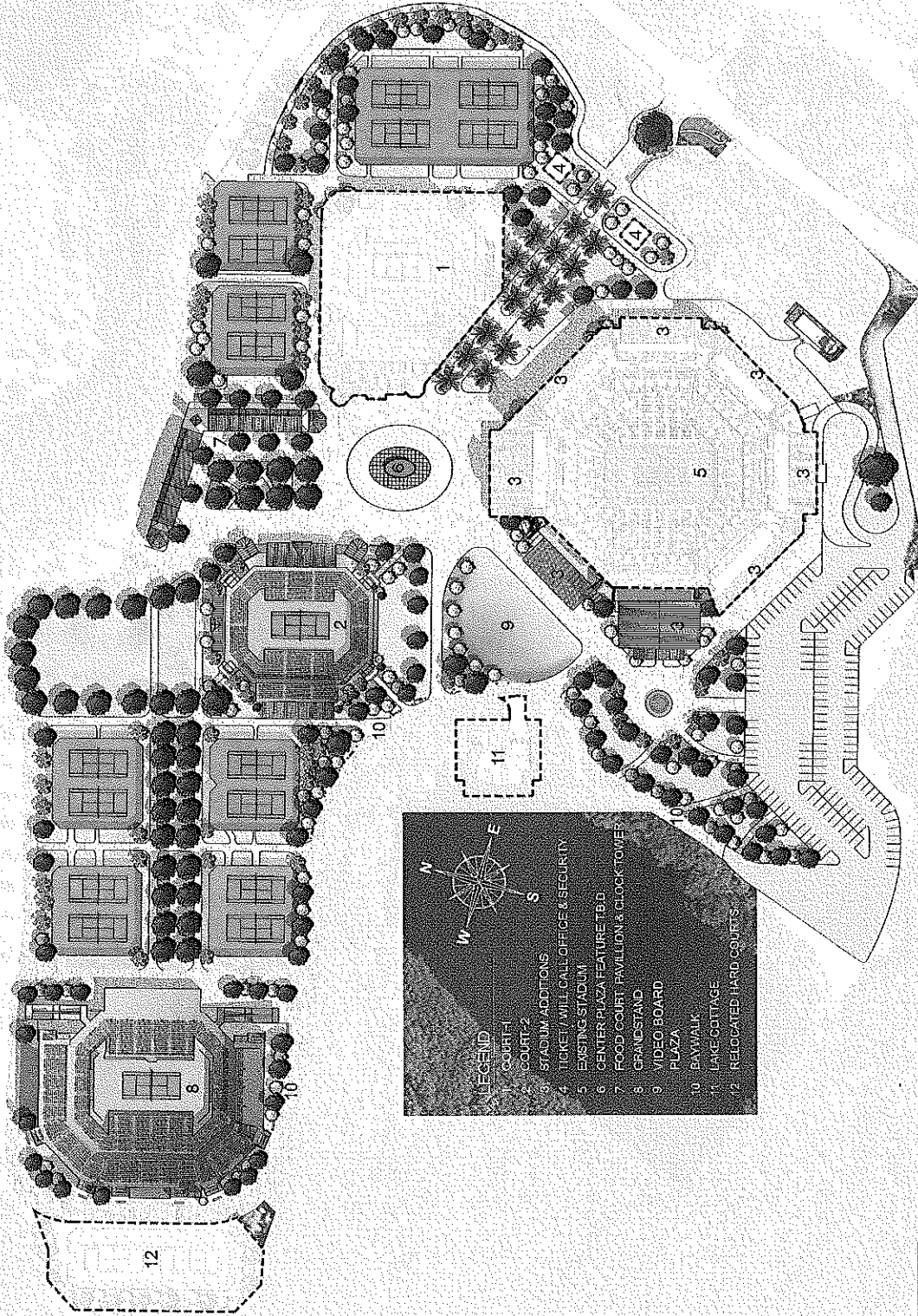
**Element U. Environmental Enhancements**

In addition to the Site Landscaping described above the vegetation throughout the Site will be rehabilitated, increased and restored to a condition more consonant with the local habitat. Plantings may include palms, mangroves and other species appropriate to Key Biscayne. This environmental enhancement will be a long term, phased and continuing process.

**Element V. Other Amenities**

The Project may include fountains, benches, tables, sculpture and other functional or decorative amenities suitable for recreational or aesthetic enjoyment of the park.

# EXHIBIT D



**LEGEND**

- 1. COURT-1
- 2. COURT-2
- 3. STADIUM ADDITIONS
- 4. TICKET / WIIII CALL OFFICE & SECURITY
- 5. EXISTING STADIUM
- 6. CENTER PLAZA FEATURE TBD
- 7. FOOD COURT, PAVILION & CLOCK TOWER
- 8. GRANDSTAND
- 9. VIDEO BOARD PLAZA
- 10. BAY/WALK
- 11. LAKE/COTTAGE
- 12. RELOCATED HARD COURTS



© COPYRIGHT BEA Architects, Inc. These documents are the property of BEA Architects, Inc. Any reproduction without the written consent of BEA Architects, Inc. is prohibited.

- EXHIBIT D -

TENNIS CENTER AT CRANDON PARK  
 PROPOSED PHASE ONE DEVELOPMENT PLAN  
 OCTOBER 3, 2013



**EXHIBIT E**  
**Proposed Phase One Development Plan Narrative**

**Site Development**

The site plan includes the removal of the existing clubhouse, the selective replacement of all asphalt pavement, six tennis courts with either green space, pervious paver hardscape systems, landscaping, and environmental enhancements (see below) and all of the elements described below pursuant to the terms development agreement. It further includes a separation between onsite parking areas and the park, upgrading existing electrical and plumbing systems to code compliance, upgrading the on-site sanitary force main system, upgrading the on-site fire main distribution, upgrading the irrigation system to allow the landscaping to thrive, and providing site and sports lighting systems, soil treatment, and storm drainage systems. The proposed development plan consists of the following elements:

**Element A. Stadium Court**

The permanent height of the existing stadium will not be increased. The number of permanent spectator seats will not be increased. However, during the tournament period, temporary grandstands will be erected in the stadium to increase spectator seating, as provided in the operating agreement. There will be constructed several stadium additions described below. None of the stadium additions will exceed the height of the existing stadium.

**Element B. Main Stadium West Wing**

This is a two-story addition to be constructed on the western elevation of the existing stadium. This structure will be provided with utility services. The first floor will enclose 5,700 to 7,600 square feet, and the second floor will enclose 5,700 to 7,600 square feet. Interior functions of the first floor of the west wing may include, among others, catering and hospitality areas. Interior functions of the second floor of the west wing may include, among others, a kitchen and members restaurant.

**Element C. Main Stadium Northwest Wing**

This is a one-story addition with a second level open deck, to be constructed on the northwest elevation of the existing stadium. This structure will be provided with utility services. The first floor will enclose 2,550 to 3,400 square feet, and the second floor deck will enclose 2,550 to 3,400 square feet. Interior functions of the first floor of the northwest wing may include, among others, Pro shop and check-in; several offices; lounge; staff lockers and toilets. Functions of the second level deck of the northwest wing may include, among others, a seating and concessions area (with or without shading) and viewing areas for a video board/television

**Element D. Grandstand Court with South, East, West and North Buildings**

A new, permanent, exhibition match play court with spectator grandstands and ancillary structures and facilities will be constructed on the northwest portion of the site. The grandstand court will be equipped and lighted to television broadcast standards during tournament periods. The spectator seating capacity of the grandstand court will consist of 4,500 to 6,000 permanent

**EXHIBIT E**  
**Proposed Phase One Development Plan Narrative**

seats. The height of the grandstand court will not exceed 35 feet, exclusive of lighting features. The grandstand court structure will be provided with utility services, and will include facilities of one and two stories of enclosed space of 13,000 to 19,000 square feet in total. Interior functions of the first floor of the structure may include men's and women's locker rooms, food and beverage hospitality areas and concession stands, public restrooms for men and women, loading dock, storage areas, secured storage area, staff offices and work areas, staff restrooms, entrance area for officials and ball persons. Interior functions of the second floor of the structure may include retail area, television broadcast booth, radio broadcast booth, scoring and A/V booth and a hawk-eye booth.

**Element E. Court 1 with West, South, North and East Buildings OR Court 2 with East, West, North and South Buildings**

Description of Court 1:

A new, permanent exhibition match play court with spectator grandstands and ancillary structures and facilities will be constructed northeast of the existing main stadium. Court 1 will be equipped and lighted to television broadcast standards during the tournament period. The height of Court 1 will not exceed 30 feet, exclusive of lighting features. The spectator seating capacity of Court 1 will consist of 3,000 to 4,000 permanent seats. The Court 1 structure will be provided with utility services, and will include facilities of one and two stories of enclosed space of 10,000 to 14,500 square feet in total. Interior functions of the first floor of the structure may include players area waiting room, off court treatment room, restrooms, public restaurant, kitchen, concessions area, court maintenance room, court storage, function areas for volunteers including open areas, offices, meeting rooms, restrooms, concessions and clothing distribution and storage. Interior functions of the second floor of the structure may include television broadcast booth, radio broadcast booth, scoring and A/V booths and a hawk-eye booth.

Description of Court 2:

A new, permanent exhibition match play court with spectator grandstands and ancillary structures and facilities will be constructed northwest of the existing main stadium. Court 2 will be equipped and lighted to television broadcast standards during tournament periods. The spectator seating capacity of Court 2 will consist of 2,250 to 3,000 permanent seats. The height of Court 2 will not exceed 24 feet, exclusive of lighting features. The Court 2 structure will be provided with utility services, and will include facilities of one and two stories of enclosed space of 12,000 to 17,000 square feet in total. Interior functions of the first floor of the structure may include players' area waiting room, off court treatment room, restrooms, concessions stand, retail area, food and beverage outlet, ball person areas and offices, staff restroom and public restrooms. Interior functions of the second floor of the structure may include television broadcast booth, scoring and A/V booths and a hawk-eye booth.

**EXHIBIT E**  
**Proposed Phase One Development Plan Narrative**

**Element F. Center Plaza**

The proposed permeable and integrally colored, hardscaped roadway and pedestrian walkways shown on the Proposed Development Plan (Exhibit B) will be installed to provide ingress, egress, circulation, recreational, retail and hospitality uses as well as access for emergency vehicles to service the various facilities spread out throughout the site. The hardscaped roadway and pedestrian areas may be modified or relocated over time as experience and prudent management of the site dictate. The Center Plaza will include a signature feature, such as a water fountain and wet paver area with water jets, or similar focal point of interest feature to facilitate way-finding during tournament events. With the professional guidance of botanists and other qualified experts from the Fairchild Tropical Botanic Garden or similar institution, the concept will be further developed and refined by the design team during a future permitting phase.

**Element G. Baywalk**

A 1,100 foot Bay Walk along the western boundary of the site, landward of the fringe of the existing thick Mangrove growth. The proposed Bay Walk will incorporate sustainable features such as pervious paver hardscape systems, seating areas, trash receptacles, low intensity lighting, and public access signage. The Bay Walk will be accessible to the public during hours of park operation.

**Element H. Pavilions**

1. Permanent, Open Pavilion Structures

Up to ten open Pavilion structures would be grouped about a hardscaped pedestrian court, will be erected north of the Center Plaza. These structures may be temporarily enclosed with materials to form enclosed pavilions when needed by the tournament for retail, hospitality or other tournament related purposes, including use as a food court. The height of the permanent pavilion structures (exclusive of the Clock Tower) shall not exceed 18 feet. The initial total footprint of the Pavilions will be 7,200 to 9,600 square feet; with the future potential to expand the area if actual park usage justifies such expansion. The structures will have stubbed utilities services such as propane, three phase and single phase electrical, waste water lines, plumbing, grease interceptors, exhaust fans amongst other utilities required for food and beverage operations and code compliance. During tournament periods, the utilities will be connected and the structures may be covered with temporary enclosures to form pavilions for hospitality, concessions, retail or other uses ancillary to the tournament. The open Pavilions may be used for gathering or meeting areas or birthday parties outside of the tournament periods.

2. Clock Tower

To further facilitate way-finding during tournament use, the Pavilion facility will feature a distinctive Clock Tower structure. The Clock Tower structure may be free standing or connected to one or more of the Pavilions. The upper portion of the tower structure will have a large clock as its signature feature. The ground level of the Clock Tower structure



**EXHIBIT E**  
**Proposed Phase One Development Plan Narrative**

will be enclosed, and contain 800 to 1,200 square feet of secured space, which may be used for storage or other ancillary purposes for the tournament. The height of the Clock Tower structure will not exceed 35 feet.

**Element I. Unenclosed Courts**

The Site will contain sixteen (16) additional unenclosed, hard-surface courts, which may include a combination of newly constructed courts and refurbishing of existing courts. The approximate location of these courts is shown in the Proposed Development Plan (Exhibit B). These courts may be fenced or screened, but will not be located within permanent enclosed structures. These courts will not have permanent spectator grandstand seating, but temporary seating may be erected from time to time. All of these courts will be equipped with lighting to a standard suitable for recreation play or better. Initially, no less than four (4) of these courts will be equipped with permanent lighting structures to television broadcast standards; with the future potential to equip additional courts to television broadcast standards on a temporary or permanent basis.

**Element J. Lawns and Open Area**

There will be constructed a large open lawn area, as shown on the Proposed Development Plan (Exhibit B) as three-aligned fields with pedestrian walkways, located on the north of Court 2 and to the west of the Pavilions.

**Element K. Site Landscaping**

Throughout the areas of the Site available to the general public there will be constructed additional landscaping features and attractions, substantially as shown on the New Site Plan. These will include the Video Board Plaza adjacent to the Northwest Wing as a sloped lawn or landscape plaza and various informal green space and other gathering areas for the recreational use of the general public throughout the year.

**Element L. Environmental Enhancements**

In addition to the Site Landscaping described above the vegetation throughout the Site will be rehabilitated, increased and restored to a condition more consonant with the local habitat. Plantings may include palms, mangroves and other species appropriate to Key Biscayne. This environmental enhancement will be a long term, phased and continuing process.

**Element M. Other Amenities**

The Project may include fountains, benches, tables, sculpture and other functional or decorative amenities suitable for recreational or aesthetic enjoyment of the park.

**Note:** Several of the "Elements" included in Phase 1 of the Project are described in this Exhibit E by reference to a range of square feet or a range of seating capacity. The Developer has committed to build within those ranges. In so doing, the Developer may elect to complete the shell or infrastructure of a particular Element in Phase 1, and to complete the balance of that

**EXHIBIT E**  
**Proposed Phase One Development Plan Narrative**

Element (or so much as the Developer is obligated to build) in a Subsequent Phase. By way of examples only, the Developer may chose to build the envelope for a particular addition to the Stadium, but finish all or part of the interior of that addition in a Subsequent Phase; or, in constructing Court 2, the Developer may construct structural elements capable of supporting 3,000 permanent seats, but finish only 2,250 permanent seats in Phase 1, reserving the right to add 750 seats in a Subsequent Phase. In making such decisions, the Developer shall act in good faith, exercising commercially reasonable judgment, in consultation with the County, and for the purposes of enhancing the success of the Tournament and the public enjoyment of the Tennis Center Improvements, all within the amount of funds available for Project Hard Costs under the financing of Phase 1.

**EXHIBIT F**

**GF PLAN**

## EXHIBIT G

Project Budget		
<b>Phase 1 Pre-Design/Design/Permitting/Bidding Phase</b>		<b>Cost</b>
	Surveys	\$ 150,000
	PM (County, Developer)	\$ 200,000
	Consultant Fees	\$ 2,200,000
	Dry-Run/Permitting Agency Fees	\$ 40,000
	Miscellaneous Soft Costs	\$ 200,000
	<b>Total Phase 1 Pre-Design/Design Cost</b>	<b>\$ 2,790,000</b>
<b>Phase 1 Construction/Construction Management Phase</b>		
	PM(County, Developer)	\$ 200,000
	Bid Packages/Elements	
	Site Work	\$ 5,000,000
	Grandstand	\$ 8,000,000
	NW Wing Expansion	\$ 1,075,000
	West Side Expansion	\$ 2,000,000
	Shaded Walkway Enclosures	\$ 1,350,000
	Court 1 or 2	\$ 5,100,000
	GC/General Requirements	\$ 505,000
	Bonds & Insurance	\$ 900,000
	Allowances Accounts	
	Permits	\$ 80,000
	Contingency (Incl. Environmental)	\$ 1,000,000
	<b>Total Phase 1 Construction Cost</b>	<b>\$ 25,210,000</b>
	Debt Service Reserve	\$ 2,100,000
	<b>Total Phase 1 Project Cost</b>	<b>\$ 30,100,000</b>
<b>Phase 2 Pre-Design/Design/Permitting/Bidding Phase</b>		
<b>Phase 2</b>	Surveys	\$ 200,000
	PM (County, Developer)	\$ 200,000
	Consultant Fees	\$ 1,295,000
	Dry-Run/Permitting Agency Fees	\$ 40,000
	Miscellaneous Soft Costs	\$ 150,000
	<b>Total Pre-Design/Design Cost</b>	<b>\$ 1,885,000</b>
<b>Phase 2 Construction/Construction Management Phase</b>		
	PM(County, Developer)	\$ 200,000
<b>Phase 2</b>	Bid Packages/Elements	
	Site Work	\$ 1,450,000
	Lake Cottage	\$ 1,500,000
	South Wing Expansion	\$ 490,000
	East Wing Expansion	\$ 1,000,000
	North Wing Expansion	\$ 1,100,000
	Northeast Wing Expansion	\$ 490,000
	Southeast Wing Expansion	\$ 1,225,000
	Southwest Wing	\$ 900,000
	Court 1 or 2	\$ 6,710,000
	Permanent Ticket & Will-call	\$ 550,000
	GC/General Requirements	\$ 250,000
	Bonds & Insurance	\$ 1,200,000
	Allowances Accounts	
	Permits	\$ 50,000
	Contingency (Incl. Environmental)	\$ 1,000,000
	<b>Total Phase 2 Construction Cost</b>	<b>\$ 18,115,000</b>
	<b>Total Phase 2 Project Cost</b>	<b>\$ 20,000,000</b>
<b>Total Project Budget</b>		<b>\$ 50,100,000</b>

76

**EXHIBIT "H"**

**NOT USED**

27



Miami-Dade County Parks, Recreation  
 and Open Spaces Department  
 275 N.W. 2 Street  
 Miami, Florida 33128  
 T 305-755-7809 F 305-755-7995

EXHIBIT I

<DATE>

TO: <IPC Representative>

RE: Letter of Permit to Occupy Site: Pursuant to the Development Agreement between Miami-Dade County and International Players Championship, Inc. (IPC)

This letter of permit allows you or your contractors to access the park property known as Crandon Park Tennis Center, located at 7300 Crandon Blvd. The purpose of this Letter of Permit is to authorize you to \_\_\_\_\_. Attached to this letter please find additional minimum permit requirements.

You shall coordinate the work with the Tennis Center Manager \_\_\_\_\_ at \_\_\_\_\_. You are to notify \_\_\_\_\_ and or his supervisor, \_\_\_\_\_, at the beginning and end of the authorized work. At no time shall public park functions be interfered with or prevented. Once completed, areas affected by this work shall be returned to a condition equal to or better than that which existed at time of commencement.

IPC shall require its \_\_\_\_\_ contractor to maintain, at all times during the performance of the work, Contractor's Public Liability Insurance providing for a limit of not less than \_\_\_\_\_ for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \_\_\_\_\_ for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractor's Property Damage Liability Insurance providing for a limit of not less than \_\_\_\_\_ for all damages arising out of injury to, or destruction of, property in any one occurrence and subject to that limit per occurrence, a total or aggregate limit of \_\_\_\_\_ for all damages arising out of injury to, or destruction of, property during the policy period. The insurance documents' shall name the Miami-Dade County as an additional insured and shall be submitted to PROS prior to mobilization.

Sincerely,

Accepted,

\_\_\_\_\_  
 PROS (Deputy) Director

\_\_\_\_\_  
 (Contractor/Developer)


Attachments

C:

SR

**EXHIBIT I**

**MIAMI-DADE COUNTY PARK & RECREATION DEPARTMENT**

	<b>OPERATIONS MANUAL</b>	DATE ISSUED:	PAGE: 4	SECTION:
		10/01/99	OF: 6	6.800
SUBJECT: AUTHORIZATION FOR OUTSIDE AGENCY CAPITAL IMPROVEMENTS				

THIS PORTION TO BE COMPLETED BY PARK & RECREATION DEPT.

Folio #: \_\_\_\_\_

Request #: \_\_\_\_\_

Minimum Requirements:

Check if Applies

- 1) Survey provided by owner (if available).....
- 2) 2 Sets of plans full size & one reproducible prepared by an Architect or Engineer registered on the State of Florida for A & B Division review.....
- 3) Insurance of Documents' .....
- 4) Asbestos Survey/Removal on renovation Projects.....
- 5) Lead Survey/Removal on renovation Projects.....
- 6) Materials and Finishes according to Park & Recreation Standards.....
- 7) Plans 24"x36" prepared according to AutoCAD Standards.....
- 8) 2 Sets of plans signed & sealed by an Architect or Engineer registered on the State of Florida and approved by the Miami-Dade Building Dept.....
- 9) Building Permit Application (Signed by owner if required).....
- 10) Provide copy of permit. Permit No.: \_\_\_\_\_
- 11) Inspections as required by the Permitting Agency.....
- 12) AS-BUILT drawings required.....
- 13) Provide Certificate of Occupancy or Certificate of Completion.....

Special Conditions (Use additional sheets if necessary)

---



---



---



---



---



---

**Required Plans Approvals:**

- Operations Regional Manager .....
- Chief Planning & Research Div. ....
- Chief Architecture & Engineering Div. ....
- Assist. Dir. Planning & Development .....

\*Required Insurance Documents Attached

# EXHIBIT J

## CONSTRUCTION MANAGEMENT CONTRACT REQUIREMENTS

	PAGE
CONTRACT FORMS .....	2
PARTICIPATION PROVISIONS .....	17
COMMUNITY BUSINESS ENTERPRISE (CBE-A/E) PROGRAM ADMINISTRATIVE ORDER .....	62
SCHEDULE OF INTENT (SOI) AFFIDAVIT FOR SBE MEASURES .....	103
COUNTY CODE (SEC. 2-11.16 - RESPONSIBLE WAGES) .....	104



**EXHIBIT J**  
**MIAMI-DADE PARKS, RECREATION, AND OPEN SPACES DEPARTMENT**

**PROJECT MANUAL**

**Construction Contract Requirements**  
**CONTRACT FORMS**

Park Name  
Project Name  
CONTRACT NO. XXXXXX

TABLE OF CONTENTS

VOLUME I

00430	Bid Bond
00432	Corporate Principal Certification
00434	Bond Certification
00440	Fair Wage Affidavit
00454	Criminal Record Affidavit
00466	Listing of First Tier Subcontractors and Suppliers Form - Fair Subcontracting Practices
00470	Sworn Statement Under Section 287.133(3)(a) Florida Statutes on Public Entity Crimes
00476	Prohibition of Contracting With The County While In Arrears Affidavit

**CONTRACT FORMS**

0615	Surety Performance and Payment Bond
------	-------------------------------------

**EXHIBIT J**  
**SURETY BID BOND**

By this Bond, we \_\_\_\_\_, as Principal, whose principal business address is \_\_\_\_\_, as respondent to the contract offering due \_\_\_\_\_, 20 \_\_\_\_, for Miami-Dade County construction of \_\_\_\_\_ Contract No. \_\_\_\_\_ (herein after referred to as "Contract") the terms of which Contract are incorporated by reference in its entirety into this Bond and \_\_\_\_\_, a corporation, whose principal business address is \_\_\_\_\_ as Surety, are bound to Miami-Dade County (hereinafter referred to as "County") in the sum of \_\_\_\_\_ (U.S. dollars) \$ \_\_\_\_\_, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that Principal:

1. Whose submittal is found to be responsive to the solicitation, offered by a responsible contractor, is the lowest such responsive and responsible bid and is found to be in the best interest of the County shall be recommended for award by the County Manager; and
2. This Notice of Contract Award will be given to the successful respondent by a registered or certified letter to the address stated in the submittal package by the prospective Contractor; and
3. Upon receipt of Notice of Contract Award, the respondent to whom a Contract is awarded will be required to execute, in four (4) counterparts, each of which shall be deemed an original, including but not limited to, the prescribed Contract Document and if applicable, Performance and Payment Bonds within ten (10) calendar days from the date of notice to him that the Contract document is ready for execution. The required Insurance Certificates and Policies, as stated in the General Covenants and Conditions, shall also be delivered within this ten (10) day period.

The Respondent further agrees that, in the event he withdraws his bid, after proper notification of intent to Contract from the County, within one hundred eighty (180) days after the date of the submittal package opening, or fails to comply with all requirements to contract with Miami-Dade County or in the event he fails to comply with the Contract Documents or in the event he fails to enter into a written Contract with Miami-Dade-County, Florida, in accordance with the submittal package as accepted and provide required Bond(s) with good and sufficient surety and provide the necessary Insurance Certificates, as may be required, all within ten (10) days after the prescribed forms are presented to him for signature, the check or Bid Bond accompanying his submittal package, and the monies payable thereon, shall become the property of and be retained and used by Miami-Dade-County as liquidated damages, and not as a penalty; otherwise, the certified check or Bid Bond shall be returned by Miami-Dade-County to the undersigned.

By executing this instrument Surety agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the County. Notice to the Surety of extensions is waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

EXHIBIT J

SURETY BID BOND (Cont'd)

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

CONTRACTOR

\_\_\_\_\_  
(Contractor Name)

BY:

\_\_\_\_\_  
(President) (Managing Partner or Joint Venturer)

(SEAL)

COUNTERSIGNED BY RESIDENT  
FLORIDA AGENT OF SURETY:

SURETY:  
\_\_\_\_\_

\_\_\_\_\_  
(Copy of Agent's current  
Identification Card as issued by  
State of Florida Insurance Commissioner must be attached) By: \_\_\_\_\_

Attorney-in-Fact

(CORPORATE SEAL)

(Power of Attorney must be attached)

EXHIBIT J

CORPORATE PRINCIPAL CERTIFICATION

Project No.  
Project Name:

P & R Contract No.

I, \_\_\_\_\_, certify that I am the  secretary   
\_\_\_\_\_ of the Corporation named as Principal in the bond; that  
\_\_\_\_\_, who signed the attached documents on behalf of  
the Principal, was then \_\_\_\_\_ of/for said Corporation; that I know  
his signature, and that his signature thereto is genuine; that said document(s) was/were duly signed, sealed and  
attested for and in behalf of said Corporation by authority of its governing body.

Signature: \_\_\_\_\_  
(Corporate Seal)

State of \_\_\_\_\_ )  
                                  ) SS  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

FOR AN INDIVIDUAL ACTING IN HIS OWN RIGHT:

by \_\_\_\_\_

FOR A CORPORATION, PARTNERSHIP OR JOINT VENTURE:

by \_\_\_\_\_ having the title of \_\_\_\_\_ with

a \_\_\_\_\_ corporation       a partnership       a joint venture, on behalf of the  
 corporation                       partnership               joint venture.

He/She is       personally known to me, or  
                     has produced \_\_\_\_\_ as identification.

Notary Signature: \_\_\_\_\_  
Type or Print Name: \_\_\_\_\_  
Notary Seal:

Attachment to:       Proposal Agreement  
                             Bid Bonds(s)  
                             Bid Affidavit(s)  
                             Post Bid Submittals  
                             Performance & Payment Bond(s)  
                             Other (Specify): \_\_\_\_\_

104

EXHIBIT J

BOND CERTIFICATION

Project No. P & R Contract No.

Project Name:
State of )
) SS
County of )

The foregoing bond was acknowledged before me this \_\_\_ day of \_\_\_, 20\_\_

FOR AN INDIVIDUAL ACTING IN HIS OWN RIGHT:

by \_\_\_\_\_

FOR A CORPORATION, PARTNERSHIP OR JOINT VENTURE:

by \_\_\_\_\_ having the title of \_\_\_\_\_ with

[ ] a \_\_\_\_\_ corporation [ ] a partnership [ ] a joint venture, on behalf of the
[ ] corporation [ ] partnership [ ] joint venture.

He/She is [ ] personally known to me, or
[ ] has produced \_\_\_\_\_ as identification and who says that he has
been authorized to execute said bond in favor of Dade County, Florida.

Contractor Signature: \_\_\_\_\_

- Contractor Seal -

Notary Signature:

Type or Print Name:

Notary Seal:

State of Florida )
) SS
County of )

The foregoing bond was acknowledged before me this \_\_\_ day of \_\_\_, 20\_\_
by \_\_\_\_\_, as attorney-in-fact for \_\_\_\_\_,
the Corporate Surety, who is personally known to me or has produced \_\_\_\_\_ as
identification and who says that he has been authorized to execute said bond in favor of Dade County,
Florida.

Surety Signature: \_\_\_\_\_

- Surety Seal -

Notary Signature: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

Notary Seal:

Attachment to: [ ] Bid Bond(s)
[ ] Performance and Payment Bond(s)

EXHIBIT J

FAIR WAGE AFFIDAVIT

Project No.  
Project Name:

MDPROS Contract No.

State of \_\_\_\_\_ )  
 ) SS  
County of \_\_\_\_\_ )

Before me, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared \_\_\_\_\_ who after first being duly sworn, upon oath deposes and says that he/she is an authorized representative \_\_\_\_\_

(Legal Name, Corporation, Partnership, Firm, Individual) hereinafter called the bidder or proposer, located at \_\_\_\_\_

\_\_\_\_\_ and that said bidder or proposer, shall pay all workers on the project minimum wage rates in accordance with ordinance 90-143, Section 2-11.16 of the Code of Metropolitan Dade County and labor Provisions of the Contract Documents.

Witness: \_\_\_\_\_ Signature \_\_\_\_\_ Signature \_\_\_\_\_

Witness: \_\_\_\_\_ Signature \_\_\_\_\_ By: \_\_\_\_\_ Legal Name & Title \_\_\_\_\_

State of \_\_\_\_\_ )  
 ) SS  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

FOR AN INDIVIDUAL ACTING IN HIS OWN RIGHT:

by \_\_\_\_\_.

FOR A CORPORATION, PARTNERSHIP OR JOINT VENTURE:

By \_\_\_\_\_ having the title of \_\_\_\_\_ with \_\_\_\_\_

a \_\_\_\_\_ corporation  a partnership  a joint venture, on behalf of the  
 Corporation  Partnership  joint venture.

He/She is  personally known to me, or  
 has produced \_\_\_\_\_ as identification.

Notary Signature: \_\_\_\_\_

Type or print Name: \_\_\_\_\_

Notary Seal:

**EXHIBIT J**  
**Criminal Record Affidavit**  
(Miami-Dade County Ordinance No. 94-34)

Before me, the undersigned authority appeared \_\_\_\_\_ (print name), the \_\_\_\_\_ (print title) of \_\_\_\_\_ (print name of Bidder or Proposer), who attests that \_\_\_\_\_ (print name of Bidders or Proposer) as of the date of bid or proposal submission:

\_\_\_\_\_ has not been convicted of a felony during the past ten (10) years, nor does it, as of the date of bid or proposal submission, have an officer, director or executive who has been convicted of a felony during the past ten (10) years.

\_\_\_\_\_ has been convicted of a felony during the past ten (10) years, nor does it, as of the date of bid or proposal submission, have an officer, director or executive who has been convicted of a felony during the past ten (10) years.

When the Proposer/Bidder is an individual:

By: \_\_\_\_\_  
(Signature of individual)

\_\_\_\_\_ (Print name of individual) \_\_\_\_\_ (Address)

When the Proposer/Bidder is a sole proprietorship or operates under a trade name:

\_\_\_\_\_ (Printed name of firm)

By: \_\_\_\_\_  
(Signature of individual)

\_\_\_\_\_ (Printed name of individual) \_\_\_\_\_ (Address)

When the Proposer/Bidder is a partnership:

\_\_\_\_\_ (Printed name of partnership)

By: \_\_\_\_\_  
(Signature of partner)

\_\_\_\_\_ (Printed name of partner) \_\_\_\_\_ (Address)

EXHIBIT J

When the Proposer/Bidder is a corporation:

(Corporate Seal)

\_\_\_\_\_ (Printed name of corporation)

By: \_\_\_\_\_ (Signature of President or Vice President and Capacity)

By: \_\_\_\_\_ (Printed name of President or Vice - President)

\_\_\_\_\_

\_\_\_\_\_ (Business address of corporation)

When the Proposer/Bidder is a Joint Venture:

\_\_\_\_\_ (Printed name of joint venture)

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Printed name of joint venture)

\_\_\_\_\_ (Business address of joint venture)

STATE OF FLORIDA            )  
   ) SS  
 COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
 by \_\_\_\_\_ on behalf of \_\_\_\_\_  
 who is personally known to me or has produced \_\_\_\_\_  
 as identification and who [ ] did [ ] not take an oath.

Notary Signature: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

Notary Seal:



EXHIBIT J

**SUBCONTRACTOR/SUPPLIER LISTING**  
**(Ordinance 97-104, and 00-30 as amended)**

Firm Name of Prime Contractor/Respondent \_\_\_\_\_

Project Name \_\_\_\_\_

Project Number \_\_\_\_\_

This form should be completed by all bidders, and respondents on County contracts for purchase of supplies, materials or services, including professional services which involve expenditures of \$100,000 or more, and all bidders and respondents on County or Public Health Trust construction contracts which involve expenditures of \$100,000 or more. A bidder or respondent who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified except upon written approval of the County.

Business Name and Address of First Tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	(Principal Owner) Gender	Race
Business Name and Address of Direct Supplier	Principal Owner	Supplies/Materials/Services to be Provided by Supplier	(Principal Owner) Gender	Race

Page 10 of 11  
 I certify that the representations contained in this Subcontractor/Supplier listing are to the best of my knowledge true and accurate.

Prime Contractor/Respondent's Signature \_\_\_\_\_ Print Name \_\_\_\_\_ Print Title \_\_\_\_\_ Date \_\_\_\_\_

EXHIBIT J

SWORN STATEMENT UNDER SECTION 287.133(3)(a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal or Contract No. \_\_\_\_\_ for \_\_\_\_\_.
2. This sworn statement is submitted by \_\_\_\_\_ whose  
(Name of entity submitting sworn statement)  
business address is \_\_\_\_\_ (if  
applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_.  
(If the entity has no FEIN, include the Social Security Number of the individual signing  
this sworn statement: \_\_\_\_\_.
3. My name is \_\_\_\_\_ and my relationship  
(please print name of individual signing)  
entity names above is \_\_\_\_\_.
4. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), "Florida Statutes" means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes means:
  1. A predecessor or successor of a person convicted of a public entity crime or:
  2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market values under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

EXHIBIT J

7. I understand that a "person" as defined in Paragraph 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, director, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

8. Based on information and belief, the statement which, I have marked below is true in relation to the entity submitting this sworn statement. (Please, indicate which statement applies.)

\_\_\_ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

\_\_\_ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July, 1989, AND (Please, indicate which additional statement applies.)

\_\_\_ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please, attach a copy of the final order.)

\_\_\_ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please, attach a copy of the final order.)

\_\_\_ The person or affiliate has not been placed on the convicted vendor list. (Please, describe any action taken by or pending with the Department of General Services.)

\_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

EXHIBIT J

SUBSCRIBED AND SWORN TO (or affirmed) before me on \_\_\_\_\_  
(Date)

by \_\_\_\_\_ He/She is personally known to me or has  
(Affiant)

presented \_\_\_\_\_ as identification.  
(Type of Identification)

\_\_\_\_\_  
(Signature of Notary) (Serial Number)

\_\_\_\_\_  
(Print or Stamp Name of Notary) (Expiration Date)

Notary Public \_\_\_\_\_  
(State)

Notary Seal:

EXHIBIT J

PROPOSER'S AFFIDAVIT THAT MIAMI-DADE COUNTY TAXES,  
FEES AND PARKING TICKETS HAVE BEEN PAID  
(Section 2-8.1(c) of the Code of Miami-Dade County, as amended by Ordinance No. 00-30)

and

THAT PROPOSER IS NOT IN ARREARS TO THE COUNTY  
(Section 2-8.1(h) of the Code of Miami-Dade County, as amended by Ordinance No. 00-67)

I, \_\_\_\_\_, being first duly sworn,  
hereby state and certify that the foregoing statements are true and correct:

1. that I am the Proposer (if the Proposer is an individual), or the \_\_\_\_\_  
(fill in the title of the position held with the Proposer ) of the Proposer.
2. that the Proposer has paid all delinquent and currently due fees or taxes (including but not limited to, real and personal property taxes, utility taxes, and occupational taxes) collected in the normal course by the Miami-Dade County Tax Collector, and County issued parking tickets for vehicles registered in the name of the above proposer, have been paid.
3. that the Proposer is not in arrears in excess of the enforcement threshold under any contract, final non-appealable judgment, or lien with Miami-Dade County, or any of its agencies or instrumentalities, including the Public Health Trust, either directly or indirectly through a firm, corporation, partnership or joint venture in which the Proposer has a controlling financial interest. For purposes hereof, the term "enforcement threshold" means any arrearage under any individual contract, non-appealable judgment, or lien with Miami-Dade County that exceeds \$25,000 and has been delinquent for greater than 180 days. For purposes hereof, the term "controlling financial interest" means ownership, directly or indirectly, of ten per cent or more of the outstanding capital stock in any corporation, or a direct or indirect interest of ten per cent or more in a firm, partnership, or other business entity.

By: \_\_\_\_\_, 20\_\_\_\_  
Signature of Affiant Date

\_\_\_\_\_  
Printed Name of Affiant and Title Federal Employer Identification Number

\_\_\_\_\_  
Printed Name of Firm

\_\_\_\_\_  
Address of Firm

SCRIBED AND SWORN TO (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

by, \_\_\_\_\_ He/She is personally known to me or has presented

\_\_\_\_\_  
Signature of Notary Serial Number

\_\_\_\_\_  
Print or Stamp Name of Notary Expiration Date

Notary Public -- State of \_\_\_\_\_

Notary Seal:

113

## EXHIBIT J

### SURETY PERFORMANCE AND PAYMENT BOND

By this Bond, We \_\_\_\_\_, as Principal, whose principal business address is \_\_\_\_\_, as Contractor under the contract dated \_\_\_\_\_, 2013, between Principal and Miami-Dade County for the construction of \_\_\_\_\_ Project No \_\_\_\_\_ (herein after referred to as "Contract") the terms of which Contract are incorporated by reference in its entirety into this Bond and \_\_\_\_\_, a corporation, whose principal business address is \_\_\_\_\_ as Surety, are bound to Miami-Dade County (hereinafter referred to as "County") in the sum of \_\_\_\_\_ (U.S. dollars) \$ \_\_\_\_\_, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs all the work under the Contract, including but not limited to guarantees, warranties and the curing of latent defects, said Contract being made a part of this bond by reference, and in the times and in the manner prescribed in the Contract, including any and all damages for delay; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays County all losses, damages, including damages for delay, expenses, costs and attorney's fees, including appellate proceedings, that County sustains because of a default by Principal under the Contract, including but not limited to a failure to honor all guarantees and warranties or to cure latent defects in its work or materials within 5 years after completion of the work under the Contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the Contract, including all warranties and curing all latent defects within 5 years after completion of the work under the Contract;

then this bond is void; otherwise it remains in full force.

If no specific periods of warranty are stated in the Contract for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the County. This Bond does not limit the County's ability to pursue suits directly with the Principal seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11(3)(c), Florida Statutes.

Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety's obligation under this Bond.

EXHIBIT J

SURETY PERFORMANCE BOND (Cont'd)

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CONTRACTOR:

\_\_\_\_\_  
(Contractor Name)

BY:

\_\_\_\_\_  
(President) (Managing Partner or Joint Venturer)

(SEAL)

COUNTERSIGNED BY RESIDENT  
FLORIDA AGENT OF SURETY:

SURETY:

\_\_\_\_\_

\_\_\_\_\_  
(Copy of Agent's current  
Identification Card as issued by  
State of Florida Insurance Commissioner must be attached) By: \_\_\_\_\_  
Attorney-in-Fact

(CORPORATE SEAL)

(Power of Attorney must be attached)

Contract No.

115

Page 2 of 2

Page 16 of 110

**EXHIBIT J**

**MIAMI- DADE COUNTY  
FLORIDA**

**Department of Small Business Development**

**COMMUNITY SMALL BUSINESS ENTERPRISE PROGRAM (CSBE)  
ORDINANCE 97-52, AS AMENDED AND A.O. 3-22, AS AMENDED**

**PARTICIPATION PROVISIONS**

**THERE ARE THREE (3) CONTRACT MEASURES:  
SET-ASIDES, TRADE SET-ASIDES, AND SUBCONTRACTOR GOALS**

**THE CSBE CONTRACT MEASURE(S)  
APPLICABLE TO THIS PROJECT:**

Set-Aside	
Trade Set-Aside	
Subcontractor Goals	

**Trades identified by the Review Committee in determining CSBE measures are recommendations; however, other construction trades can be utilized to meet the CSBE goal.**

**THERE ARE TWO (2) PROGRAM INCENTIVES:  
BID PREFERENCE AND SELECTION FACTOR**

Bid Preference	
Selection Factor	

**Department of Small Business Development  
111 N.W. 1st Street, 19th Floor  
Miami, Florida 33128  
(305) 375-3111 Fax (305) 375-3160**

**Revised 4/5/2010**

116



**EXHIBIT J**  
**TABLE OF CONTENTS**

<u>Section</u>	<u>Page</u>
I. Definitions	3-9
II. General Information	9
III. Certification	9-10
IV. Contract Measures	10-20
A. Set-Asides	
B. Trade Set-Asides	
C. Subcontractor Goals	
V. Program Incentives	20-22
A. Bid Preferences	
B. Selection Factors	
VI. Design Build Contracts	22
VII. Pre-Award Compliance	22-23
A. Compliance Review by Compliance Monitor	
VIII. Prompt Payment	23-25
IX. Post Award Compliance and Monitoring	25-29
X. Sanctions for Contractual Violations	29-31
XI. Administrative Penalties	31-32
XII. Appendices	32
A. Forms	
1. Schedule of Intent Affidavit	SBD 400
2. Unavailability Certificate	SBD 303
3. Unavailability of a CSBE Due to Competitiveness	SBD 305A
4. Availability of Non-CSBE (Competitiveness)	SBD 305B
5. Monthly Utilization Report	M-300
6. Disbursement Authorization Form	SBD 306
B. Management and Technical Assistant Program	
C. Mentor Protégé Program	
D. Expedited Payment Process	

Ordinance 97-52, 97-158 and 00-17, and this Administrative Order 3-22 as Amended, can be obtained from the Clerk of the Board located in the Stephen P. Clark Bldg., 111 N. W. 1<sup>st</sup> Street, Suite 17-202.

## EXHIBIT J

### I. DEFINITIONS

The definitions in this section apply only to these Participation Provisions, hereafter, referred to as "Provisions".

1. *Advisory Board* means the CSBE Advisory Board created for the purpose of reviewing program activities and results, and for making recommendations to the Department of Small Business Development (SBD) and the Board of County Commissioners on matters pertaining to the program.
2. *Approval letter* means a document issued by SBD at the request of a CSBE or a bidder that, based on the written representations of the CSBE or bidder, finds a specified activity or scope of work consistent with normal industry practice.
3. *Available or Availability* means to have, prior to bid submission, the ability to provide construction services under a prime contract or first tier subcontract by having:
  - a. reasonably estimated, uncommitted capacity and expertise;
  - b. all licenses, permits, registrations and certifications;
  - c. the ability to obtain bonding that is reasonably required to perform the contract or subcontract consistent with normal industry practice; and
  - d. the ability to otherwise meet bid specifications.
4. *Bid* means a quotation, proposal, and letter of interest or offer by any bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, and letter of interest or offer to perform the contract.
5. *Bid Preference* means an amount deducted (for bid evaluation purposes only) from the total bid price in order to calculate the bid price to be used to evaluate the bid on a competitively bid prime County construction contract, which is not set-aside for bidding solely by CSBEs. Firms may claim a bid preference for Program Incentives such as Worker Training and Mentor-Protégé as outlined in Ordinance 97-52 as amended.
6. *Bidder* means any person, partnership, corporation or other business entity that submits a bid.
7. *Board* means the Miami-Dade County Board of County Commissioners of Miami-Dade County, Florida.
8. *Bonding Assistance* may include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes.
9. *Broker* means an individual or business that acts as a conduit for the purchase of goods or services from a supplier and transfers funds to a non-CSBE in a manner that does not add economic value to the purchase of goods or services, except where such conduct is normal industry practice.

## EXHIBIT J

10. *Business day* is a regular week day (Monday through Friday) normally starting at 8:00 a.m. and finishing at 5:00 p.m., excluding Saturdays and Sundays and excluding all legal holidays recognized by the Federal, State or Miami-Dade County governments.
11. *CSBE* means a construction related enterprise including a design-build firm, which has an actual place of business in Miami-Dade County and whose average annual gross revenues for the last three (3) years do not exceed: \$10,000,000 for SIC 15/NAICS 233 - Building Construction, General Contractors and Operative Builders; \$6,000,000 for SIC 16/NAICS 234 - Heavy Construction, other than Building Construction; or \$5,000,000 for SIC 17/NAICS 235 - Specialty Trade Contractors. A CSBE shall be categorized by the type of construction it performs in accordance with the two-digit SIC code, or the six-digit NAICS code, of the Census applicable to such type of construction. A CSBE will graduate out of the program once it has exceeded these size limits based on its three-year average annual gross revenues.

CSBE must be certified by the SIC or NAICS code, and classified into one of the three Contracting Participation Levels by the firm's average gross revenues for the past three (3) years. The lack of bonding capacity shall not preclude an applicant from being certified as a CSBE. As part of the certification process, a CSBE must go through a pre-qualification process, which will be used to determine which of the three Contracting Participation Levels the CSBE will be placed in based on the firm's three (3) year average gross revenues. The Contracting Participation Levels are as follows:

1. Level I - 3 year average annual gross revenues of \$0 - \$2,000,000.
2. Level II - 3 year average annual gross revenues above \$2,000,000 but not exceeding \$5,000,000.
3. Level III - 3 year average annual gross revenues above \$5,000,000 but not exceeding \$10,000,000.

A firm's eligibility to participate in the CSBE program and the Contracting Participation Level at which it will participate shall be determined based on the three year average gross revenues of the applicant firm in combination with that of all of the firm's affiliates. No firm shall be certified as a CSBE where the individual net worth of any of its owners is more than one million, five hundred thousand dollars (\$1,500,000). Representations as to gross revenues and net worth of owners shall be subject to audit.

12. *CSBE objective* means the objective of assuring that not less than 10% of the County's total annual expenditures for construction are expended with CSBEs. The foregoing CSBE objective may be increased by subsequent resolution of the Board of County Commissioners, adopted after recommendation for an increase by the CSBE Advisory Board, Forty percent (40%) of the foregoing objective may be accomplished through set-aside of smaller prime contracts and use of subcontractor goals on larger prime contracts falling within SIC 15/NAICS 233; forty percent (40%) of the foregoing objective may be accomplished through set-aside of smaller

## EXHIBIT J

prime contracts and use of subcontractor goals on larger prime contracts falling within SIC 16/NAICS 234; and twenty percent (20%) of the foregoing objective may be accomplished in prime contracts falling within SIC 17/NAICS 235. The percentage of the overall CSBE objective allocated to each SIC/NAICS category may be adjusted by resolution of the Board of County Commissioners in direct correlation to CSBE availability.

13. *Calendar day* means a twenty-four (24) hour period covering all days of the week (Monday through Sunday including all holidays), starting at 12:00 a.m., and finishing at 11:59 p.m.
14. *Certificate of Unavailability* means a document signed by a CSBE stating that the CSBE is not available to participate on a specific project at a specific time.
15. *Certification List* means a list maintained by SBD that contains the names and addresses of currently certified CSBEs, sorted by trade, service, Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) code, and Contracting Participation Level.
16. *Commercially useful function* means a contractual responsibility for the execution of a distinct element of the work of a contract by a business enterprise and the carrying out of the contractual responsibilities by actually performing, managing, and supervising the work involved. Acting as a broker is not considered a commercially useful function. The determination of whether an activity is a commercially useful function shall include: (1) the evaluation of the amount of work subcontracted; (2) normal industry practices; (3) the skills, qualifications, or expertise of the enterprise to perform the work; (4) whether the firm's personnel performs, manages, and/or supervises the work involved; and (5) other relevant factors.
17. *Commitment letter* means a letter signed by an officer or other authorized representative of a bidder or proposer for a County construction contract containing a second, third, or fourth tier subcontractor goal, which specifically commits the bidder or proposer to meet such subcontractor goal.
18. *Compliance Monitor* means the Director of SBD or his or her designee assigned to review and enforces compliance with Ordinance 97-52, as amended and this Administrative Order 3-22.
19. *Construction* means the building, renovating, retrofitting, rehabbing, restoration, painting, altering, or repairing of a public improvement.
20. *Construction Manager-at-Risk ("CM-at-risk")* replaces the general contractor and works for a fee with the County and the Architect through the design phase to contain the budget and schedule. The CM-at-risk provides a guaranteed maximum price ("GMP"), and bids the work out to local trade contractors. The CM-at-risk mobilizes to the site and manages the trade contractors for quality and schedule.
21. *Contract* means an agreement covered by this Administrative Order proposed by the County or Public Health Trust staff, or approved by the County Commission or Public Health Trust for construction.

## EXHIBIT J

22. *Contract measure* means a contract set-aside, or a trade set-aside, or a subcontract goal, or a bid preference, or a selection factor, singly or in any combination.
23. *Contracting Officer* means the person assigned under a contract, usually a department director or his or her designee, who has primary responsibility to manage the contract and enforce contract requirements.
24. *Contracting Participation Level* refers to the *level* in which a CSBE firm is classified based on the three (3) year average annual gross revenues of the applicant firm and that of all of the firm's affiliates. In addition, construction contracts of \$5,000,000 or less (which may be reserved for limited competition among CSBEs) will be classified into one of the three Contracting Participation Levels based on estimated project cost. The three Contracting Participation Levels are:
  1. Level I.....3 year average annual gross revenues of \$0 - \$2,000,000.
  2. Level II.....3 year average annual gross revenues above \$2,000,000 but not exceeding \$5,000,000.
  3. Level III.....3 year average annual gross revenues above \$5,000,000 but not exceeding \$10,000,000.

Prime contracts with estimated project construction costs in excess of \$5,000,000 shall be "open market" contracts which all firms can bid on. CSBEs pre-qualified in one level (e.g., those in Level III) may not bid on a lower level prime County contract set-aside for CSBEs (e.g., a \$500,000 project which falls into Level I). However, lower level CSBEs may bid on higher level contracts (e.g., a Level I CSBE may bid on a Level II or a Level III project).

25. *County* means Miami-Dade County, Florida, a political subdivision of the State of Florida.
26. *DPM* means the Miami-Dade County Department of Procurement Management.
27. *Debar* means to exclude a contractor, its individual officers, its shareholders with significant interests, its qualifying agent, or its affiliated businesses from County contracting and subcontracting for a specified period of time, not to exceed five (5) years.
28. *Graduation* means the CSBE has exceeded the specific size limits stated for the program, based on the firm's three-year average annual gross revenues, and will no longer be eligible for participation in the Program.
29. *Guaranteed maximum price ("GMP")* is the cost of the project that the CM-at-risk guaranteed will not be exceeded.
30. *Joint venture* means an association of two or more CSBEs. Joint ventures shall be subject to the size limitations set forth in this administrative order such size limitations include affiliates as set forth in Appendix A of Ordinance 97-52 as amended.

## EXHIBIT J

31. *Joint venture agreement* means a document submitted to SBD by a joint venture that provides information regarding the nature of the joint venture.
32. *Joint worth* for the purposes of the size limits established in Ordinance '97-52, as amended is defined as total assets minus total liabilities.
33. *Management & Technical Assistance (MTA)* means a program designed to provide direct and indirect assistance for small business enterprise development. Specific details of the program are shown in Section XXI of this Administrative Order.
34. *Mentor-Protégé Program* is a program whose purpose is to build effective working relationships between leaders of mature established companies and emerging small business enterprises in order for the latter to benefit from the knowledge and experience of the established mentor firms. Specific details of the Mentor-Protégé Program are shown in Section XII (C) of this Administrative Order.
35. *Monthly Utilization Report (MUR)* means a report completed by the successful bidder on a contract that is set-aside, or on a contract with trade set- asides or subcontractor goals, and submitted monthly, listing all work performed in the past month by the CSBE identified on the Schedule of Participation and all expenditures paid to date to the identified CSBE.
36. *North American Industry Classification System (NAICS Code)* is a code that was developed by the *Federal Office of Management and Budget* for use in the classification of establishments by type of activity in which they are engaged. The NAICS code replaces the SIC code.
37. *Pre-qualification* is defined under the definition of CSBE above.
38. *Primary Trade Contractor* means those contractors who directly contract with the CM-at-risk. This definition only applies to contracts for a construction manager-at-risk with a guaranteed maximum price.
39. *Program incentive* is an incentive that a firm can choose to use in a bid or proposal based on the firm's participation in certain programs. The incentive consists of either a bid preference or selection factor that will be used in evaluating the firm's bid or proposal on a specific project. The Program Incentives available are as follows:
  - a. For participation in the Mentor-Protégé Program -up to 2% of bid price or up to 10% of the total evaluation points; and
  - b. For participation in the Worker Training Program -up to 2% of bid price or up to 10% of the total evaluation points.
  - c. Specific details of the program incentive are shown in Section XII of this Administrative Order.
40. *Qualifier* means the individual who has qualified a contractor for its current, valid certificate of competency or eligibility as required by Subsection (a) of Section 10- 3 of the Code of Miami-Dade County.

## EXHIBIT J

41. *Registered CSBE* means a business that has registered with the relevant County agencies to compete for County construction contracts and has declared, by registration for statistical purposes, to be a CSBE. If no registration system showing such declaration exists, this term means a business that has bid on a County construction contract and has declared to County staff or in a public document that it is a CSBE.
42. *Review Committee (RC)* -the County Manager shall establish an administrative procedure for the review of each proposed County contract to which this ordinance applies, including the establishment of a committee to recommend whether CSBE contract set-asides, trade set-asides or subcontractor goals provided in the ordinance should be applied.
43. *SBD* means the Miami-Dade County Department of Small Business Development.
44. *Schedule of Intent Affidavit* means a form contained in the bid documents of a CSBE contract set-aside or a contract with trade set-asides or subcontractor goals in which bidders list at the time of bid submission that all CSBEs must use to meet the set-aside or the goal, and the scope of work each will perform, including the goods or services to be provided, and the dollar value of such work..
45. *Selection factor* means a percentage of total evaluation points added to the points scored by a proposer responding to a Request for Proposals (RFP) or a Request for Qualifications (RFQ) for a prime County construction contract which is not set-aside for competition solely among CSBEs.
46. *Services* mean construction, maintenance, painting, alteration, or repair of a public improvement or any performance of work offered for public consumption that does not consist primarily of goods.
47. *Set-aside* means reservation for competition solely among CSBEs of a given prime County contract whose estimated cost is \$5,000,000 or less.
48. *Standard Industrial Classification (SIC) or the equivalent NAICS code* is a code that was developed by the Federal Office of Management and Budget for use in the classification of establishments by type of activity in which they are engaged. The NAICS code replaces the SIC code.
49. *Subcontract* for the purposes of Ordinance 97-52, as amended means an agreement between a prime construction contractor and a Primary Trade Contractor, or a first, second, third, or fourth tier subcontractor.
50. *Subcontractor goal* means a proportion of a prime contract value stated as a percentage to be subcontracted at the first tier level, and another additional percentage to be subcontracted at the second, third, and/or fourth tier level, as outlined in this Administrative Order, to CSBEs to perform a commercially useful function. For County construction projects whose total estimated value is less than \$25,000,000 only expenditures to CSBEs made under written first tier subcontracts executed by both the prime contractor and the CSBE shall be counted towards meeting the CSBE subcontractor goal. For County construction projects whose total

## EXHIBIT J

estimated value is equal to, or greater than, \$25,000,000 the Review Committee shall recommend that a specific percentage of the expenditures be made to CSBEs under written first tier subcontracts, and that another additional percentage of the expenditures be made to CSBEs under second, third and/or fourth tier subcontracts.

51. *Successful Bidder* means the bidder to which the contract is awarded.
52. *Trade Set-aside* means that an entire Specialty Trade component(s) of a County miscellaneous construction contract is reserved for first tier subcontracting among certified CSBEs (for example, the entire plumbing, roofing or electrical component of a specific contract is reserved for limited competition among certified CSBEs). No CSBE may be awarded more than one trade set-aside on any one specific miscellaneous construction contract.
53. *Unavailability Certificate* means a document signed by a CSBE stating that the CSBE is not available to participate on a specific project at a specific time.
54. *Work* means the provision of goods or services for construction projects.
55. *Worker Training Program* is a qualified training program or technical school or other such construction industry related training program, as approved by the CSBE Advisory Board.

## II. GENERAL INFORMATION

These Provisions shall apply to every bid, request for proposals and contract to which a CSBE set-aside, Trade Set-aside or subcontractor goal is applied or where bidders claim a bid preference or selection factor. The phrase "CSBE contract measure(s)" means to apply the contract measures to this contract as indicated on the cover sheet. Only the contract measures in the CSBE program indicated on the cover sheet apply.

Note: THESE PROVISIONS ARE IN ADDITION TO FEDERAL REQUIREMENTS GOVERNING DISADVANTAGED BUSINESS ENTERPRISES.

- A. The bidder shall fully comply with these Provisions, which implement Miami-Dade County Ordinance 97-52 as amended, and this Administrative Order 3-22, respectively.
- B. Miami-Dade County shall not award a contract to any bidder, which it determines, fails to comply with all the applicable requirements of these Provisions.
- C. Forms necessary for submittal of information pertaining to these Provisions are included in the appendix. Additional copies may be obtained by contacting the Compliance Monitor (SBD), at: Miami-Dade County (MDC) Department of Small Business Development (SBD) at 111 N. W 1<sup>st</sup> Street, 19th Floor, Miami, Florida 33128 or by telephone at (305) 375-3111, facsimile (305) 375-3160.

## III. CERTIFICATION

- A. A CSBE certification list is included as an appendix to assist bidder compliance with any subcontractor goal, set-aside, or Trade Set-aside established for this project. The



## EXHIBIT J

certification list is maintained and published at least every other week. Bidders must utilize the most current certification list in complying with these Provisions. A current certification list may be obtained by contacting the Miami-Dade County Department of Small Business Development (SBD) at 111 N.W. 1st Street, 19th Floor, Miami, Florida 33128 or by telephone at (305) 375-3111, facsimile (305) 375-3160.

- B. Attached, as an example is a CSBE Certification List with a specified date. Certification lists are updated and issued at least every other week. Bidders *shall use the most recent Certification list available prior to bid opening. Certification lists may be obtained by contacting SBD at telephone number (305) 375-3111 during normal business hours, or from SBD website, MiamiDade.Gov.*
- C. The firms on the Certification list will be identified by each SIC/NAICS category and each Specialty Trade the CSBE is certified in. SBD shall certify each CSBE by the type of construction they perform in accordance with the two-digit SIC or six digit NAICS code applicable to such type of construction for which the CSBE is licensed. A CSBE can be certified in an unlimited number of SIC/NAICS codes and trade categories. CSBEs certified in SIC 17/NAICS 235 (Specialty Trade Contractors) shall also be classified by trade category or categories in which they are licensed. Each CSBE will also be certified in a specific Contracting Participation Level based on the firm's 3-year average annual gross revenues.
- D. In order to participate as a CSBE on this contract, a CSBE must have a valid certification in effect at the time of bid submittal. The CSBE must maintain certification from the time of bid submittal throughout the duration of the contract.
- E. Joint Ventures.

Only joint ventures approved by SBD in accordance with the CSBE Administrative Order are eligible to participate as joint ventures in the CSBE program. Joint ventures must be lawfully established. All members of the joint venture must be certified as CSBEs before the joint venture can be approved. Joint ventures can participate under the CSBE program on contracts with CSBE Trade Set-asides, subcontractor goals, bid preferences and selection factors.

#### IV. CONTRACT MEASURES

##### A. Contract Set-Asides

1. County construction contracts that are set-aside under the CSBE program are for bidding solely among CSBEs. In order to bid on a set-aside contract the bidder must be certified as a CSBE prior to bid submission date. A CSBE awarded a set-aside contract shall not transfer to a non-CSBE through subcontracting or otherwise any part of the actual work of the contract unless these bid documents expressly and specifically permit such transfer as consistent with normal industry practice or the CSBE requests in writing and receives prior to bid award an approval letter from SBD [for example, a CSBE general contractor needs to rent a particularly expensive piece of equipment with labor support to perform a specific task in the contract and requests approval from SBD].

## EXHIBIT J

2. CSBEs prequalified in one contracting capacity (e.g., those in contracting capacity Level III) may not bid on a lower level prime County contract set-aside for CSBEs (e.g., a \$500,000 project which falls into Level I). However, lower level CSBEs may bid on higher-level contracts (e.g. a Level I CSBE may bid on a Level II or a Level III project).
3. A CSBE that performs the work of the set-aside contract with its own forces may count such work towards reducing the CSBE goal applied to the contract by a maximum of one hundred (100) percent.
4. Bidders on set-asides, that cannot demonstrate their compliance with the requirements of Section IV, A1, shall be found to be in non-compliance with these provisions.
5. Bidder's Responsibilities for Contract Set-Asides:
  - a. Bidders on set-asides must submit a completed Schedule of Intent Affidavit (Form SBD 400) at the time of bid submission. Bidders who fail to submit the Schedule of Intent Affidavit shall be considered non-responsive; and
  - b. Bidders must submit a Schedule of Intent Affidavit (Form SBD 400) to the person or office to whom the bid was submitted on the bid submittal due date. Defective Schedule of Intent Affidavits that is incomplete or inaccurate upon notification by the Department of Small Business Development, bidders may correct defects that exist on the Schedule of Intent Affidavit within forty-eight (48) hours after bid submission. Failure to submit the required Schedule of Intent Affidavit or commitment letter at the time of bid submission shall render the bid non-responsive. Examples of defects include, but are not limited to improperly executed letters, the listing of an unidentifiable CSBE and percentage miscalculations that are not mere clerical errors apparent on the face of the Schedule of Intent Affidavit. Bidders who fail to submit the Schedule of Intent Affidavit shall be considered non-responsive.
6. The following shall constitute a violation of these Provisions as they relate to a contract that is set-aside:
  - a. Submission of a Schedule of Intent Affidavit (Form SBD 400) of CSBE subcontractors that the bidder knew or should have known is incomplete or inaccurate;
  - b. After bid submission due date, deviation from the Schedule of Intent Affidavit without the written approval of the Compliance Monitor;
  - c. The utilization of a non-certified CSBE.
  - d. A CSBE serving as a conduit for CSBE work awarded to a firm as a CSBE but which is being performed by a non-CSBE firm;

## EXHIBIT J

- e. Not obtaining or retaining CSBE certification while performing work designated for CSBE firms;
- f. Failure to submit monthly utilization reports;
- g. Failure to maintain certification;
- h. Failure to comply with CSBE certification requirements including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
- i. Modifications to the terms and/or prices of payment to a CSBE without prior approval from SBD; or
- j. Unjustified failure to enter into a written subcontract with a CSBE after listing the firm on a Schedule of Intent Affidavit."

### B. Trade Set-Asides

1. The purpose of a Trade Set-Aside is to have the entire Specialty Trade component(s) of a County miscellaneous construction contract to be performed by available first tier subcontractors that are certified CSBEs. Trade Set-asides may be applied to a miscellaneous construction contract as individual work orders are processed through SBD and the RC.
2. Bidder Responsibilities for Trade Set-aside:
  - a. Bidders on contracts to which a Trade Set-aside has been applied must submit a completed Schedule of Intent Affidavit at the time of bid submission. The Schedule of Intent Affidavit constitutes a written representation by the bidder that, to the best of the bidder's knowledge, the CSBEs listed are qualified and available to perform as specified. The Schedule of Intent Affidavit is a commitment by the bidder that, if awarded the contract, it will enter into written subcontracts with the identified CSBE for the scope of work at the percentage set forth in the Schedule of Intent Affidavit.
  - b. All bidders must submit Schedule of Intent Affidavits to the person or office to whom the bid was submitted by the bid submission due date. Upon notification by the Department of Small Business Development, bidders may correct defects that exist on the Schedule of Intent Affidavit within forty-eight (48) hours after bid submission. Failure to submit Schedule of Intent Affidavits within the specified time shall render the bid non-responsive. Failure to correct identified defects on the Schedule of Intent Affidavit within forty-eight hours, upon notification by the Department of Small Business Development shall render the bid non-responsive. Submission of a defective form shall render the bid voidable.
  - c. In contracts with Trade Set-asides for CSBEs, a CSBE shall be counted toward meeting the goal for one Contracting Participation Level only. The

## EXHIBIT J

prime bidder shall declare at bid submission toward which Trade Set-aside the CSBE business enterprise shall count.

- d. All such subcontracts shall be in writing and shall be executed by the prime contractor and the first tier CSBE subcontractor.
  - e. Bidders who *fail* to submit the Schedule of Intent Affidavit shall be considered non-responsive.
  - f. Bids that contain a defective Schedule of Intent Affidavit may be voidable. Examples of defects include, but are not limited to, an incomplete Schedule, the listing of an unidentifiable CSBE, and percentage miscalculations that are not mere clerical errors apparent on the face of the Schedule.
  - g. A successful prime bidder that is a CSBE or a CSBE joint venture may perform up to fifty percent (50%) of a CSBE Trade Set-aside with its own forces.
  - h. Reporting of Bidders' Subcontracting Policies and Procedures.  
As part of its bid each bidder shall also provide a detailed written statement of its policies and procedures for awarding subcontracts. (Dade County Ordinance 97-35).
3. The following shall constitute non-compliance with these Provisions as they relate to a contract with a Trade Set-aside:
- a. Submission of a Schedule of Intent Affidavit of CSBE subcontractors that the bidder knew or should have known is incomplete or inaccurate;
  - b. After bid submission due date, deviation from the Schedule of Intent Affidavit without the written approval of the Compliance Monitor;
  - c. The utilization of a non-certified CSBE for the Trade Set-aside;
  - d. A CSBE serving as a conduit for CSBE work awarded to a firm as a CSBE but which a non-CSBE firm; is performing;
  - e. prime contractor not meeting the CSBE Program Trade Set-aside requirements;
  - f. Failure to submit monthly utilization reports;
  - g. Failure of the CSBE to maintain certification;
  - h. Deviations from the Schedule of Intent Affidavit without prior approval from SBD;
  - i. Termination of the CSBE's contract without prior approval from SBD;
  - j. Reduction of the scope of work of a first tier CSBE subcontractor without prior approval from SBD;

## EXHIBIT J

- k. Modifications to the terms and/or prices of payment to a CSBE without prior approval from SBD;
- l. Unjustified failure to enter into a written first tier subcontract with a CSBE after listing the firm on a Schedule of Intent Affidavit.

### C. Subcontractor Goals

1. The Purpose of a subcontractor goal is to have portions of the work under the prime contract performed by available subcontractors that are certified CSBEs for contract values totaling not less than the percentage of the prime contract value set out in the bid form. Subcontractor goals may be applied to a contract when estimates made prior to bid advertisement identify the quality; quantity and type of opportunities in the contract and CSBEs are available to afford effective competition in providing a percentage of these identified services.

Only expenditures to CSBEs made under a written first tier subcontract executed by both the prime contractor and the CSBE shall be counted towards meeting a first tier subcontractor goal. Only expenditures made under a written second, third or fourth tier subcontract executed by both the next tier level subcontractor and the lower tier CSBE subcontractor shall be counted towards meeting a second, third or fourth tier subcontracting goal.

2. After a bid is advertised or other formal public notice, the established subcontractor goal may be reduced only with the approval of the County Commission or if the Public Health Trust executes the contract. Bid documents shall include documentation demonstrating the basis for subcontractor goals established in the contract. Any bidder may challenge or protest the goal by submitting to SBD or the Contracting Officer, no later than ten (10) business days prior to the scheduled bid submission date, the reasons for such challenges or protests in writing. Challenges or protests to a CSBE goal by bidders after that time, or based on reasons not provided in writing within the time frame stated above, shall not be considered by the County Commission.
3. The Project Worksheet for establishing the stated subcontractor goal is included as part of the bid package.
4. Bidder Responsibilities for Subcontractor Goals:
  - a. With the exception of contracts for a construction manager-at-risk as noted below where a first tier subcontractor goal has been imposed, bidders must submit a completed Schedule of Intent Affidavit form at the time of bid submission identifying all CSBEs to be utilized to meet the first tier subcontractor goal, the trade designation of work each will perform, and the percentage of such work. Pursuant to section X.5. of these provisions, any bidder that failed to meet an established CSBE goal shall submit a CSBE Make-up Plan and corresponding Schedule of Intent Affidavit as part of the bid or proposal at the time of bid submittal. Failure to include the required Schedule of Intent Affidavit with bids or proposals shall result in the submittal being deemed nonresponsive. Upon notification by the

## EXHIBIT J

Department of Small Business Development, bidders may cure correctable defects that exist on the Schedule of Intent Affidavit within forty-eight (48) hours after bid submission. Correctable defects may include: percentage of work not identified for subcontractor on SOI signed by subcontractor, no signature of subcontractor on the SOI and no signature of prime contractor on the SOI. Non-correctable defects may include: blank SOI (not listing the subcontractor's name and scope of work and percentage of work to be performed) or no make-up plan submitted with bid documents when there is a goal deficit. All responsive bids will be opened 48 hours after the bid submission due date and non-responsive bids will not be opened.

The Schedule of Intent Affidavit constitutes a written representation by the bidder that, to the best of the bidder's knowledge the first tier CSBEs listed are qualified and available to perform as specified. The Schedule of Intent Affidavit is a commitment by the bidder that if awarded the contract, it will enter into written subcontracts with the identified first tier CSBEs for the scope of work at the price set forth in the Schedule of Intent Affidavit. Where a second, third and fourth tier subcontractor goal has been imposed, bidders must submit a commitment letter committing the bidder to meet such goal.

For contracts for a construction manager-at-risk with a guaranteed maximum price, the Primary Trade Contractors shall submit the list of first-tier CSBE subcontractors at the time of bid submission to the CM-at-risk. All Primary Trade Contractors shall submit Schedule of Intent Affidavits for all subcontractors listed on the list of first-tier CSBE subcontractors within two business days of the date of bid submission date to the CM-at-risk. Failure to submit the required documents within the required time frames may render the bid non-responsive or be subject to sanctions or penalties as outlined in the contract or in this Administrative Order.

For contracts for a construction manager-at-risk with a guaranteed maximum price, the use of CSBEs at the Primary Trade Contractor level and the level of contractors that directly contract with the Primary Trade Contractors, count towards the first-tier CSBE subcontractor goal on the contract. In addition, if the CM-at-risk exceeds the first-tier CSBE subcontractor goal, the amount by which the first-tier CSBE subcontractor goal is exceeded counts towards fulfillment of the second, third and fourth tier subcontractor goal on that contract. However, if the CM-at-risk exceeds the second, third and fourth tier subcontractor goal, the amount that the second, third and fourth tier subcontractor goal is exceeded by shall not count towards fulfillment of the first-tier subcontractor goal.

For contracts for a construction manager-at-risk, the construction manager-at-risk shall be responsible for administering and implementing the requirements of Ordinance 97-52 as amended and this Administrative Order, on the contract

1. All such subcontracts shall be in writing and shall be executed by the prime contractor and the first, second, third, and/or fourth tier CSBE

## EXHIBIT J

subcontractor utilized to meet a first, second, third or fourth tier subcontract goal.

2. Bidders who fail to submit the required Schedule of Intent Affidavit or commitment letter at the time of bid submission shall be considered non-responsive.
  3. Bids that contain a defective Schedule of Intent Affidavit may be voidable. Examples of defects include, but are not limited to, an incomplete Schedule, the listing of an unidentifiable CSBE, and percentage miscalculations that are not mere clerical errors apparent on the face of the Schedule.
- b. A successful prime bidder that is a CSBE or a CSBE joint venture may perform up to fifty percent (50%) of a CSBE subcontractor goal with its own forces. The remaining subcontractor goal work shall be performed by other CSBEs.
  - c. Reporting of Bidders Subcontracting Policies and Procedures.  
As part of its bid each bidder shall also provide a detailed written statement of its policies and procedures for awarding subcontracts (Dade County Ordinance 97-35).
  - d. Bidders whose bid do not meet the specified goal and who do not prove lack of availability are not in compliance with these provisions, except as noted in C (4)(i) below.
  - e. Expenditures to subcontracting CSBEs shall be counted toward meeting specified goals as follows:
    1. One hundred percent (100%) of the expenditures to a CSBE that perform a commercially useful function in the supply of services required for the fulfillment of the contract;
    2. One hundred percent (100%) of the expenditures to CSBEs that subcontract work further to non-CSBEs, only if bid documents expressly and specifically permit such subcontracting as consistent with normal industry practice, or the bidder or CSBE requests and receives prior to bid award an approval letter from SBD;
    3. One hundred percent (100%) of the expenditures to CSBEs that perform actual work with their own forces;
    4. None of the expenditures to a CSBE that acts essentially as a conduit to transfer funds to a non-CSBE unless bid documents expressly and specifically permit such transfers as consistent with normal industry practice or the bidder or CSBE requests and receives prior to bid award an approval letter from SBD;
    5. Only expenditures to CSBEs made under a written first tier subcontract executed by both the prime contractor and the CSBE shall

## EXHIBIT J

be counted towards meeting a first tier subcontractor goal. Only expenditures made under a written second, third or fourth tier subcontract executed by both the next tier level subcontractor and the lower tier CSBE subcontractor shall be counted towards meeting a second, third or fourth tier subcontracting goal.

### 6. Reporting of bidders' Subcontracting Policies and Procedures.

As part of its bid each bidder shall also provide a detailed written statement of its policies and procedures for awarding subcontracts. (Dade County Ordinance 97-35).

- f. Bidders shall take all necessary and reasonable steps in accordance with these Provisions to ensure that CSBEs have the maximum opportunity to compete for and perform this contract. Bidders shall select portions of the work to be performed by CSBEs so as to increase the likelihood of meeting the subcontractor goal including, where appropriate, breaking down subcontracts into economically feasible units to facilitate CSBE participation.
- g. With the exception of contracts for a construction manager-at-risk as noted above where a first tier subcontractor goal has been imposed, bidders must submit a Schedule of Intent Affidavit form as part of the bid package at the time of bid submission identifying all CSBEs to be utilized to meet the first tier subcontractor goal, the trade designation of work each will perform, and the dollar value of such work. On contracts where a second, third and fourth tier subcontractor goal has been imposed, bidders must also submit a commitment letter at the time of bid submission committing the bidder to meet such goal. Failure to submit the required Schedule of Intent Affidavit within the specified time shall render the bid non-responsive. Failure to submit the required commitment letter at the time of bid submission shall render the bid non-responsive. Submission of a defective form shall render the bid voidable. Expenditures to first tier CSBEs on a Schedule of Intent Affidavit that are not confirmed by a properly executed Schedule of Intent Affidavit shall not count toward the goal.

For contracts for a construction manager-at-risk with a guaranteed maximum price, the Primary Trade Contractors shall submit the list of first-tier CSBE subcontractors at the time of bid submission to the CM-at-risk. All Primary Trade Contractors shall submit letters of intent for all subcontractors listed on the list of first-tier CSBE subcontractors within two business days of the date of bid submission date to the CM-at-risk. Failure to submit the required documents within the required time frames may render the bid non-responsive or be subject to sanctions or penalties as outlined in the contract or in this Administrative Order.

For contracts for a construction manager-at-risk with a guaranteed maximum price, the use of CSBEs at the Primary Trade Contractor level and at the level of contractors that directly contract with the Primary Trade Contractors, count towards the first-tier CSBE subcontractor goal on the contract. In addition, if the CM-at-risk exceeds the first-tier CSBE



## EXHIBIT J

subcontractor goal, the amount by which the first-tier CSBE subcontractor goal is exceeded counts towards fulfillment of the second, third and fourth tier subcontractor goal on that contract. However, if the CM-at-risk exceeds the second, third and fourth tier subcontractor goal, the amount that the second, third and fourth tier subcontractor goal is exceeded by shall not count towards fulfillment of the first-tier subcontractor goal.

For contracts for a construction manager-at-risk, the construction manager-at-risk shall be responsible for administering and implementing the requirements of Ordinance 97-52 as amended, and this administrative Order, on the contract

- h. With the exception of contracts for a construction manager-at-risk as noted above, in order to assure at the time of bid submission, agreement upon the above information between the bidder and the first tier CSBE subcontractor so identified, bidders must submit Schedule of Intent Affidavits signed by the identified first tier CSBE subcontractor to the Contracting Officer by bid submission date. Failure to submit Schedule of Intent Affidavits signed by the affected CSBE within the specified time may render the bid non-responsive. Submission of a defective form may render the bid voidable.
- i. Bidders whose bids do not meet the specified goal, in order to remain eligible, must submit to the person or office to whom the bid was submitted by bid submission due date, evidence proving the lack of available CSBEs to afford effective competition to provide the services to meet the goal. To prove lack of availability, bidders must submit the following:
  1. Unavailability Certificates either completed and signed by all of the CSBEs available to perform the scopes of work are completed and signed by the bidder explaining the contacts with all of the CSBEs available to perform the scopes of work, statements or actions of the CSBEs showing unavailability, and the reason(s) why the CSBEs' signature could not be obtained;
  2. A listing of any bids received from a CSBE, the scope of work and price of each bid, and the bidder's reasons for rejecting each bid;
  3. A statement of the bidder's contacts with SBD for assistance in determining available CSBE's,
  4. A description of the bidder's process for soliciting and evaluating bids from CSBEs, including copies of telephone logs detailing time, date and name of contacts with potential subcontractors;
  5. Bidders may establish a CSBE as unavailable if its bid is not reasonably competitive with comparable bids of non-CSBEs for the same scope of work. To establish a CSBE as unavailable if its bid is not considered reasonably competitive, the prime bidder must furnish SBD with copies of all bids received from all firms, both CSBEs and non-CSBEs, for each specific scope of work for which they are claiming that the bid is not reasonably competitive. A CSBE's bid

## EXHIBIT J

will be considered reasonably competitive if its bid, for the same scope of work, is within 25% of the bid of comparably sized non-CSBE firms. Bidders must submit SBD Form 305A "Unavailability of a CSBE Due to competitiveness" to the Contracting Officer by bid submission due date. Failure to submit SBD Form 305A within the specified time shall render the bid non-responsive. Submission of a defective form shall render the bid voidable;

6. The bidder who is awarded a contract having a second, third or fourth tier subcontractor goal shall notify SBD, in writing, at least one week prior to initiating the process to select lower tier CSBEs whose participation will be utilized to meet such goal, of the name, address and tier level of the subcontractor who will award the lower tier subcontract to a CSBE, the scope of work for such lower tier subcontract and the bid submission date for such lower tier subcontract. The prime contractor shall obtain SBD's approval prior to the award of any lower tier subcontract that will be utilized to meet a lower tier subcontractor goal; and
7. On contracts in excess of \$25 million which have subcontractor goals, the prime contractor shall be required during the term of the contract to make a quarterly presentation to the CSBE Advisory Board on his or her performance in meeting such goal.

Bidders whose bid does not meet the specified goal, and who do not prove lack of availability as indicated in C(4)(i)(1) above, are not in compliance with this Administrative Order.

5. The following shall constitute non-compliance with these Provisions as they relate to a contract, which has a CSBE subcontractor goal:
  - a. The utilization of a non-certified CSBE.
  - b. A CSBE serving as a conduit for CSBE work awarded to a firm as a CSBE but which is being performed by a non-CSBE firm;
  - c. A prime contractor not meeting CSBE Program subcontractor goal requirements;
  - d. Not obtaining or retaining CSBE certification while performing work designated for CSBE firms;
  - e. Failure to submit monthly utilization reports;
  - f. Deviations from the Schedule of Intent Affidavit or listing of first tier subcontractors as required on a contract without prior approval from SBD;
  - g. Termination of the CSBE's contract without prior approval from SBD.
  - h. Reduction of the scope of work of a first tier CSBE subcontract without prior approval from SBD. Reduction of the scope of work of a second,

## EXHIBIT J

third or fourth tier CSBE subcontract utilized to meet a second, third or fourth tier subcontractor goal without prior approval of SBD;

- i. Modifications to the terms and/or prices of payment to a CSBE without prior approval from SBD; or
- j. Unjustified failure to enter into a written first tier subcontract with a CSBE after listing the firm on a Schedule of Intent Affidavit or on a list of first tier subcontractors as required on a CM-at-risk contract. Unjustified failure to enter into a written second, third or fourth tier subcontract with a CSBE utilized to meet a second, third or fourth tier subcontractor goal.

**NOTE: Trades identified by the Review Committee in determining CSBE measures are Recommendations; however, other construction trades can be utilized to meet the CSBE goal.**

### V. PROGRAM INCENTIVES

#### A. Bid Preference Eligibility

Bidders claiming a bid preference as a result of participation in the CSBE Mentor-Protégé or Worker Training Program shall complete and submit with their bid a claim of bid preference. The Compliance Monitor shall determine whether the bidder qualifies for the bid preference for the specified contract. To qualify for the bid preference, the bidder must:

1. Have been actively and successfully participating in a SBD-approved Mentor-Protégé relationship, as either a Mentor or a Protégé, for at least six (6) months prior to the bid submittal date for the bid for which the bid preference is being sought; or
2. Be currently participating in, or currently providing significant funding for, a CSBE Advisory Board-approved Worker Training Program; or
3. Have successfully completed a SBD-approved Mentor-Protégé relationship, as either a Mentor or a Protégé, within the twelve (12) months prior to the bid submittal date for the bid for which the bid preference is being sought.

SBD shall determine whether the bidder has been actively and successfully participating in or has successfully completed a SBD-approved Mentor-Protégé relationship. The CSBE Advisory Board shall approve all Worker Training Programs; SBD shall determine the level of participation in, and/or level of funding provided for, the Worker Training Program that is appropriate for qualification for the bid preference.

A bid preference resulting from participation in the CSBE Mentor-Protégé or Worker Training Program may only be claimed on contracts that are not CSBE contract set-asides. The bid preference for the Mentor-Protégé Program is up to 2% of the bid price based on the sliding scale shown in Table I on the following page; the bid preference for the Worker Training Program is up to 2% of the bid price based on the sliding scale shown in Table I on the

## EXHIBIT J

following page. The bid preference shall be calculated and subtracted from the total bid price. The bid preference is used only to calculate an amount to be used in evaluating the bid and does not affect the contract price.

**Table 1: Sliding Scale for Bid Preference**

Estimated Project Cost	CSBE Bid Preference Incentive
>\$0 <=\$75,000	2.0% of total bid price
>\$75,000 <=\$125,000	1.0% of total bid price
>\$125,000 <=\$250,000	0.8% of total bid price
>\$250,000 <=\$500,000	0.6% of total bid price
>\$500,000 <=\$1,000,000	0.4% of total bid price
>\$1,000,000	0.2% of total bid price

### B. Selection Factor Eligibility

Proposers claiming a selection factor based on participation in the CSBE Mentor-Protégé or Worker Training Program must complete and submit with their proposal a claim for such a selection factor. To qualify for the selection factor, the proposer must:

1. Have been actively and successfully participating in a SBD-approved Mentor-Protégé relationship, as either a Mentor or a Protégé, for at least six (6) months prior to the proposal submittal date for the proposal for which the selection factor is being sought; or
2. Be currently participating in or currently providing significant funding for a CSBE Advisory Board-approved Worker Training Program; or
3. Have successfully completed a SBD-approved Mentor-Protégé relationship, as either a Mentor or a Protégé, within the twelve (12) months prior to the proposal submittal date for the proposal for which the selection factor is being sought.

SBD shall determine whether the proposer has been actively and successfully participating in, or has successfully completed, a SBD-approved Mentor-Protégé relationship. The CSBE Advisory Board shall approve all Worker Training Programs; SBD shall determine the level of participation in, and/or level of funding provided for, the Worker Training Program that is appropriate for qualification for the selection factor.

A selection factor resulting from participation in the CSBE Mentor-Protégé or Worker Training Program may only be claimed on contracts that are not CSBE contract set-asides. The selection factor for the Mentor-Protégé Program is up to 10% of the total evaluation points based on the sliding scale shown in Table 2 below; the selection factor for the Worker Training Program is up to 10% of the total evaluation points based on the sliding scale shown in Table 2 below.

## EXHIBIT J

**Table 2: Sliding Scale for Selection Factor**

<b>Estimated Project Cost</b>	<b>CSBE Selection Factor Incentive</b>
>\$0 <=\$75,000	10.0% of total evaluation points
>\$75,000 <=\$125,000	5.0% of total evaluation points
>\$125,000 <=\$250,000	4.0% of total evaluation points
>\$250,000 <=\$500,000	3.0% of total evaluation points
>\$500,000 <=\$1,000,000	2.0% of total evaluation points
>\$1,000,000	1.0% of total evaluation points

Any evaluation/selection committee formed to evaluate a proposal with a CSBE selection factor shall include a voting representative from SBD.

### **VI. DESIGN BUILD CONTRACTS**

The construction portion of the design-build contract is subject to the procedures in these Provisions.

### **VII. PRE-AWARD COMPLIANCE**

#### **A. Compliance Review**

1. The Compliance Monitor shall review bidder's submission for compliance with these Provisions on every contract to which a CSBE contract set-aside, Trade Set-aside or subcontractor goal has been applied. The Compliance Monitor shall also review bidders claiming a bid preference or selection factor. The purpose of this review shall be for the Compliance Monitor to consider whether to recommend the bidder's bid is determined to be in compliance or non-compliance with the requirements of these Provisions. The Compliance Monitor may consider relevant information from any person in making this decision. The Compliance Monitor may require the bidder to produce information deemed pertinent and appropriate and may obtain further information from whatever sources the Compliance Monitor deems appropriate.
2. The Compliance Monitor shall notify the bidder in writing stating the facts and the reasons on which the non-compliance is based. The bidder may request a meeting within five (5) business days from the date of the notification of non-compliance. The bidder shall supply further relevant information as required by the Compliance Monitor. No new altered Schedule of Intent Affidavit will be accepted.
3. The Compliance Monitor shall make a written recommendation to the Contracting Officer, which shall include a statement of the facts and reasons for which the non-compliance is based.
4. Following receipt of a recommendation of non-compliance from the Compliance Monitor, the Contracting Officer shall review the Compliance Monitor's recommendation of bidder's non-compliance with these Provisions. The Contracting Officer shall notify the bidder of such non-compliance. The

## EXHIBIT J

bidder may request a meeting within five (5) business days from the date of notification of non-compliance with the Contracting Officer if the Contracting Officer was not present at the first meeting referenced in Section VII (A)(2) above. The bidder shall supply further relevant information as required by the Compliance Monitor. No new altered Schedule of Intent Affidavit will be accepted.

5. The Contracting Officer in conjunction with the Compliance Monitor may conduct an informal meeting with the bidder. Other parties may be invited to offer information relevant to the issue of the bidder's non-compliance.
6. The Contracting Officer shall in writing determine whether the bidder complies with the requirements of these Provisions and whether to recommend to the County Manager that the contract be awarded to the bidder. A copy of such recommendation shall be sent to the bidder. Such recommendation shall not affect the power of the Board of County Commissioners to reject the bidder's bid for any other reason or to take such action on the recommendation of the Contracting Officer as the Board deems appropriate.
7. Consideration of Other Bids.

If the Contracting Officer or Compliance Monitor deem it advisable in the interest of expediting the award of the contract, the procedures set forth in this subsection may be carried out with respect to the bids of one or more additional bidders at the same or different time with each such proceeding to be separately conducted.

8. Failure of Bidder to Participate.

The bidder will be bound by the proceedings under this subsection to which they have been given required notice without regard to their participation or lack of participation. A lack of participation upon receiving notices and requests pursuant to these Provisions shall not be grounds for reconsideration of any action taken in the proceedings.

9. Miami-Dade County shall not award this contract to any bidder, which it determines, fails to comply with the applicable requirements of these Provisions. Nothing herein shall relieve any bidder from any of the terms, conditions or requirements of the contract or modify Miami-Dade County's rights as reserved in the contract document.

### VIII. PROMPT PAYMENT

It is the County's intent that all firms, including CSBEs providing construction services to the County, shall receive payments promptly in order to maintain sufficient cash flow.

#### A. PRIME CONTRACTOR RESPONSIBILITIES

1. A prime contractor shall include in its billing to Miami-Dade County or the Public Health Trust copies of those portions of the billings from CSBE subcontractors utilized to meet the subcontractor goal applicable to the contract

## EXHIBIT J

which the contractor approves and whose cost is included in the payment amount requested from Miami-Dade County or the Public Health Trust. A prime contract which contains a second, third or fourth tier subcontractor goal shall require all subcontractors in direct privity with a second or lower tier CSBE subcontractor, and all successive subcontractors on up to and including the first tier subcontractor level, to include portions of any lower tier CSBE subcontractor's billings which are approved by such subcontractors and are included in any payment amount they request.

2. Prime construction contracts to which a CSBE Trade Set-aside or subcontractor goal has been applied shall require that billings from CSBEs at whatever tier level for which the contract measure has been applied, shall be promptly reviewed and payment made to such CSBEs on those amounts not in dispute within two (2) business days of receipt of payment thereof. The foregoing obligation to promptly review and pay CSBE billings shall apply to prime contractors and subcontractors who are in direct privity with the CSBE and to each successive subcontractor on up the line to the level of prime contractor. The foregoing notwithstanding, the prime contractor (or subcontractor) shall pay billings from CSBE subcontractors with whom they are in direct privity that are not in dispute within the time frame recommended by the CSBE Advisory Board and implemented by Administrative Order 3-22, as amended, and approved by the Board of County Commissioners.
3. The prime contractor on a prime construction contract to which a CSBE Trade Set-aside or a first tier subcontractor goal has been applied shall inform SBD, the Contracting Officer, and the first tier CSBE subcontractor, in writing, of those amounts billed by the CSBE which are in dispute, and the specific reasons why they are in dispute, within seven (7) calendar days of submittal of such billing by the first tier CSBE subcontractor to the prime contractor. Prime contracts to which a second or lower tier subcontractor goal has been applied shall provide that subcontractors in direct privity with any CSBE utilized to meet such lower tier subcontractor goal, shall inform the affected CSBE in writing, with copies to the prime contractor and SBD, of those amounts of such CSBE's billings that are disputed and the specific reasons thereof within seven (7) calendar days of submittal of such billing from the CSBE.
4. Failure of the prime contractor to comply with the applicable requirements of Section VIII (A) (3) above shall result in the prime contractor's forfeiture of the right to use the dispute as justification for not paying the first tier CSBE subcontractor and payment shall be forthcoming from the prime contractor. Prime contracts to which a second or lower tier subcontractor goal has been applied shall provide that a subcontractor in direct privity with a CSBE utilized to meet such goal who fails to comply with the applicable provisions of subsection (A)(3) above shall result in such subcontractor's forfeiture of the right to use the dispute as justification for not paying the CSBE subcontractor and payment shall be forthcoming from such subcontractor.

### COUNTY RESPONSIBILITIES

1. Bid documents for contracts with CSBE contract set-asides, Trades Set-asides or subcontractor goals shall require that billings from contractors under prime

## EXHIBIT J

construction contracts with Miami-Dade County or the Public Health Trust that are a CSBE contract set-aside or which contain a Trade Set-aside or subcontractor goal shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust.

2. SBD may investigate reported instances of late payment to CSBEs.

### FINANCE DEPARTMENT RESPONSIBILITIES

The Finance Department shall review billings from contractors under prime construction contracts with Miami-Dade County or the Public Health Trust that are a CSBE contract set-aside or which contain a Trade Set-aside or subcontractor goal and make payment on those amounts not in dispute within fourteen (14) calendar days of receipt of billing.

## IX. POST AWARD COMPLIANCE AND MONITORING

SBD shall monitor and enforce the compliance of the Successful Bidder with the requirements of these Provisions during the duration of the contract and for up to one year after completion of the work or full payment of contract obligations, whichever comes last.

### A. Approval of Subcontracts

The Successful Bidder shall submit to the Contracting Officer, for approval, written subcontracts corresponding in all respects to the Successful Bidder's Schedule of Intent Affidavit, or listing of first tier subcontractors as required by the CM-at-risk contract. The Successful Bidder shall enter into a written subcontract with each listed first tier CSBE subcontractor and shall thereafter neither terminate any such subcontract nor reduce the scope of work to be performed by or decrease the price to be paid to the first tier CSBEs thereunder without in each instance-obtaining prior written approval of the Contracting Officer. On contracts where a second, third or fourth tier subcontractor goal has been imposed, the Successful Bidder shall submit to the Contracting Officer, for approval, written subcontracts executed by both the next tier level subcontractor and the lower tier CSBE subcontractor corresponding to the information provided to SBD in Section IV(C)(4)(i)(7) above. The Contracting Officer shall not give a final written determination without a recommendation from the Compliance Monitor.

### B. Access to Records

Successful Bidders and CSBEs shall permit the County to have access during normal business hours to books and records relating to the bidder's compliance with the contract set-aside, Trade Set-aside or subcontractor goal applied to the contract or relating to CSBE compliance with certification requirements. Such books and records include, but are not limited to, corporate documents, charters, organizational filings, tax filings, registrations, licenses, stock registrations, partnership agreements, contracts, subcontracts, joint venture agreements, telephone logs, checking accounts, journals, ledgers, correspondence, pension and benefits documents, and documents and records between the bidder or the CSBE and other entities. This right of access shall be granted for one year after completion of the work or full payment of contract



## EXHIBIT J

obligations, whichever comes last, or for one year after the expiration of CSBE certification.

### C. Access to Job Site

Successful Bidders and CSBEs shall permit the County to have access to project locations during normal business hours in order to conduct visual inspections and employee interviews.

### D. Monthly/Quarterly Reporting

The Successful Bidder on a project that is a CSBE contract set-aside or on a project with CSBE Trade Set-asides or subcontractor goals shall submit monthly a Utilization Report to the Compliance Monitor through the Contracting Officer on or before the tenth working day following the end of the month the report covers. The Compliance Monitor shall give standard reporting forms to the Successful Bidder. The Utilization Report is to be completed by the Successful Bidder. Where a first tier subcontractor goal has been imposed, the Utilization Report shall include information on CSBEs utilized to meet such first tier subcontractor goal. Where a second, third and fourth tier subcontractor goal has been imposed, the Utilization Report shall also include information on CSBEs utilized to meet such goal. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or administrative penalties by the County. In addition to the above requirements on County contracts in excess of \$25 million which have subcontractor goals the prime contractor shall be required, during the term of the contract, to make a quarterly presentation to the CSBE Advisory Board on his or her performance in meeting such goal.

### E. Deviations from the Schedule of Intent Affidavit

- a. In the event that during the performance of a contract a first tier CSBE is not able to provide the services specified on the Schedule of Intent Affidavit or the listing of first tier subcontractors required on a CM-at-risk contract, the Successful Bidder must locate a CSBE to substitute for the unavailable first tier CSBE unless the bidder can prove the lack of an available CSBE to provide the services to be provided by the prior CSBE. The Successful Bidder must receive approval for substitution from SBD by submitting a request in writing addressed to the Director of SBD through the Contracting Officer. The request must include a revised Schedule of Intent Affidavit or listing of first tier subcontractors as required on a CM-at-risk contract to include the substitute first tier CSBE and a Letter of Intent from the substitute first tier CSBE. The Compliance Monitor will review the request and make a recommendation regarding the substitution to the Contracting Officer. A Successful Bidder that cannot secure a substitute first tier CSBE must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, and telephone numbers of all CSBEs contacted, and the date of contact for each CSBE. All certified CSBEs certified in the appropriate specialty trade area in SIC 17/NAICS 235 must be contacted in order to prove lack of an available CSBE.

## EXHIBIT J

In the event that during the performance of a contract where a second, third or fourth tier subcontractor goal has been imposed a second, third or fourth tier CSBE that is not able to provide the services specified to SBD in Section IV(C)(4)(i)(7) above, the Successful Bidder must locate a CSBE to substitute for the unavailable second, third or fourth tier CSBE unless the bidder can prove the lack of an available CSBE to provide the services to be provided by the prior CSBE. The Successful Bidder must receive approval for substitution from SBD by submitting a request in writing addressed to the Director of SBD through the Contracting Officer. The Compliance Monitor will review the request and make a recommendation regarding the substitution to the Contracting Officer. A Successful Bidder that cannot secure a substitute second, third or fourth tier CSBE must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, and telephone numbers of all CSBEs contacted, and the date of contact for each CSBE. All certified CSBEs certified in the appropriate specialty trade area in SIC 17/NAICS 235 must be contacted in order to prove lack of an available CSBE.

- b. The Compliance Monitor shall be responsible for monitoring the performance of the Successful Bidder regarding compliance with contract set-asides, Trade Set- asides or subcontractor goals applied to the contract. The Compliance Monitor may, at his or her discretion, investigate deviations in the utilization of first tier CSBEs from that described on the Schedule of Intent Affidavit or on the listing of first tier subcontractors as required by a CM-at-risk contract, or deviations in the utilization of second, third or fourth tier subcontractors from the information provided to SBD in Section IV(C)(4)(i)(7) above on contracts where a second, third or fourth tier subcontractor goal has been imposed, and make recommendations regarding compliance to the Contracting Officer. The Contracting Officer shall not make a final determination without a recommendation regarding compliance from the Compliance Monitor. Deviations from the goal stated in the contract that shall be monitored include, but are not limited to:
1. Termination of a CSBE's subcontract;
  2. Reduction in the scope of work to be performed by a first tier CSBE or reduction in the scope of work to be performed by a second, third or fourth tier CSBE utilized to meet a second, third or fourth tier subcontractor goal;
  3. Modifications to the terms of payment or price to be paid to a CSBE; or
  4. Failure to enter into a contract with a CSBE being utilized to meet a first, second, third or fourth tier subcontractor goal.
- c. Excuse from Entering into Subcontracts

If, prior to execution of a subcontract required by this Administrative Order, the Successful Bidder submits a written request to the Contracting Officer demonstrating to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not reasonably have been aware until subsequent to the date of the

## EXHIBIT J

award of the contract, a CSBE who is to enter into such subcontract has unreasonably refused to execute the subcontract, or is not available, the Successful Bidder shall be excused from executing such subcontract. The procedures of paragraphs (e) and (f) below shall apply to this paragraph.

### d. Termination of Subcontracts

If, after execution of a subcontract required by this Administrative Order, the Successful Bidder submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not be reasonably have been aware, until subsequent to the date of execution of such subcontract, a CSBE, who entered into such subcontract has committed a material breach of the subcontract, the Successful Bidder shall be entitled to exercise such rights as may be available to him/her to terminate the subcontract. The procedures of paragraphs (e) and (f) below apply to this paragraph.

### e. County's Determination of Bidder's Excuse or Termination

If the Successful Bidder at any time submits a written request to the Contracting Officer under the prior two paragraphs, the Contracting Officer as soon as practicable, shall determine whether the Successful Bidder has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the Successful Bidder, upon notice, an opportunity to present pertinent information and arguments. The procedures of paragraph (f) below apply to this paragraph.

### f. Alternative Subcontracts

If the Successful Bidder is excused from entering into a subcontract or rightfully terminates a subcontract under this Administrative Order and without such subcontract the Successful Bidder will not achieve the level of CSBE participation upon which the contract was awarded, the Successful Bidder shall make every reasonable effort to propose and enter into an alternative subcontract or subcontracts for the same work to be performed by another available CSBE as appropriate, for a subcontract price or prices totaling not less than the subcontract price under the excused or terminated subcontract, less all amounts previously paid thereunder. The Successful Bidder must submit to the Compliance Officer a revised Schedule of Intent Affidavit or listing of first tier sub-contractors as required on a CM-at-risk contract and Schedule of Intent Affidavit to include the substitute first tier CSBE. For contracts where the Successful Bidder is requesting substitution of a second, third or fourth tier CSBE subcontractor, the Successful Bidder must submit to the Compliance Officer a revised list of the second, third or fourth tier subcontractors being utilized to meet the goal. A Successful Bidder that cannot secure a substitute CSBE must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, telephone numbers, and the date of contact for each CSBE. All CSBEs certified within the appropriate SIC/NAICS code or trade category must be contacted. The procedures of paragraphs (1) and (2) below apply to this paragraph:

## EXHIBIT J

1. The Compliance Monitor may require the Successful Bidder to produce such information, as the Compliance Monitor deems appropriate and may obtain further information from other sources. The Compliance Monitor shall make his/her recommendation under this paragraph to the Contracting Officer and forward a copy to the bidder.
2. The Contracting Officer will consider objections to the Compliance Monitor's recommendation only if such written objections are received by the Contracting Officer within five calendar days from the Successful Bidder's receipt of the Compliance Monitor's recommendation. The Contracting Officer with or without a hearing, and as he/she in his/her discretion may determine, will reply to the Successful Bidder's written objection within ten (10) days of receipt of these objections.

### **X. SANCTIONS FOR CONTRACTUAL VIOLATIONS**

Bid and contract documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a bidder's violation of or failure to comply with this ordinance or this Administrative Order may result in the imposition of one or more of the following sanctions:

1. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
2. Work stoppage;
3. Termination, suspension, or cancellation of the contract in whole or part; and
4. In the event a bidder or CSBE attempts to comply with these Provisions through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter 11A of the Code of Miami-Dade County, the County shall, whenever practicable, terminate the contract or require the termination or cancellation of the subcontract for the project on which the bidder or CSBE committed such acts. In addition, and as a further sanction, the County Manager or his or her designee may impose any of the above-stated sanctions on any other contracts or subcontracts the bidder or CSBE has on County projects.

In each instance, the bidder or CSBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The bidder or CSBE may also be subject to debarment.

5. In the event that a bidder fails to achieve the CSBE measure after completion, the bidder's eligibility to receive any future county contracts will be conditioned upon the bidder making up the deficit in CSBE participation in such future contracts by having CSBEs perform equal to double the dollar value of the deficiency in the CSBE measure in the prior contract. The procedures for making up the CSBE deficit are as follows:
  - a. Upon completion of a contract or after final payment on a contract SBD shall review the final Monthly Utilization Report and other project documents to

## EXHIBIT J

include final payments and make a determination as to whether the bidder met the CSBE measure. If the bidder has not met the CSBE measure, SBD will notify the bidder in writing of the deficit and corresponding make-up penalty.

- b. If the bidder is found in non-compliance with the CSBE measures, the compliance officer may issue a letter of non-compliance requesting that the bidder make up the CSBE deficit on an existing or future County contract for double the amount of the deficit on the contract in question. The bidder will also be required to submit a plan indicating any current or future County contracts in which the CSBE deficit will be remedied.
- c. The bidder must respond to SBD in writing within ten business days from the date of the non-compliance letter. The bidder must acknowledge receipt of the non-compliance letter and provide a plan to make up the CSBE measure.
- d. The compliance monitor will review the plan for approval.
- e. When a contract is identified in which the CSBE measure deficit will be remedied, the bidder will provide a Schedule of Intent Affidavit or a listing of first tier subcontractors as required in a CM-at-risk contract, and Schedule of Intent Affidavit for the CSBE firm(s) that will be utilized in making up the deficit.
- f. For any future contracts a Schedule of Intent Affidavit must be submitted as part of any bid or proposal at the time of bid or proposal submittal. The Schedule of Intent Affidavit must identify all CSBEs to be utilized to meet the first tier subcontractor goal and the trade designation of work each firm will perform in satisfaction of the make-up, in addition to any other goals that may be applicable. Failure to include the required Schedule of Intent Affidavit with bids or proposals for any future contracts shall result in the submittal being deemed nonresponsive.
- g. Any contractor subject to an approved make-up plan that fails to comply with any of the material terms of that make-up plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a six (6) month period.
- h. A contractor that fails to comply with any of the material terms of a second make-up plan, without good cause, shall be subject to an automatic suspension from bidding and/or otherwise participating on County contracts as a prime or subcontractor for a one (1) year period.
- i. A contractor that fails to comply with any of the material terms of a third make-up plan, without good cause, may be subject to debarment and shall automatically be referred to the debarment committee. After serving a debarment for failure to satisfy a make-up plan for no good cause, the subject firm shall be deemed ineligible for bidding on county contracts with measures for one (1) additional year unless the County Manager determines that an emergency exists justifying such participation, and the Board of County Commissioners approves such decision.

## EXHIBIT J

- j. The bidder will remain in a non-compliance status until the CSBE make-up goal has been achieved.
- k. Failure of the bidder to make up the CSBE measure when opportunities are available on existing or future County Contracts will result in the imposition of other penalties or sanctions as referenced in Sections X and XI.

Some of the contractual violations that may result in the imposition of sanctions listed in Section X above include, but are not limited, to the following:

1. A CSBE serving as a conduit for CSBE work awarded to a firm as a CSBE but which is being performed by a non-CSBE firm;
2. A prime contractor not meeting CSBE Program Trade Set-aside or subcontractor goal requirement;
3. Not obtaining or retaining CSBE certification while performing Work designated for CSBE firms;
4. Failure to submit monthly utilization reports;
5. Failure to comply with CSBE certification requirements, including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
6. Failure to maintain certification;
7. Deviations from the Schedule of Intent Affidavit or listing of first tier subcontractors as required on a CM-at-risk contract without prior approval from SBD;
8. Termination of the CSBE's contract without prior approval from SBD;
9. Reduction of the scope of work of a first tier CSBE subcontract without prior approval from SBD or reduction of the scope of work of a second, third or fourth tier subcontract utilized to meet a second, third or fourth tier subcontractor goal without prior approval of SBD;
10. Modifications to the terms and/or prices of payment to a CSBE without prior approval from SBD; or
11. Unjustified failure to enter into a written first tier subcontract with a CSBE after listing the firm on a Schedule of Intent Affidavit. Unjustified failure to enter into a written second, third or fourth tier subcontract with a CSBE utilized to meet a second, third or fourth tier subcontractor goal.

## XI. ADMINISTRATIVE PENALTIES

- A. Debarment

## EXHIBIT J

1. The County may debar a CSBE or a non-CSBE for violation of, or non-compliance with, the provisions of Ordinance No. 97-52 as amended, this Administrative Order, or implementing bid documents.
2. Causes for debarment are as noted in Section 10-38 of the Code. These include but are not limited to, a preponderance of the evidence that the CSBE has forfeited a bond or defaulted on financial assistance, either of which was provided under the CSBE program; or if any individual or corporation, partnership or other entity, or any individual officer, shareholder with a significant interest, director or partner of such entity, qualifying agent or affiliated business of such entity attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement.

### B. Decertification

Violations of certification requirements are addressed in Section II of the Administrative Order.

## XII. APPENDICES

### A. Forms

- |  |          |
|--|----------|
| 1. Schedule of Intent Affidavit                    | SBD 400  |
| 2. Unavailability Certificate                      | SBD 303  |
| 3. Unavailability of a CSBE Due to Competitiveness | SBD 305A |
| 4. Availability of Non-CSBE (Competitiveness)      | SBD 305B |
| 5. Monthly Utilization Report                      | M-300    |

- B. Management and Technical Assistance (MTA) Program
- C. Mentor-Protégé Program
- D. Expedited Payment Process

**EXHIBIT J  
APPENDIX B**

**MANAGEMENT/TECHNICAL ASSISTANCE SERVICES**

Management and Technical Assistance Services are provided based on need and tailor made to address those needs on a case-by-case basis. These services shall be offered to an applicant when it is determined by SBD and/or the Consultant that the inclusion of these services will enhance the bonding or financial assistance opportunities for firms which under normal procedures would not qualify for bonding or financial assistance.

The following represents the minimum services required by the County to be offered to the small businesses:

a. Pre-Award Services

- Assist with pricing;
- Assist with the preparation of the bid or proposal documents;
- Analyze the specifications, bid and labor problems;
- Assist with purchasing material for the job;
- Assist with the preparation of change orders, job budgets, and trade payment breakdown;
- Assist with obtaining construction permits and subcontractor permits for subcontracts;
- Assist interested and qualified small businesses that lack bonding and loan credit facility to obtain bonding, loans and lines of credit;
- Assist with construction scheduling;
- Assist in quality control;
- Assist with cost control;
- Avoid time delays;
- Assist in site management; and
- Maintain a file of successful bid/proposal documents from past procurement and encourage Program participants to review and evaluate such documents.

b. Post-Award Services.

- Attend pre-construction conference;
- Monitor schedules, performance and compliance with construction management directives;
- Monitor and report routinely on contractor's progress and performance;
- Coordinate information regarding contractor's performance with General Contractor and Construction Manager/Inspector;
- Assist in conflict resolution;
- Assist when language is a barrier;
- Monitor work product and relations with suppliers and subcontractors;
- Review monthly draws and payment schedules;
- Monitor contractor's payroll and tax reporting functions;
- Prepare periodic reports for bonding and working capital providers;
- Prepare final report on contractor's performance; and
- Conduct debriefing sessions, at the request of unsuccessful bidders or at the discretion of SBD, on awarded contracts to explain why bids/proposals may have been unsuccessful.



## EXHIBIT J

### c. Access to Business Management Services including:

- Business planning
- Financial planning
- Tax planning -Marketing
- Contract procurement
- Franchising
- Cash flow management
- Pursuit of capitalization
- Creating/improving business image
- Computerization
- Receivables and payables management
- Entrepreneurial training
- Cost accounting methodology and practice
- Total quality management (TQM)
- Industrial and manufacturing development
- Distribution
- Inventory control
- Provide two computer workstations, accessible by the physically challenged
- Develop and design an electronic information system (i.e., electronic bulletin board or Internet Web Page) designed to benefit small businesses by providing information and links to resources including technical service providers, professional organizations and area chambers of commerce
- Establish Small Business Resource Library, which includes:
  - On line computer services
  - video tutorials
  - magazines
  - books
  - reference materials
- federal information support, which includes:
  1. current bidding opportunities
  2. government literature on regulatory changes
  3. timely information on available federal programs
- Provide newsletter, which contains:
  1. timely information on specialized training, seminars and conferences
  2. "Client Classifieds" which helps match client services, identifies personnel, and markets special activities sponsored by Program clients
  3. a listing of vendors who have established special service delivery costs for Program participants.

### d. Other:

Evaluate and provide feedback and suggested changes to the County Manager on construction related contracting and procurement processes within the County. Such processes include bid/proposal specifications, procurement policy, job performance requirements, dividing of contracts and purchase orders into smaller sizes to afford greater opportunities, general bidding requirements, bonding and insurance requirements, certification procedures, etc,

Establish a Technical Assistance Account for each Program Participant upon completion of the Needs Assessment portion of the Program. This account is limited to \$2,500 per year,

## EXHIBIT J

subject to availability of funds. Funds from this account may be used to pay for Technical Assistance Services not available through the County or through SBD (such as approved educational training programs, seminars, conferences, etc.),

### C.2 COMUMUNITY OUTREACH

SBD and the Consultant shall coordinate Community Outreach to stimulate the interest of the small business community in the Program. The Consultant must design and implement (with SBD) an outreach program that will communicate the advantage of the Program as well as convince potential participants that contracting opportunities exist. The County Manager or his or her designee must approve this outreach program, before implementation. The Program must demonstrate ongoing recruitment and assistance to small businesses. The following reflects the minimum frequency of Consultant outreach services required during the contract period.

Programs	Frequency
Technical Workshops	Quarterly
*Organizational Outreach	On-going
Advertisement in major & minority publications	Monthly

\*Organizational Outreach in the community includes briefing the local Chambers of Commerce, trade organizations and other agencies as deemed necessary to emphasize the purpose and assistance offered under the Program.

The Consultant shall provide the County Manager or his or her designee with a schedule of workshops or other related activities within 30 days of the planned event. Potential program participants must conduct these activities within the Miami- Dade County area at locations and times, which will afford maximum attendance.

The Consultant shall also:

- Communicate with contractors/vendors that are currently certified with the County under the CSBE program or the Minority & Women-Owned Business Enterprise Program;
- "Network" with local organizations to assure maximum exposure to potential contractors/vendors;
- Develop a marketing/communications program to encourage participation by small businesses;
- Develop a database of small businesses; and
- Design and develop a program to disseminate information, which will inform potential participants of the criteria, guidelines and benefits of the Program.

### C. 3 PROGRAM RESTRICTIONS

The following restrictions shall apply to the program applicant:

## EXHIBIT J

- a. Any applicant who exceeds the CSBE program size thresholds is prohibited from participating in this program.
- b. Applicants who have been identified through the Needs Assessment as needing MTA will be certified for such assistance for a period of two (2) years after identification of such need.

### C. 4 USE OF OTHER LOCALLY FUNDED ASSISTANCE AGENCIES

The Consultant shall utilize the services of other publicly and privately funded assistance agencies and non-profit agencies, which can provide technical and financial services to small businesses required under this contract.

EXHIBIT J  
APPENDIX C

MENTOR PROTEGE PROGRAM:

I. Program Mission

Miami-Dade County seeks to build effective working relationships between leaders of mature established companies and emerging small business enterprises in order for the latter to benefit from the knowledge and experience of the established Mentor firms. Working together in regular meetings, the Mentors will focus on and assist with the development of the Protégé's business plan, identifying the most critical needs to achieve the plan, and implementing the actions to obtain the results.

The Mentor-Protégé Program is a community based effort-involving leaders of major firms, financial and bonding institutions, contracting associations, small business enterprises, and support service organizations. The Program is a deliberate effort to overcome barriers that typically inhibit or restrict the success of small businesses. The Program is designed to produce a broad base of high quality, competitive and profitable companies through incremental improvement. It is expected that as a result of the Mentor-Protégé Program, Protégés will experience a greater than industry average success rate and realize the growth and profitability objectives of their business plans as well as long range stability. By implementing the Mentor-Protégé Program as a component of its CSBE program, Miami-Dade County will provide a community benefit by strengthening emerging businesses and providing them with previously denied opportunities for growth, expansion and increased participation in Miami-Dade County's economic development.

2. Definitions

- A. SBD - The Miami-Dade County department that sponsors and provides direct support and overall management to the Mentor-Protégé Program component of the CSBE program.
- B. Mentor-Program Coordinator - The SBD staff member designated as the individual responsible for coordinating and administering the various activities of the Mentor-Protégé Program.
- C. Mentor- A firm with an actual functioning place of business in Miami-Dade or Broward County which is deemed by SBD as productive and successful, and which has applied for and has been approved by SBD, in accordance with applicable procedures, for participation as a mentor in the Mentor-Protégé Program. Although a Mentor may not provide mentoring services to more than three (3) Protégé firms at anyone time, it is allowed to serve as a Mentor for an unlimited number of times (pursuant to SBD approval).
- D. Protégé -A certified CSBE firm which has applied for and has been approved, in accordance with applicable procedures, for participation as a protégé in the Mentor-Protégé Program. Such participation cannot exceed two (2) years and a firm may have only one (1) term of participation as a protégé.

3. Individual Goals

- A. The primary goals of Miami-Dade County's CSBE Mentor-Protégé Program are:

## EXHIBIT J

- a. To develop and strengthen Protégé firms through coaching and counseling from Mentors.
- b. To expand business opportunities for Protégé firms.
- c. To enable Protégés to become competent and viable well managed businesses.
- d. To assist mentoring companies in carrying out their civic and corporate responsibilities by furnishing opportunities to provide developmental assistance to other emerging Miami-Dade County firms.
- e. To enhance Miami-Dade County's overall business and economic environments

### 4. Measurable Objectives

An important facet of the Miami-Dade County Mentor-Protégé Program is the ability to conduct ongoing monitoring and assessment of the results of implementation of the Program through the use of measurable program objectives. The primary measurable objectives to be considered in the evaluation of the effectiveness of the Mentor-Protégé Program are:

#### A. Specific Protégé Objectives

1. Increase in Protégé's business capital.
2. Increase in Protégé firm's capacity to perform as depicted in equipment owned or leased, size of payroll, materials purchased, overhead costs, etc.
3. Increase in Protégé's bonding capacity.
4. Increase in Protégé's gross earnings.
5. Increase in Protégé's net earnings and profit margin.
6. Increase in Protégé's credit rating.
7. Increase in value of Protégé's current and future work.
8. Increase in Protégé firm's longevity and viability during and after concluding Mentor-Protégé participation.
9. Achievement of goals outlined in the strategic business plan.

From various financial, operating, personnel, and other reports received from the Protégé, the above objectives are determined, monitored and evaluated at the beginning stage of the Protégé's participation in the Mentor-Protégé Program, at various intervals (monthly, quarterly and annually) throughout the duration of the Protégé's participation in the Program, at the conclusion of the two-year mentoring period, and through follow-up annual review from one to five years after the Protégé has completed the Mentor-Protégé Program. This provides a means of determining whether mentoring procedures need to be revised or refocused either within individual Mentor-Protégé teams or with the entire Program, and helps to track the long-range impact of participation in the Mentor-Protégé Program.

#### B. General Program Objectives

1. Increase in number of actual or requested Mentor-Protégé Program Mentors.
2. Increase in number of actual or requested Mentor-Protégé Program Protégés.
3. Increase in repeat Mentor-Protégé Program participation by Mentors.
4. Increase in successful graduates.
5. Program eligibility and participation.

## EXHIBIT J

### 5. Program Eligibility and Participation

#### A. Mentor Eligibility Requirements

1. The potential Mentor shall be a company, which is successful and productive in its area of work or services with a minimum of five (5) years of experience in its principal industry and which agrees to provide developmental assistance through the Mentor-Protégé Program.
2. The Mentor firm must have and maintain an actual place of business where it provides its actual products and services in Miami-Dade County throughout the duration of its mentorship.
3. The Mentor firm must be, and remain, in good legal business standing with the State of Florida, Miami-Dade County and all other local jurisdictions. Mentors must be solvent and licensed businesses.
4. The potential Mentor shall agree to follow all Mentor-Protégé Program guidelines and devote the necessary time, staff and other resources in order to fulfill its responsibility as a Mentor, including attending all meetings scheduled with Protégé and/or SBD.

#### B. Mentor Application Process

1. The potential Mentor shall apply with SBD on the appropriate application form to be considered for program participation as a Mentor. Documentation such as company brochures, occupational licenses and other licenses may be required to ensure basic eligibility requirements are met.
2. In some instances it may be necessary for SBD to contact the owner or managers of the prospective Mentor by telephone or to visit the offices to determine whether an applicant firm is eligible to be a Mentor.
3. SBD shall review the application and inform the applicant whether it has been approved as a Mentor within ten (10) business days of receipt of the completed Mentor application.
4. SBD will assign Protégés to Mentors (either one or two Mentors per Protégé, as available or appropriate) subject to approval by the CSBE Advisory Board and both parties must sign an agreement to formalize their commitment to the Program. Pairing Mentors with Protégés, which have a working relationship with each other, will be strongly discouraged since one of the objectives of the Mentor-Protégé Program is to establish new productive relationships in the construction industry

#### C. Mentor Responsibilities

1. Meetings -The approved Mentor shall conduct monthly face-to-face coaching and counseling meetings with the Protégé to review the Protégé's strategic business plan and to discuss problems, strategies, and objectives for timely and efficient completion of projects and effective management. These meetings will be held at a time and place mutually agreed upon by the Mentor and Protégé; however, such meetings should occur

## EXHIBIT J

no less than once every thirty (30) calendar days between the first and 10th day of each month and should be at least two (2) hours in duration (more time should be allotted for these meetings as deemed necessary). The agenda for the meetings should be established in advance and should consist of items relevant to the Protégé's previously identified problem areas and his/her changing needs as well as the current experiences of both the Mentor and Protégé. The Protégé will also be expected to provide reports on his/her efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s) and both parties should establish target dates for any further improvements or enhancements. The Mentor and Protégé shall alternate in preparing a report of the results of the monthly meeting using the form and format provided and submitting a copy of the report to the other party as well as to the SBD Mentor-Protégé Program Coordinator and the CSBE Advisory Board within five (5) business days of the meeting. The Mentor-Protégé Program Coordinator or a representative shall attend the monthly meetings between Mentor-Protégé teams at least every other month.

2. **Informal Contacts** - The Mentor should also routinely communicate with the Protégé on the telephone and attempt to make other informal contacts or correspond on a routine basis (such as every other day) to discuss daily problems and situations encountered by the Protégé and to provide periodic review.
3. **Introduction to Resources** - The Mentor shall, as frequently as possible, introduce the Protégé to various business resources in which he/she consults, including representatives in the banking, bonding, management, and business industries as a means of providing access and breaking down previously existing barriers which may have hindered small businesses in the past.
4. **Independence** - The Mentor must not assume managerial or administrative control of the Protégé during or following the mentorship period.
5. **Reporting Problems to SBD** - The Mentor will discuss progress, issues or problems encountered with the Mentor-Protégé arrangement with SBD Mentor-Protégé Program coordinating staff as soon as possible after concerns are identified.
6. **Working Relationships** - Nothing in the Mentor-Protégé Program regulations shall prohibit Mentors and Protégés from working together on joint ventures or in contractor-subcontractor arrangements on construction or other projects provided that control of the Protégé firm remains with the Protégé itself. These Protégés may be used to meet subcontractor goals on which the Mentor bids.
7. **Incentives** - In addition to the benefits provided in the section immediately above, Mentors can be compensated for their involvement in the Mentor-Protégé Program by the award of an incentive on bidding on Miami-Dade County contracts. This incentive may consist of either 2% of the bid price, or up to 10% of the total evaluation points, for bid evaluation purposes only. A Mentor claiming an incentive in bidding on Miami-Dade County contracts based on involvement in the Mentor-Protégé Program must meet the eligibility criteria shown in Section XII of this Administrative Order.

### D. Protégé Eligibility Requirements

## EXHIBIT J

1. The prospective Protégé shall be a company certified as a CSBE with SBD, must have been actively conducting business for a minimum of two (2) years, must be considered as ready for expansion, and must agree to participate fully in the Mentor-Protégé Program.
2. The prospective Protégé firm must have and maintain an actual place of business where it provides its actual products and services in Miami-Dade County throughout the duration of its Mentor-Protégé Program participation.
3. The prospective Protégé firm must be and remain in good legal business standing with the State of Florida, Miami-Dade County and all other local jurisdictions. Protégés must be solvent and licensed businesses.
4. The prospective Protégé shall agree to follow all Mentor-Protégé Program guidelines and devote the necessary time, staff and other resources in order to fulfill its responsibility as a Protégé, including attending all meetings scheduled with the Mentor and/or SBD.

### E. Protégé Application Process

1. The prospective Protégé shall apply with SBD on the appropriate application form to be considered for program participation as a Protégé. Accompanying the application should be a completed strategic business plan and the documentation requested, providing various information concerning the prospective Protégé's current financial standing, bonding level, capacity, staffing, workload, and other key business indicators. Additional documentation such as company brochures, occupational licenses and other licenses may be required to determine Mentor-Protégé Program eligibility requirements.
2. SBD shall review the application and inform the applicant whether it has been approved as a Protégé within ten (10) business days of receipt of the completed Protégé application.
3. SBD will assign Protégés to Mentors as deemed appropriate and/or as available and both parties must sign an agreement to formalize their commitment to the Program.

### F. Protégé Responsibilities

1. Strategic Business Plan - The Protégé shall prepare and strive to achieve goals outlined in a strategic business plan. SBD's Management and Technical Assistance Program (MTA), as described in Section XXI of this Administrative Order, should be used by the Protégé as a resource in developing this business plan if such assistance is needed. This business plan shall serve as a guideline and benchmark for evaluating the Protégé's progress in the Mentor-Protégé Program.
2. Meetings -The approved and assigned Protégé must make him/herself available for the monthly face to face coaching and counseling conferences with the Mentor and must be consistently prepared to review progress made in achieving the desire outcome outlined in their strategic business plan. In the meeting the Protégé must make the Mentor aware of all problems affecting the timely and efficient completion of projects and effective management of the firm. These conferences will be held at a time and place mutually



## EXHIBIT J

agreed upon by the Mentor and Protégé; however, such meetings should occur no less than once every 30 calendar days between the first and 10th day of each month and should be at least two (2) hours in duration (more time should be allotted for these meetings as deemed necessary). The topics for the meetings should consist of items relevant to the Protégé's previously identified problem areas and his/her changing needs as well as the current experiences of both the Mentor and Protégé. The Protégé will also be expected to provide reports on his/her efforts in implementing the established phases of its business plan or any actions suggested by the Mentor at the previous counseling session(s) and both parties should establish target dates for any further improvements or enhancements. The Mentor and Protégé shall alternate in preparing a report of the results of the monthly meeting and submitting a copy of the report to the other party as well as to the SBD Mentor-Protégé Program Coordinator and CSBE Advisory Board.

3. Informal Contacts - The Protégé should also routinely converse with the Mentor on the telephone and attempt to make other informal contact or correspond on a routine basis (such as every other day) to discuss daily problems and situations encountered by the Protégé and to obtain periodic counseling and guidance as needed.
4. Use of Training Resources - In an effort to enhance its business and industry knowledge and effectiveness, the Protégé may be required to attend, at its own expense if necessary, training conferences, coursework, or workshops on a routine basis as recommended by the Mentor or Mentor-Protégé Program Coordinator. These conferences are expected to cover various aspects of general business management as well as training sessions addressing specific industry topics. Attendance at these events must be recorded and made a part of the progress report for the appropriate period of attendance.
5. Use of MTA Program - In an effort to enhance its business and industry knowledge and effectiveness, the Protégé may be required to make routine use of the technical assistance component of the CSBE program by seeking, scheduling and attending various services professionals as provided by the MTA Program. A listing of these resources are available through SBD and participation in the MTA Program must be recorded and made a part of the progress report for the appropriate period of participation.
6. Independence - The Protégé is not permitted to relinquish managerial or administrative control to the Mentor.
7. Reporting Problems - The Protégé will discuss poor progress or problems encountered with the Mentor-Protégé arrangement with SBD Mentor-Protégé Program coordinating staff as soon as possible after concerns are identified.

### 6. Program Coordination

- A. SBD is responsible for the overall coordination and administration of the CSBE Mentor-Protégé Program. SBD's duties will include:
  1. Advertising and promoting the program.
  2. Organizing related business events.
  3. Identifying and approving potential Mentors.

## EXHIBIT J

4. Identifying and certifying potential Protégés.
5. Assigning Mentors to Protégés as available.
6. Informing and reminding Mentors and Protégés of their roles and responsibilities.
7. Amending Mentor-Protégé meetings to promote effective cooperation and participation.
8. Reviewing meeting and progress status reports.
9. Maintaining program records.
10. Contracting for the management, accounting and other professional services that Protégés will need.
11. Identifying the necessary sources of program funding.
12. Attracting the support of larger corporate sponsors.

## **EXPEDITED PAYMENT PROCESS**

The Department of Small Business Development (SBD) will provide financial assistance to eligible CSBEs through an Expedited Payment Process (EPP) for incurred or expended mobilization expenses on their construction contract awards with the County. Eligible CSBEs can receive assistance for up to 10% of contract award for approved mobilization expenses.

### **1. CSBE Responsibilities**

In order to be eligible for expedited payments, CSBEs must show proof of the following:

1. Certification as a CSBE.
2. Successful completion of Management and Technical Assistance Program Professional Development and Training Modules.
3. Contract award for a County construction contract with a prime contractor or directly with a County department.

CSBEs must also be in good standing with existing County ordinances applicable to County construction contracts. CSBEs seeking participation in the EPP program must sign a notarized agreement accepting the terms and conditions of EPP.

Eligible CSBEs seeking EPP assistance must complete a Disbursement Authorization Form (Form SBD 306 in Appendix A). If the CSBE is a subcontractor he/she must list mobilization expense items, with supporting documentation, for EPP consideration and forward to the prime contractor. Conversely, if the CSBE is a prime contractor, the Disbursement Authorization Form must be submitted directly to the user department's Project Manager (PM). The CSBE must also submit a copy of the Project Schedule of Values to SBD. When the CSBE submits the normal requisition, it should include the mobilization expenses listed on the Disbursement Authorization Form.

### **2. Prime Contractor Responsibilities When CSBE is a Subcontractor**

The prime contractor is responsible for reviewing the Disbursement Authorization Form in order to verify that each expense item is for mobilization expenses and also for line item expenses listed on the Schedule of Values. The prime contractors will also verify that said expenses reflect materials delivered, services performed or any miscellaneous expenses associated with the project's start up. For approved expenses, the prime contractor is required to sign off on the Disbursement Authorization Form and forward to the user department's PM. If authorization is not approved, the prime contractor must provide an explanation on the Disbursement Authorization Form and return to the CSBE with a copy to SBD. In the normal requisition process the prime contractor will pay the CSBE for services provided or goods delivered and deduct any payments made through EPP.

3. **Department Project Manager Responsibilities** <sup>EXHIBIT J</sup>

The department PM is responsible for reviewing the Disbursement Authorization Forms received from the CSBE or prime contractor, and verify that goods have been received and/or services have been provided. The department PM will then sign off on Disbursement Authorization Forms for approved expenses and forward to SBD. If authorization is not approved, the department PM must provide an explanation on the Disbursement Authorization Form and return to the CSBE or prime contractor with a copy to SBD.

4. **SBD Responsibilities**

SBD will verify eligibility of all CSBEs applying for EPP assistance. SBD will review all Disbursement Authorization Forms received from department PM and processes check requests for all expenses approved for EPP. SBD will verify that vendors/suppliers indicated on the check request are registered with the Department of Procurement. For unregistered vendors/suppliers, SBD will assist CSBEs in registering these firms. Check requests will be forwarded to the Miami-Dade County Finance Department Management. However, the Miami-Dade Aviation Department (MDAD), the Water and Sewer Department (WASD) and Jackson Memorial Hospital (JMH) are exceptions because they process checks independent of the Finance Department. MDAD, WASD or JMH, will process EPP requests based on an approved Disbursement Authorization Form. These departments will forward a copy of the approved Disbursement Authorization Form to SBD. SBD will provide adequate follow up to ensure CSBE vendors/suppliers receive payment. Any problems or complaints regarding EPP transactions will be the responsibility of SBD.

5. **Finance Department Responsibilities**

The Miami-Dade County Finance Department will receive all check requests for EPP payments from SBD. Check requests will be processed for payment and made payable to the CSBE vendor or supplier. The Finance Department will only issue checks to vendors who are registered with the Department of Procurement Management. For mobilization expenses paid by the CSBE, the Finance Department will issue a check payable to the CSBE providing that the CSBE shows adequate proof of expenses paid. All checks will be issued within ten (10) business days from receipt of check request.

MDAD, WASD and JHM operate independent of the Finance Department, but each department will have the same responsibility for EPP payments with the exception that they will issue two party checks either to the prime contractor and the CSBE vendor/supplier or to the prime and the CSBE. These checks will be processed directly from approved Disbursement Authorization Forms received from the user department's PM.

# EXHIBIT J

## Administrative Order

MIAMI-DADE

**Administrative Order No.:** 3-32

**Title:** Community Business Enterprise (CBE-A/E) Program for the Purchase of Professional Architectural, Landscape Architectural, Engineering, or Surveying and Mapping Services

**Ordered:** 11/30/04

**Effective:** 12/10/04

### **AUTHORITY:**

Section 4.02, Miami-Dade County Home Rule Amendment and Charter; Sections 2-8.1, 2-8.5, 2-10.4, 2-11(c), 2-11(d), 10-33.02 and 10-38 of the Code of Miami-Dade County.

### **POLICY:**

- A. It is the policy of Miami-Dade County that not less than 10% of the County's total annual expenditures of all project specific contracts for professional architectural, landscape architectural, engineering, and surveying and mapping services, shall be expended with CBE-A/Es certified under the CBE-A/E ordinance.
- B. Except where federal or state laws or regulations mandate to the contrary, this Administrative Order applies to all project specific awards, and multiple project contracts as mandated in the CBE-A/E ordinance.
- C. **APPLICABILITY TO THE PUBLIC HEALTH TRUST:**  
The application of contract measures to professional architectural, landscape architectural, engineering, or surveying and mapping services purchased by the Public Health Trust shall be governed by this Administrative Order.

#### **I. DEFINITIONS**

This Administrative Order incorporates completely the definitions listed in the CBE-A/E Ordinance. Those definitions, as well as additional terms necessary for the understanding of this Administrative Order, are listed below:

- A. "Agreement" means an agreement proposed by the County, or Public Health Trust staff, or approved by the County Commission or Public Health Trust for architectural, landscape architectural, engineering, or

## EXHIBIT J

surveying and mapping professional services.

- B. "Available" or "Availability" means to have, prior to proposal submission, the ability to provide professional services under an agreement or sub consultant agreement by having:

reasonably estimated, uncommitted capacity and expertise; all licenses, permits, registrations, insurances and certifications; that are reasonably required to perform the agreement or subconsultant agreement consistent with normal industry practice; and the ability to otherwise meet all the proposal specifications.

- C. "Bonding Assistance" may include providing assistance in preparing and completing bond packages as well as providing funding to be used for bonding purposes.

- D. "Business Day" means a regular weekday (Monday through Friday) normally starting at 8:00 a.m. and finishing at 5:00 p.m., excluding Saturdays and Sundays and excluding all legal holidays recognized by the Federal, State or Miami-Dade County governments.

- E. "Calendar Day" means a twenty-four (24) hour period covering all days of the week (Monday through Sunday including all holidays), starting at 12:00 a.m. and finishing at 11:59 p.m.

- F. "Commercially Useful Function" means contractual responsibility for the execution of a distinct element of the work of an agreement by a firm and the carrying out of the contractual responsibilities by actually performing, managing, and supervising the work involved. Acting as a broker is not considered a commercially useful function. The determination of whether an activity is a commercially useful function shall include:

the evaluation of the amount of work contracted to subconsultants; normal industry practices; the skills, qualifications, or expertise of the firm to perform the work; whether the firm's own personnel perform, manage, and/or supervise the work involved; and other relevant factors.

- G. "Community Business Enterprise (CBE-A/E)" means a firm providing architectural, landscape architectural, engineering, or surveying and mapping professional services, including a design-build firm, which has an actual place of business in Miami-Dade County and whose three (3) year average annual gross revenues do not exceed two million (\$2,000,000) dollars for first tier CBE-A/Es, four million (\$4,000,000) dollars for second tier CBE-A/Es in the case of architectural,

## EXHIBIT J

engineering or surveying and mapping services, or six million (\$6,000,000) dollars for second tier CBE-A/Es in the case of landscape architectural services. A CBE-A/E will graduate out of the Program once it has exceeded these second tier size limits based on its three-year average annual gross revenues. As part of the certification process, CBE-A/Es must go through a technical certification process, which will be used to determine which of the technical certification categories the CBE-A/E will be placed in. A firm's eligibility to participate in the CBE-A/E program shall be determined based on the cumulative adjusted gross revenues of the applicant firm in combination with that of all of the firm's affiliates as provided in Section II E. Representations as to gross revenues shall be subject to audit.

- H. "Construction" means the building, renovating, retrofitting, rehabbing, restoration, painting, altering, or repairing of a public improvement.
- I. "Continuing Contract" shall have the definition provided at Sec. 2-10.4(1)(f), Code of Miami-Dade County.
- J. "CBE-A/E Program" is the Community Business Enterprise Program for the Architectural, Engineering, Landscape Architectural, Surveying and Mapping Professionals.
- K. "Debar" means to exclude a consultant, its individual officers, its shareholders with significant interests, its qualifying agent or its affiliated businesses from County agreements, whether as a prime consultant or subconsultant, for a specified period of time, not to exceed three (5) years.
- L. "Design-build contract" means a single contract with a design-build firm for the design and construction of a public construction project.
- M. "Design-build Firm" means a partnership, corporation, or other legal entity with the following characteristics:
  - 1. A partnership or joint venture, having at least one partner in compliance with either of the following two requirements:
    - a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
    - b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219 to practice

## EXHIBIT J

architecture; or certified under Section 481.319 to practice landscape architecture.

2. An individual or corporation in compliance with the following two requirements:
  - a. Is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; and
  - b. Is certified under Section 471.023, Florida Statutes, to practice engineering; certified under Section 481.219 to practice architecture; or certified under Section 481.319 to practice landscape architecture.
- N. "DBD" means Miami-Dade County Department of Business Development.
- O. "DPM" means Miami-Dade County Department of Procurement Management.
- P. "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, landscape architecture, design-build, and/or land surveying and mapping services.
- Q. "Graduation" means the CBE-A/E has exceeded the specific size limits stated for the Program and thus will no longer be eligible for participation in the Program.
- R. "Joint Venture" means an association of two or more CBE-A/Es. Joint ventures shall be subject to the size limitations set forth in this ordinance; such size limitations include affiliates as set forth in Appendix A of this ordinance.
- S. "Multiple Projects Contract" is a contract for a "project" which constitutes a grouping of minor or substantially similar study of activities or substantially similar construction, rehabilitation or renovation activities as defined in Sec. 2-10.4(1)(e)(1) and (2), Code of Miami-Dade County.
- T. "Net Worth" for the purposes of the size limits established in this Ordinance is defined as total assets minus total liabilities, of owners.
- U. "Owned" means having all the customary incidents of ownership,



## EXHIBIT J

including the right of disposition, and the right or obligation to share in all risks and profits commensurate with the degree of ownership interest.

- V. "Professional Services" are those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of Florida, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
- W. "Project Specific Awards" are contracts for professional services between Miami-Dade County and a firm whereby the firm provides professional services to the agency for work of a specified nature for a fixed capital study or planning activity.
- X. "Prompt Payment" – it is the intent of the County that all firms providing professional services to the County, shall receive payments promptly in order to maintain sufficient cash flow.
  - 1. Contracts with CBE-A/E set-asides or subconsultant goals shall require that billings from consultants under prime professional services with Miami-Dade County, Fire or the Public Health Trust that are a CBE-A/E contract set-aside or which contain a Set-aside or subconsultant goal shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute with fourteen (14) calendar days of receipt of such billing by the County, Fire, or the Trust.
  - 2. The Department of Business Development may investigate reported instances of late payments to CBE-A/Es.
  - 3. The County Manager shall establish an administrative procedure for the resolution of written complaints pertaining to underpayment of professional services.
- Y. "Proposal" means a proposal, letter of interest, letter of participation or offer by any proposer in response to any kind of invitation, request or public announcement to submit such proposal, letters of interest, letter of participation or offer to perform the agreement.
- Z. "Proposer" means any firm that submits a proposal to provide professional services
- AA. "Qualifier" means the individual who qualified the firm license holder as required by Florida Statute.

## EXHIBIT J

- BB. "Review Committee" or "RC" means the committee established by the County Manager to review proposed projects for the application of contract measures.
- CC. "Review Committee Process" - the County Manager or his or her designee shall establish an administrative procedure for the review of each proposed County agreement to which this ordinance applies, including the establishment of a committee to recommend whether CBE-A/E measures provided in this ordinance should be applied.
- DD. "Set-aside" means reservation for competition solely among first tier CBE-A/Es of a given prime County contracts for architectural, landscape architectural, engineering, or surveying and mapping professional services.
- EE. "Subconsultant Goal" means a proportion of a prime agreement value stated as a percentage to be subconsulted to first and second tier CBE-A/Es to perform a commercially useful function.
- FF. "Suspension" means temporary debarment for a period not to exceed two (2) years.
- GG. "Technical Certification" means a certification approved by the Miami-Dade County Technical Certification Committee to be eligible a firm to submit proposals on, and receive award of, County agreements for architectural, engineering, landscape architecture, or surveying and mapping services. Firms may be certified in several different technical certification categories.

## II. CERTIFICATION

### RESPONSIBILITY OF DBD

1. DBD is the County agency responsible for certifying applicants, decertifying and recertifying CBEs, and maintaining the Certification List. DBD shall maintain and publish at least monthly an updated list of CBEs, identifying each listed CBE based on each SIC/NAICS category, and each Technical Certification Category.
2. DBD shall collect, assemble and verify all information needed to establish the eligibility of an applicant and continued eligibility of a CBE.

## EXHIBIT J

3. DBD shall attempt to make a certification decision within thirty calendar days, of receipt of a completed application.
  4. Where DBD knows or has reason to know, DBD shall not certify an applicant, shall not recertify a CBE, and shall decertify a CBE that fails to comply with the criteria or procedures of the CBE-A/E Ordinance as amended, this Administrative Order and/or participation provisions. DBD shall have authority to suspend the certification of a CBE during any appeal of a decertification decision.
  5. DBD shall certify each CBE by the type of professional service it performs in accordance with the applicable two-digit SIC and/or six-digit NAICS Code and the Technical Certification Categories for which the CBE is licensed. A CBE can be certified in an unlimited number of SIC/NAICS Codes and Technical Certification Categories.
  6. DBD shall provide written renewal procedures and/or forms to certified CBEs not later than thirty (30) calendar days prior to their certification expiration date.
  7. To decertify a CBE, DBD shall either:
    - a. give notice to the CBE that the decertification decision will be effective at the completion of any appeal under this Administrative Order; or
    - b. suspend the certification of the CBE during any appeal of the decertification decision.
  8. DBD shall give written notice, including the reasons for its decision, to applicants who are denied certification and to CBEs who are decertified or denied recertification.
  9. DBD may require applicants and CBEs to submit information regarding their business operations including, but not limited to, a breakdown of the applicant's or CBE's ownership, and/or workforce as to race, national origin, gender, and gross annual sales receipts.
- A. CERTIFICATION PROCESS
1. Interested parties may obtain the certification application from DBD and are encouraged to request an explanation of the certification process. A copy of the certification application and an

## EXHIBIT J

explanation of the certification process is also available on DBD's Web Page through the County's Internet Portal. <http://www.co.miami-dade.fl.us/dbd> is the address of the Web page.

2. The applicant shall complete the certification application and submit it with all requested documentation to DBD.
3. All applicants, including CBEs seeking recertification, shall attend, if requested by DBD staff, an Eligibility Review Meeting to clarify information that was submitted in the application and accompanying documents or to gain additional information regarding the applicant's eligibility for certification.
4. All applicants, including CBEs seeking recertification, shall allow site visits by DBD staff to gain additional information regarding compliance with eligibility requirements.

### B. TERMS OF CERTIFICATION

1. Certification is valid for a one (1) year period.
2. A CBE firm, its individual officers, its shareholders with significant interests, its qualifying agent or its affiliated businesses that has been denied recertification or that has been decertified is not eligible to apply for certification for up to twelve (12) months from the time of the denial or decertification. The reapplication waiting period is dependent on the severity of the cause of denial or decertification.
3. A CBE must be certified in accordance with Section II A (5) above.
4. A business owner, alone or as a member of a group, shall own or control only one CBE at a time. A business owner, alone or as a member of a group, and any CBE, may not hold more than a ten (10) percent equity ownership in any other CBE in the same or similar line of business. If a non-CBE in the same or similar line of business as a CBE has an equity ownership of such CBE that exceeds ten (10) percent, the CBE shall not be certified or recertified.
5. Certified CBEs shall provide written notice to DBD of any changes that affect their eligibility as CBEs. CBEs shall submit a written statement describing the nature and stating the effective date of

## EXHIBIT J

the change(s) to DBD within thirty (30) calendar days of the effective date of the change(s).

6. A CBE must have a valid certification in effect at time of proposal submittal. For successful proposers, certification must be maintained from the time of proposal submittal throughout the duration of the agreement. With the exception of provisions described in CBE-A/E Ordinance for graduation from the CBE program, loss of CBE certification may lead to removal of the firm from continued participation in the CBE program. CBEs shall allow site visits by DBD staff to determine continuing compliance with certification requirements.
7. Applicants for CBE certification shall, as part of their application, disclose the information specified in Subsection (d)(1) and (2) of Section 2-8.1 of the Code of Miami-Dade County.
8. Applicants and certified CBEs must be properly licensed to conduct business in Miami-Dade County, must perform a commercially useful function with an actual place of business in Miami-Dade County, and must continue to perform a commercially useful function in Miami-Dade County to be eligible for certification or to remain certified.
9. The qualifier of the certified CBE must own at least twenty-five percent (25%) of the certified firm's issued stock.
10. Certification shall be renewed annually, and must be in effect at the time of proposal submittal. CBEs experiencing changes in ownership shall notify DBD within thirty (30) days of the effective date of such changes.

### C. ELIGIBILITY REQUIREMENTS

1. Applicants and CBEs must be profit-motivated businesses. (Note: not-for-profit or non-profit corporations are not eligible for certification).
2. CBEs must have an actual place of business in Miami-Dade County and may be registered as a vendor with DPM.
  - a. When determining whether the applicant has an actual place of business in Dade County, DBD shall consider evidence such as, but not limited to:

## EXHIBIT J

- (1) The existence of a Miami-Dade County telephone number in the CBE's name or the name with which the CBE is doing business;
  - (2) Logs of telephone activity at the Miami-Dade County telephone number;
  - (3) Offices, premises related to business, or other facilities within the geographic boundaries of Miami-Dade County at which the goods or services to be provided are produced or performed;
  - (4) The existence and location of secretarial or other administrative staff;
  - (5) The existence of other offices or premises at which the same business is conducted; and
  - (6) The possession of licenses required to conduct the business in Miami-Dade County.
3. An individual, alone or as a member of a group, shall own or control only one (1) CBE at a time.
  4. A firm's eligibility to participate in the CBE program shall be determined based on the average annual adjusted gross revenues for the last three (3) years, in combination with that of all of the firm's affiliates, if any. Representations as to gross revenues shall be subject to audit.
  5. Nothing shall prohibit CBEs from competing for contracts under the Federal Disadvantaged Business Enterprise (DBE) program or any other business assistance program if the CBE is also certified for the programs under this Administrative Order by DBD or certified by any other agency or organization.
  6. When investigating the ownership and control of an applicant or a CBE, DBD shall consider factors including, but not be limited to the following:
    - a. All securities constituting ownership and/or control of a business for purposes of establishing the business as a CBE shall be held directly by the owners. No securities held in trust shall be considered.

## EXHIBIT J

- b. The contributions of capital and expertise by the qualifying agent to acquire interest in the business shall be real and substantial. Examples of insufficient contributions may include, but are not limited to, a note payable to the business or to those of its part owners, or the mere participation of the qualifier as an employee, rather than as a manager.
7. A CBE shall not be subject to any formal or informal restrictions that limit the customary discretion of the owner.
8. An applicant that has undergone a recent change in ownership, control or reported income level will be carefully scrutinized. Factors such as, but not limited to, the following shall be considered:
  - a. The reasons for the timing of the change in ownership of the business relative to the time that the contracts in the applicant's trade, SIC/NAICS, or service area are advertised;
  - b. Whether an individual identified as an owner who had a previous or continuing employee-employer relationship with present owners has actual management responsibilities and capabilities;
  - c. The participation of one or more of the owners of the applicant firm in another firm in the same trade, SIC/NAICS, or service area;
  - d. Whether reported income levels indicate a severe decline to possibly attempt to qualify the firm for CBE certification; and
  - e. Whether affiliation as described in CBE-A/E Ordinance exists or once existed between the applicant firm and a non-CBE firm.

### D. SIZE ELIGIBILITY AND AFFILIATION DETERMINATION

- A. General: Only small firms that meet size limits of first tier and second tier CBE-A/Es as to average annual adjusted gross revenues for the last three years may be codified as CBE-A/Es. Size determinations for first and second tier CBE-A/Es certification eligibility shall take into account the combined gross revenues of the applicant firm and all of its domestic and foreign affiliates. All affiliates of the applicant firm, regardless of whether organized for profit, shall be included.

## EXHIBIT J

B. Affiliation: Firms are considered affiliates of each other when either directly or indirectly:

1. One concern controls or has the power to control the other, or
2. A third party or parties controls or has the power to control both, or
3. An identity of interest between or among parties exists such that affiliation may be found.

C. In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships. Variations of these factors are examined more closely below:

1. Nature of control in determining affiliation.
  - a. Every firm is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.
  - b. Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.
  - c. Control can arise through management positions where a firm's vote stock is so widely distributed that no effective control can be established.
2. Identity of interest between and among persons as an affiliation determinant.

Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one firm. In determining who controls or has the power to control firm, persons with an identity of interest may be treated as though they were one person.

3. Affiliation through stock ownership.
  - a. A person is presumed to control or have the power to control a firm if he or she owns or controls or has the power to



## EXHIBIT J

control fifty (50) percent or more of its voting stock.

- b. A person is presumed to control or have the power to control a firm even though he or she owns, controls or has the power to control less than fifty (50) percent of the firm's voting stock, if the block of stock he or she owns, controls, or has the power to control is large as compared with any other outstanding block of stock.
  - c. If each of two or more persons owns, controls or has the power to control less than fifty (50) percent of the voting stock of a firm; such minority holdings are equal or approximately equal in size; and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each such person individually controls or has the power to control the firm; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.
4. Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the firm. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held there under had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another firm before it actually does so.
  5. Affiliation under voting trusts.
    - a. If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a firm in order that such firm or another firm may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction. However, if a voting trust is primarily entered into for a legitimate purpose other than that described above, and it is recognized within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination.
    - b. Agreements to divest (including agreements in principle) are

## EXHIBIT J

not considered to have a present effect on the power to control the firm.

6. Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another firm.
7. Affiliation through common facilities. Affiliation generally arises where one firm shares office space and/or employees and/or other facilities with another firm, particularly where such firms are in the same or related industry or field of operations, or where such firms were formerly affiliated.
8. Affiliation with a newly organized firm. Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one firm organize a new firm in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and the firm is furnishing or will furnish the other firm with subconsulting agreements, financial or technical assistance, proposal or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.
9. Affiliation through contractual relationships. Affiliation generally arises where one firm is dependent upon another firm for consulting agreements and business to such a degree that its economic viability would be in jeopardy without such agreements/business.
10. Affiliation under joint venture arrangements.
  - a. A joint venture for size determination purposes is an association of firms and/or individuals, with interests in any degree or proportion, formed by agreement, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

## EXHIBIT J

- b. For the purpose of financial assistance to a joint venture, the parties thereto are considered to be affiliated with each other. Where the financial assistance, however, is to a firm for its own use, outside the joint venture, an affiliation determination shall not automatically arise from the existence of the joint venture arrangement. In this latter situation, the existence of affiliation shall be determined under these regulations.
  - c. Firms proposing on a particular agreement as joint ventures are affiliated with each other with regard to performance of the agreement. This determination of affiliation does not extend to other contracts or business outside the joint venture arrangement.
  - d. An ostensible subconsultant which performs or is to perform primary or vital requirements of an agreement may have such a controlling role that it must be considered a joint venture affiliated on the agreement with the prime consultant. In determining whether subconsulting arises to the level of affiliation as a joint venture, DBD considers whether the prime consultant has unusual reliance on the subconsultant.
  - e. Even though a firm might not be an affiliate of its joint ventures for the purpose of operations apart from the joint venture, it nevertheless must include its proportionate share of the joint venture receipts or employees in determining its eligibility under the size standards.
11. Affiliation under franchise and license agreements. In determining whether the franchiser controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints, relating to standardized quality, advertising, accounting format and other provisions, imposed on a franchisee by its franchise agreement shall generally not be considered, provided that the franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though the franchiser by virtue of such provisions may not control a franchisee in the franchise agreement, control and, thus, affiliation could arise through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

### D. Gross Annual Revenues.

## EXHIBIT J

1. In size determinations, size eligibility requires that the firm may not exceed the three year average gross annual revenues in the applicable standard.
2. Definitions. For the purpose of determining annual gross revenues of a firm:
  - a. "Accrual Basis" means a method of accounting in which accounts and notes receivable are recorded in the regular books of account for the period in which the firm first has a claim of right to them.
  - b. "Claim of Right" has the meaning attributed to it by the U.S. Internal Revenue Service (IRS).
  - c. "Gross Revenues" is defined to include all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. However, the term revenues excludes proceeds from sales of capital assets and investments, proceeds from transactions between a firm and its domestic and foreign affiliates, amounts collected for another by a travel agent or real estate agent, and taxes collected for remittance to a taxing authority.
  - d. "Regular Books of Account" means the general ledger or other book of final entry and, if used, the journals or other books of original entry.
  - e. "Completed Fiscal Year" means a taxable year including any short period. Taxable year and short period have the meaning attributed to them by the IRS.
  - f. Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.
3. Period of measurement.
  - a. Annual Gross Revenues of a firm which has been in business for three (3) or more completed fiscal years means the arithmetic annual average revenue of the firm over its last three (3) completed fiscal years (total revenue compiled over the entire three (3) year period would be divided by three).
  - b. Annual Gross Revenues of a firm which has been in business for less than three (3) fiscal years means the arithmetic annual

## EXHIBIT J

average revenue over the time period the firm has been in business (total revenues compiled over the period the firm has been in business, divided by the number of weeks, including fractions of a week, the firm has been in business, multiplied by 52).

- c. Annual Gross Revenues of a firm which has been in business three or more years but has a short year in the last three years will be the arithmetic annual average revenue over the two full years and the short year. The short period may appear at the beginning, middle or end of the three year calculation period.
4. Method of determining annual gross revenues.
    - a. Revenue may be taken from the regular books of account of the firm. If the firm so elects, or has not kept regular books of account, or the IRS has found such records to be inadequate and has reconstructed income of the firm, then revenues shown on the federal income tax return of the firm may be used in determining annual gross revenues. Revenue shown on the regular books of account or the Federal Income tax return on a basis other than accrual must be restated to show revenue on an accrual basis for all fiscal years.
    - b. Where the federal income tax return of a firm shows its annual gross revenues to be less than seventy-five (75) percent of the applicable size standard, the firm need not restate its revenue to an accrual basis prior to determining annual revenues.
    - c. Where a short period is included in the firm's most recent three (3) years, annual gross revenues are calculated by dividing the sum of the revenues of the short year and the revenues of the two (2) full fiscal years by the sum of the number of weeks in the short fiscal year and the number of weeks in the two full fiscal years, and multiplying that figure (the weekly average revenues) by fifty-two (52).
  5. Annual gross revenues of affiliates.
    - a. If a firm has acquired an affiliate or been acquired as an affiliate during the applicable averaging period or before certification, the *annual gross revenues* in determining size status include the revenues of both the applicant and the affiliate. Furthermore, this aggregation of the revenues of both the applicant and its affiliates applies for the entire applicable averaging period used in computing size (usually the preceding three (3) complete fiscal

## EXHIBIT J

years) rather than only for the period after the affiliation arose.

- b. The annual gross revenues of a firm which had been an affiliate of the applicant during part of the period used in determining size (usually the preceding three complete fiscal years), but was not an affiliate at the time of certification, are not included within the computation of annual gross revenues in making size determinations. This exclusion of annual gross revenues of a former affiliate applies during the entire period used in computing size, rather than only for the period after which the affiliation ceased.

E. Annual gross revenues and adjusted gross revenues of affiliated.

1. The annual gross revenues and adjusted gross revenues of affiliates shall be included in determining size status of the applicant.
2. Payments to an affiliate that has been used as a subconsultant by the applicant shall not be counted as documented payment used to adjust the gross revenues of the applicant.

### III. JOINT VENTURES

- A. Only joint ventures approved by DBD in accordance with this Administrative Order are eligible to participate as joint ventures in the CBE program. Joint ventures must be lawfully established. All members of the joint venture must be certified as CBEs before the joint venture can be approved. Joint ventures can participate under the CBE program on contracts with CBE set-asides or subconsultant goals.
- B. Joint ventures must submit, prior to proposal submission, a Joint Venture Agreement containing the following information:
  1. A description of the financial contribution of each member;
  2. A list of the personnel and equipment used by each member;
  3. A detailed breakdown of the responsibility of each member and the work to be performed by each member;
  4. An explanation of how the profits and/or losses will be distributed;
  5. The bonding capacity of each member;

## EXHIBIT J

6. A description of any management or incentive fees for any of the members;
7. A statement of the percentage of the joint venture that is owned and controlled by the qualifying member(s) and the basis for claiming such percentage; and
8. A copy of any required State certificates or registrations.

### IV. DEPARTMENT/AGENCY RESPONSIBILITIES

- A. Each department and agency, in conjunction with the annual budget process, shall compile a list of its proposed capital projects, renovations, and major repairs for the fiscal year. Each department and agency shall forward the list by August 1 of each year to DBD for use in the formulation of the CBE objectives.
- B. Each department and agency, in conjunction with its contracting and purchasing activities, shall compile and maintain a list of its consultants' ownership demographics. These lists shall be updated at least quarterly and forwarded to DBD. Contract documents shall require that all requests for payment by the prime consultants include a list of all subconsultants who have performed work, and shall contain the prompt payment provisions outlined in the CBE ordinance.
- C. DBD shall prepare standard proposal participation provisions. Each issuing department including the Public Health Trust must use these standard proposal participation provision documents for all agreements with agreement set-asides or subconsultant goals unless DBD approves substitute proposal documents. When proposal documents for agreements with set-asides or subconsultant goals are advertised, they shall include a current CBE Certification List.
- D. Departments shall submit recommendations of the RC to the Board of County Commissioners for approval. DBD shall notify departments of the recommended agreement set-aside, or subconsultant goal.
- E. Subsequent to a recommendation by the RC and prior to agreement advertisement, each department shall advise DBD of any change in the scope of work of an agreement. DBD shall review the change and recommend to the County Manager whether the agreement requires further review by the RC due to the change in the scope of work. Each department shall advise DBD of post-award changes in scope and all change orders that require Board of County Commissioners' approval shall be submitted to DBD. DBD shall review the changes and change orders and recommend to the County Manager whether the agreement

## EXHIBIT J

requires further review by the RC due to the change in the scope of work, and report on the prime consultant's current status of CBE compliance.

- F. Each department shall advise DBD of any agreement advertisement dates that are in excess of one hundred twenty (120) days of the initial RC recommendation to apply a set-aside or a goal in order to allow DBD to identify any changes in availability. Each department shall advise DBD of any agreement cancelled or not advertised within one hundred eighty (180) days after review by the RC and the agreement must be resubmitted to the RC to re-establish availability.

### V. PROCEDURE FOR RECOMMENDATION OF AGREEMENT SET-ASIDES OR SUBCONSULTANT GOALS

Each individual project specific award and multiple project contracts (if the multiple projects contract 10% utilization objective has not been met) as mandated by the CBE-A/E ordinance for the purchase of architectural, landscape architectural, engineering, or surveying and mapping services, shall be reviewed for application of first tier CBE-A/E set-asides or subconsultant goals. The procedure for applying first tier CBE-A/E set-asides or subconsultant goals on such services are as follows:

- A. Each department, as applicable, shall review anticipated agreements for application of first tier CBE-A/E set-asides or subconsultant goals.
- B. Departments shall work in conjunction with DBD in recommending whether agreements should be set-aside for first tier CBE-A/Es or have subconsultant goals applied. The department shall submit the appropriate items from the following to the Director of DBD:
  - 1. For each recommendation to have an agreement set-aside for first tier CBE-A/Es or to have a subconsultant goal applied, a memorandum should be included providing an appropriate brief description as follows:
    - a) Project title and number;
    - b) A complete breakdown of all the required professional services, including identification by their respective technical certification categories;
    - c) Estimated percentage of work for each of the required professional services;



## EXHIBIT J

- d) A history of previous purchases to include the sizes of the previously successful consultants as appropriate for the previous three (3) years; and
  - e) The recommendation as to whether to set-aside the agreement or to place a subconsultant goal on the agreement.
2. An agreement may be set-aside for first tier CBE-A/Es or subconsultant goals applied to a given agreement when there is a CBE objective set for the SIC/NAICS category in which the agreement is classified and the forecast of future expenditures by program area indicates that an agreement set-aside for first tier CBE-A/Es or a subconsultant goal will be appropriate.

### A. GENERAL GUIDANCE

- 1. The selection of an agreement for first tier set-aside or subconsultant goal shall include consideration of the following:
  - a. The impact of the project as it relates to the CBE objective;
  - b. The previous agreements used in the particular SIC/NAICS category;
  - c. The relative impact of economic incentives;
  - d. The effects of other agreement set-asides or subconsultant goals taken or reasonably expected to be taken in the SIC/NAICS category and their expected effects during the life expectancy of the agreement;
  - e. The impact of the agreement set-aside or subconsultant goal on potential competitors; and
  - f. Consideration of selection among various programs as set forth by the Review Committee.

### B. AGREEMENT SET-ASIDES

- 1. A recommendation of a set-aside is appropriate when:

## EXHIBIT J

- a. The estimated project cost is \$3,000,000 or less;
  - b. The quality, quantity and type of opportunities provided by the agreement are appropriate for applying a first tier set-aside;
  - c. Prior to proposal advertisement three (3) or more first tier CBE-A/Es are available to provide the quality, quantity and type of opportunities afforded by the proposed agreement.
2. Set-asides should be used to provide large economic incentives. Set-asides are most effectively applied to relatively small agreements. When possible, consideration should be given for splitting large agreements into smaller agreements to allow for greater program participation.

### C. SUBCONSULTANT GOAL

1. A recommendation to apply a subconsultant goal to a particular agreement is appropriate when:
  - a. The agreement has identifiable opportunities, which, according to normal industry practice, are appropriate for subconsulting in a specific professional service area within SIC/NAICS and technical certification category;
  - b. The quality, quantity and types of opportunities provided are appropriate for applying a subconsultant goal.
2. Effective competition exists for setting a particular subcontractor goal in that three (3) or more CBEs certified within the applicable professional service area within SIC/NAICS and technical certification category are available.
3. A memorandum identifying and briefly describing all agreements or proposals, including justification for sole source, for which a recommendation is being made not to set aside the agreement or not to place a subconsultant goal on the agreement, and information to support such a recommendation.

## EXHIBIT J

- D. DBD shall review the proposed agreement and the departmental recommendations. DBD shall review all submissions received prior to the published RC agenda deadline, develop a DBD recommendation, and shall place the submissions on the agenda of the appropriate RC meeting.

### VI. DOCUMENTATION TO REVIEW COMMITTEE

DBD shall present the following to the RC:

- A. For each recommendation of an agreement set-aside or subconsultant goal, a copy of the department's recommendation; a memorandum briefly describing the analysis of the agreement and basis for providing a recommendation; verification of ability to submit a proposal for first tier set-aside agreements and a recommendation report that includes a listing of all professional service areas on which availability was established and subconsultant goals were based.
- B. A brief memorandum identifying all services for which a recommendation of no agreement set-aside or no subconsultant goal is being made and providing information to support the recommendation.

### VII. REVIEW COMMITTEE

The RC is responsible for recommending to the County Manager whether to apply CBE agreement set-asides, or subconsultant goals to an agreement.

- A. The members of the RC shall be: Director, DBD; President, Public Health Trust; Director, GSA; Director, Public Works Department; Director, Aviation Department; and Director, Miami-Dade Water and Sewer Department or their designees; and four (4) individuals named by the County Manager. The County Manager shall designate one member to be chairperson. A quorum of the RC shall be six (6) members. Staff assistance shall be provided by DBD.
- B. The RC shall meet monthly or more frequently as needed. It shall publish a schedule of meetings, listing the meeting locations, dates, times and agenda deadlines for submission of departmental recommendations to DBD. All RC meetings are subject to Government-in-the-Sunshine requirements. The chair shall allow participation of the public at RC meetings consistent with accomplishing the agenda of the RC.

## EXHIBIT J

- C. The RC shall have authority to promulgate rules of general application to carry out its responsibilities, which rules are subject to review and approval by the County Manager.
- D. The RC may, after public deliberation and consideration of alternatives, accept, reject, modify or otherwise alter the staff recommendation. The County Manager may accept, reject, modify or otherwise alter the RC recommendations. The Board of County Commissioners may accept, reject, modify or otherwise alter the County Manager's recommendations. The Mayor may accept or veto the Board of County Commissioners' recommendations. In accordance with the policy established by the Board of County Commissioners, the Board of County Commissioners may overrule the Mayor's veto.
- E. The RC shall hear appeals as provided in Section XVI of this Administrative Order.

### VIII. AGREEMENT ADMINISTRATION - AGREEMENT SET-ASIDES

- A. Solicitations for County professional services agreements that are set-aside under the CBE program shall consider proposals solely from CBEs. In order to submit a proposal on a set-aside agreement, the proposer must be certified as a CBE prior to proposal submission date. A CBE awarded a set-aside agreement shall not transfer to a non-CBE, through subconsulting or otherwise, any part of the actual work of the agreement unless the proposal documents expressly and specifically permit such transfer as consistent with normal industry practice or the CBE requests and receives prior to agreement award, an approval letter from DBD.
- B. A CBE that performs the work of a set-aside agreement with its own forces may count such work towards reducing the CBE goal applied to the agreement by a maximum of one hundred (100) percent.
- C. Respondent's Responsibilities for CBE-A/E Set-Asides
  - 1. Respondents on set-aside agreements must submit a completed "Set-Aside List of Subconsultants" at the time of proposal submission. Respondents who fail to submit the Set-Aside List of Subconsultants shall be considered non-responsive,
  - 2. Respondents must submit Letters of Intent to the person or office to whom the proposal was submitted by 4:00 p.m. on the second business day following proposal submission. Defective Letters of Intent that are incomplete or inaccurate shall constitute non-compliance. Examples of defects include, but are not limited to,

## EXHIBIT J

improperly executed letters, the listing of an unidentifiable CBE and percentage miscalculations that are not mere clerical errors apparent on the face of the "Set-Aside List of Subconsultants." Respondents who fail to submit the Letter of Intent shall be considered non-responsive.

- D. The following shall constitute a violation of this Administrative Order as they relate to an agreement that is set-aside:
1. Submission of a "Set-Aside List of Subconsultants" of CBE subconsultants that the respondent knew or should have known is incomplete or inaccurate;
  2. After proposal submission due date, deviations from the "Set-Aside List of Subconsultants" without the written approval of the Compliance Monitor;
  3. The utilization of a non-certified CBE;
  4. A CBE serving as a conduit for CBE work awarded to a firm as a CBE but which is being performed by a non-CBE firm;
  5. Not obtaining or retaining CBE certification while performing work designated for CBE firms;
  6. Failure to submit monthly utilization reports;
  7. Failure to comply with CBE certification requirements including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
  8. Modifications to the terms and/or prices of payment to a CBE without prior approval from DBD; or
  9. Unjustified failure to enter into a written subconsultant agreement with a CBE after listing the firm on a "Set-Aside List of Subconsultants."

### IX. AGREEMENT ADMINISTRATION - SUBCONSULTANT GOALS

#### A. SUBCONSULTANT GOALS

The purpose of a subconsultant goal is to have portions of the work under the prime consultant performed by available subconsultants that

## EXHIBIT J

are certified CBEs for agreement values totaling not less than the percentage of the prime agreement value set out in the proposal form. Subconsultant goals may be applied to an agreement when estimates made prior to proposal advertisement identify the quality, quantity and type of opportunities in the agreement and CBEs are available to afford effective competition in providing a percentage of these identified services.

After a proposal is advertised or other formal public notice given, the established subconsultant goal may be reduced only with the approval of the County Commission or the Public Health Trust. Proposal documents shall include documentation demonstrating the basis for the subconsultant goal established in the agreement.

### 1. RESPONDENT RESPONSIBILITIES FOR SUBCONSULTANT GOALS

Respondents must submit a completed Schedule of Participation form at the time of proposal submission identifying all first and/or second tier CBE-A/Es to be utilized to meet the subconsultant goal, the professional service designation of work each will perform, and the percentage of such work. The Schedule of Participation constitutes a written representation by the respondent that, to the best of the respondent's knowledge, the CBEs listed are qualified and available to perform as specified. The Schedule of Participation is a commitment by the respondent that, if awarded the agreement, it will enter into written subconsultant agreements with the identified CBEs for the scope of work at the percentage set forth in the Schedule of Participation. Failure to submit the required documents within the required time frames may render the proposal non-responsive or be subject to sanctions or penalties as outlined in the contract or in this Administrative Order.

- a. All such subconsultant agreements shall be in writing and shall be executed by the prime consultant and the CBE subconsultant utilized to meet the subconsultant goal.
- b. Respondents who fail to submit the required Schedule of Participation at the time of proposal submission shall be considered non-responsive.
- c. Respondents that contain a defective Schedule of Participation may be voidable. Examples of defects include, but are not limited to, an incomplete Schedule, the listing of an unidentifiable CBE, and percentage miscalculations that

## EXHIBIT J

are not mere clerical errors apparent on the face of the Schedule.

- d. A successful respondent that is a CBE or a CBE joint venture may perform up to one hundred percent (100%) of a CBE subconsultant goal with its own forces. The remaining subconsultant goal work shall be performed by other CBEs.
- e. Expenditures to subconsulting CBEs shall be counted toward meeting specified subconsultant goals as follows:
  - (1) One hundred percent (100%) of the expenditures to a CBE that performs a commercially useful function in the supply of services required for the fulfillment of the agreement;
  - (2) One hundred percent (100%) of the expenditures to CBEs that subconsult work further to non-CBEs, only if the proposal documents expressly and specifically permit such subconsulting as consistent with normal industry practice, or if the respondent or CBE requests and receives prior to agreement award an approval letter from DBD;
  - (3) One hundred percent (100%) of the expenditures to CBEs that perform actual work with their own forces;
  - (4) None of the expenditures to a CBE that acts essentially as a conduit to transfer funds to a non-CBE unless the proposal documents expressly and specifically permit such transfers as consistent with normal industry practice or the respondent or CBE requests and receives prior to agreement award an approval letter from DBD; and
  - (5) Only expenditures to CBEs made under a written subconsultant agreement executed by both the prime consultant and the CBE shall be counted towards meeting the subconsultant goal.
- f. In order to assure at the time of proposal submission, agreement upon the above information between the prime consultant and the CBE subconsultant so identified, the prime consultants must submit Letters of Intent signed by the identified first and/or second tier CBE-A/E subconsultants to the Contracting Officer no later than 4:00 p.m. on the second

## EXHIBIT J

business day following proposal submission date. Failure to submit Letters of Intent signed by the affected CBE within the specified time shall render the proposal non-responsive. Submission of a defective form shall render the proposal voidable.

- g. Respondents whose proposals do not meet the specified goal, in order to remain eligible, must submit to the Contracting Officer by no later than 4:00 p.m. on the second business day following proposal submission, evidence proving the lack of available CBEs to afford effective competition to provide the services to meet the goal. To prove lack of availability, respondents must submit the following:
- (1) Unavailability Certificates either completed and signed by all of the CBEs available to perform the scopes of work are completed and signed by the respondent explaining the contacts with all of the CBEs available to perform the scopes of work, statements or actions of the CBEs showing unavailability, and the reason(s) why the CBEs' signature could not be obtained;
  - (2) A listing of any proposals received from a CBE, the scope of work and percentage of work, and the respondent's reasons for rejecting each proposal;
  - (3) A statement of the respondent's contacts with DBD for assistance in determining available CBEs;
  - (4) A description of the respondent's process for soliciting and evaluating proposals from CBEs, including copies of telephone logs detailing time, date and name of contacts with potential subconsultants;
  - (5) Respondents may establish a CBE as unavailable if its proposal is not reasonably competitive with comparable proposals of non-CBEs for the same scope of work. To establish a CBE as unavailable if its proposal is not considered reasonably competitive, the prime consultant must furnish DBD with copies of all proposals received from all firms, both CBEs and non-CBEs, for each specific scope of work for which they are claiming that the proposal is not reasonably competitive. A CBE's proposal will be considered reasonably competitive if its proposal, for the same



## EXHIBIT J

scope of work, is within 25% of the proposal of comparably sized non-CBE firms;

Respondents whose proposals do not meet the specified goal, and who do not prove lack of availability as indicated in 1(g) above, are not in compliance with this Administrative Order.

The following shall constitute non-compliance with this Administrative Order as it relates to an agreement which has a CBE subconsultant goal:

- (1) The utilization of a non-certified CBE;
- (2) A CBE serving as a conduit for CBE work awarded to a firm as a CBE but which is being performed by a non-CBE firm;
- (3) A prime consultant not meeting CBE subconsultant goal requirements;
- (4) Not obtaining or retaining CBE certification while performing work designated for CBE firms;
- (5) Failure to submit monthly utilization reports;
- (6) Deviations from the Schedule of Participation without prior approval from DBD;
- (7) Termination of the CBE's agreement without prior approval from DBD;
- (8) Reduction of the scope of work of a CBE subconsultant without prior approval from DBD;
- (9) Modifications to the terms and/or prices of payment to a CBE without prior approval from DBD; or
- (10) Unjustified failure to enter into a written subconsultant agreement with a CBE after listing the firm on a Schedule of Participation.

### B. COUNTY RESPONSIBILITIES

1. After considering the quality, quantity and type of opportunities provided by the agreement, and the availability of CBEs to afford

## EXHIBIT J

effective competition in providing the professional services required under the agreement, each department or DPM will recommend to DBD the type and level of agreement set-aside, or subconsultant goal that could be applied.

2. DBD shall review the Schedules of Participation, Letters of Intent, and Unavailability Certificates to determine compliance with the agreement set-aside, or subconsultant goal stated in the proposal documents. The Compliance Monitor may meet with a respondent before recommending that the Contract Officer determine non-compliance. This written recommendation shall be forwarded to the respondent and the Contract Officer.
3. In the event that the Contracting Officer receives a recommendation of non-compliance from the Compliance Monitor, he or she may conduct a meeting or hearing at which the respondent shall be afforded an opportunity to present data supporting its compliance with the goal. The Contracting Officer shall consider the evidence and make a determination as to compliance.

### X. DESIGN-BUILD CONTRACTS

The design portion of the design-build contract is subject to the procedures outlined in this Administrative Order.

### XI. PROMPT PAYMENT

It is the County's intent that all firms, including CBEs providing professional services to the County, shall receive payments promptly in order to maintain sufficient cash flow.

#### A. PRIME CONSULTANT RESPONSIBILITIES

1. A prime consultant shall include in its billing to Miami-Dade County or the Public Health Trust copies of those portions of the billings from CBE subconsultants utilized to meet the subconsultant goal applicable to the agreement which the prime consultant approves and whose cost is included in the payment amount requested from Miami-Dade County or the Public Health Trust.
2. Prime consultant agreements to which a CBE subconsultant goal has been applied shall require that billings from CBEs be promptly reviewed and payment made to such CBEs on those amounts not

## EXHIBIT J

in dispute within two (2) business days of receipt of payment therefore. The foregoing notwithstanding, the prime consultant shall pay billings from CBE subconsultants with whom they are in direct privity that are not in dispute within the timeframe and implemented by this Administrative Order.

3. The prime consultant on an agreement to which a CBE subconsultant goal has been applied shall inform DBD, the Contracting Officer, and the CBE subconsultant, in writing, of those amounts billed by the CBE which are in dispute, and the specific reasons why they are in dispute, within seven (7) calendar days of submittal of such billing by the CBE subconsultant to the prime consultant.
4. Failure of the prime consultant to comply with the applicable requirements of Section XI (A) (3) above shall result in the prime consultant's forfeiture of the right to use the dispute as justification for not paying the CBE subconsultant and payment shall be forthcoming from the prime consultant.

### B. COUNTY RESPONSIBILITIES

1. Proposal documents for agreements with CBE agreement set-asides, or subconsultant goals shall require that billings from subconsultants under prime consultant agreements with Miami-Dade County or the Public Health Trust that are a CBE agreement set-aside or which contain a subconsultant goal shall be promptly reviewed and payment made by the County or Trust on those amounts not in dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust.
2. DBD may investigate reported instances of late payment to CBEs.

### C. FINANCE DEPARTMENT RESPONSIBILITIES

The Finance Department shall review billings from prime consultants under prime consultant agreements with Miami-Dade County or the Public Health Trust that are a CBE agreement set-aside or which contain a subconsultant goal and make payment on those amounts not in dispute within fourteen (14) calendar days of receipt of billing.

## XII. AGREEMENT ADMINISTRATION - COMPLIANCE AND MONITORING

### A. Compliance Review

## EXHIBIT J

1. The Compliance Monitor shall review respondent's submission for compliance with this Administrative Order on every agreement to which a CBE agreement set-aside, or subconsultant goal has been applied. The purpose of this review shall be for the Compliance Monitor to consider whether to recommend the respondent's proposal is determined to be in compliance or non-compliance with the requirements of this Administrative Order. The Compliance Monitor may consider relevant information from any person in making this decision. The Compliance Monitor may require the respondent to produce information deemed pertinent and appropriate and may obtain further information from whatever sources the Compliance Monitor deems appropriate.
2. The Compliance Monitor shall notify the respondent in writing stating the facts and the reasons on which the non-compliance is based. The respondent may request a meeting within five (5) business days from the date of the notification of non-compliance. The respondent shall supply further relevant information as required by the Compliance Monitor. No new altered Schedule of Participation and Letter of Intent will be accepted.
3. The Compliance Monitor shall make a written recommendation to the Contracting Officer, which shall include a statement of the facts and reasons for which the non-compliance is based.
4. Following receipt of a recommendation of non-compliance from the Compliance Monitor, the Contracting Officer shall review the Compliance Monitor's recommendation of respondent's non-compliance with this Administrative Order. The Contracting Officer shall notify the respondent of such non-compliance. The respondent may request a meeting within five (5) business days from the date of notification of non-compliance with the Contracting Officer if the Contracting Officer was not present at the first meeting referenced in Subsection (A)(2) above. The respondent shall supply further relevant information as required by the Compliance Monitor. No new altered Schedule of Participation and Letter of Intent will be accepted.
5. The Contracting Officer, in conjunction with the Compliance Monitor, may conduct an informal meeting with the respondent. Other parties may be invited to offer information relevant to the issue of the respondent's non-compliance.
6. The Contracting Officer shall provide a written determination of the respondent's compliance with this Administrative Order, along with a recommendation whether to award the agreement to the

## EXHIBIT J

respondent, to the County Manager. A copy of such recommendation shall be sent to the respondent. Such recommendation shall not affect the power of the Board of County Commissioners to reject the respondent's bid for any other reason or to take such action on the recommendation of the Contracting Officer as the Board deems appropriate.

7. Consideration of other proposals. If the Contracting Officer or Compliance Monitor deems it advisable in the interest of expediting the award of the agreement, the procedures set forth in this subsection may be carried out with respect to the proposals of one or more additional respondents at the same or different time with each such proceeding to be separately conducted.
8. Failure of respondent to participate. The respondent will be bound by the proceedings under this subsection to which they have been given required notice without regard to their participation or lack of participation. A lack of participation upon receiving notices and requests pursuant to this Administrative Order shall not be grounds for reconsideration of any action taken in the proceedings.
9. Miami-Dade County shall not award an agreement to any respondent which, in its determination, fails to comply with the applicable requirements of this Administrative Order. Nothing herein shall relieve any respondent from any of the terms, conditions or requirements of the contract or modify Miami-Dade County's rights as reserved in the agreement document.

### B. Post-Award Compliance and Monitoring

#### 1. Approval of Subconsultant Agreements

The Successful Respondent shall submit to the Contracting Officer, for approval, written subconsultant agreements corresponding in all respects to the Successful Respondent's Schedule of Participation or Set-Aside List of Subconsultants. The Successful Respondent shall enter into a written subconsultant agreement with each listed CBE subconsultant and shall thereafter neither terminate any such subconsultant agreement, nor reduce the scope of work to be performed by, or decrease the price to be paid to the first tier CBEs thereunder, without in each instance obtaining prior written approval of the Contracting Officer. The Contracting Officer shall not give a final written determination without a recommendation from the Compliance Monitor.

## EXHIBIT J

### 2. Access to Records

Successful respondents and CBEs shall permit the County to have access during normal business hours to books and records relating to the respondent's compliance with the agreement set-aside, or subconsultant goal applied to the agreement or relating to CBE compliance with certification requirements. Such books and records include but are not limited to corporate documents, charters, organizational filings, tax filings, registrations, licenses, stock registrations, partnership agreements, contracts, subcontracts, joint venture agreements, telephone logs, checking accounts, journals, ledgers, correspondence, pension and benefits documents, and documents and records between the respondent or the CBE and other entities. This right of access shall be granted for one year after completion of the work or full payment of the agreement obligations, whichever comes last, or for one year after the expiration of CBE certification.

### 3. Access to Job Site

Successful respondents and CBEs shall permit the County to have access to project locations during normal business hours in order to conduct visual inspections and employee interviews.

### 4. Monthly/Quarterly Reporting

The successful respondent on a project that is a CBE agreement set-aside or on a project with CBE subconsultant goals shall submit monthly a Utilization Report to the Compliance Monitor through the Contracting Officer on or before the tenth working day following the end of the month the report covers. The Compliance Monitor shall give standard reporting forms to the successful respondent. The Utilization Report is to be completed by the successful respondent. Where a subconsultant goal has been imposed, the Utilization Report shall include information on CBEs utilized to meet such subconsultant goal. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or administrative penalties by the County.

### 5. Deviations from the Schedule of Participation or Set-Aside List of Subconsultants

- a. In the event that, during the performance of an agreement, the CBE is not able to provide the services specified on the Schedule of Participation, the successful respondent must

## EXHIBIT J

locate a CBE to substitute for the unavailable CBE, unless the respondent can prove the lack of an available CBE to provide the services to be provided by the prior CBE. The successful respondent must receive approval for substitution from DBD by submitting a request in writing addressed to the Director of DBD through the Contracting Officer. The request must include a revised Schedule of Participation to include the substitute CBE and a Letter of Intent from the substitute CBE. The Compliance Monitor will review the request and make a recommendation regarding the substitution to the Contracting Officer. A successful respondent that cannot secure a substitute CBE must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, and telephone numbers of all CBEs contacted, and the date of contact for each CBE. All certified CBEs certified in the appropriate professional service area under the technical certification categories must be contacted in order to prove lack of an available CBE.

- b. The Compliance Monitor shall be responsible for monitoring the performance of the successful respondent regarding compliance with agreement set-asides, or subconsultant goals applied to the agreements. The Compliance Monitor may, at his or her discretion, investigate deviations in the utilization of CBEs from that described on the Schedule of Participation, and make recommendations regarding compliance to the Contracting Officer. The Contracting Officer shall not make a final determination without a recommendation regarding compliance from the Compliance Monitor. Deviations from the goal stated in the agreement that shall be monitored include, but are not limited to:
  - (1) Termination of a CBE's subconsultant agreement;
  - (2) Reduction in the scope of work to be performed by a CBE;
  - (3) Modifications to the terms of payment or price to be paid to a CBE; or
  - (4) Failure to enter into a subconsultant agreement with a CBE being utilized to meet a subconsultant goal.
- c. Excuse from entering into subconsultant agreements:

## EXHIBIT J

If, prior to execution of a subconsultant agreement required by this Administrative Order, the successful respondent submits a written request to the Contracting Officer demonstrating to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not reasonably have been aware until subsequent to the date of the award of the agreement, a CBE who is to enter into such subconsultant agreement has unreasonably refused to execute the subconsultant agreement, or is not available, the successful respondent shall be excused from executing such subconsultant agreement. The procedures of paragraphs (e) and (f) below shall apply to this paragraph.

d. Termination of Subconsultant Agreements:

If, after execution of a subcontract required by this Administrative Order, the successful respondent submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond his/her control of which he/she was not aware and could not be reasonably have been aware, until subsequent to the date of execution of such subconsultant agreement, a CBE, who entered into such subconsultant agreement has committed a material breach of the subconsultant agreement, the successful respondent shall be entitled to exercise such rights as may be available to him/her to terminate the subconsultant agreement. The procedures of paragraphs (e) and (f) below apply to this paragraph.

e. County's Determination of Respondent's Excuse or Termination:

If the successful respondent at any time submits a written request to the Contracting Officer under the prior two paragraphs, the Contracting Officer as soon as practicable, shall determine whether the Successful Respondent has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the successful respondent, upon notice, an opportunity to present pertinent information and arguments. The procedures of paragraph (f) below apply to this paragraph.

f. Alternative Subconsultant Agreements:



## EXHIBIT J

- 1) If the successful respondent is excused from entering into a subconsultant agreement or rightfully terminates a subconsultant agreement under this Administrative Order and without such subconsultant agreement, the Successful Respondent will not achieve the level of CBE participation upon which the agreement was awarded, the Successful Respondent shall make every reasonable effort to propose and enter into an alternative subconsultant agreement or subconsultant agreements for the same work to be performed by another available CBE as appropriate, for a subconsultant agreement price or prices totaling not less than the subconsultant agreement price under the excused or terminated subconsultant agreement, less all amounts previously paid thereunder.
- 2) The Successful Respondent must submit to the Compliance Officer a revised Schedule of Participation or Set-Aside List of Subconsultants and Letter of Intent to include the substitute CBE.
- 3) A successful respondent that cannot secure a substitute CBE must provide a written statement to the Compliance Monitor and Contracting Officer that includes a list of the names, addresses, telephone numbers, and the date of contact for each CBE. All CBEs certified within the appropriate professional service area under the technical certification categories must be contacted.
- 4) The Compliance Monitor may require the successful respondent to produce such information as the Compliance Monitor deems appropriate and may obtain further information from other sources. The Compliance Monitor shall make his/her recommendation under this paragraph to the Contracting Officer and forward a copy to the respondent.
- 5) The Contracting Officer will consider objections to the Compliance Monitor's recommendation only if such written objections are received by the Contracting Officer within five calendar days from the successful respondent's receipt of the Compliance Monitor's recommendation. The Contracting Officer with or without a hearing, and as he/she in his/her discretion may determine, will reply to

## EXHIBIT J

the successful respondent's written objection within ten (10) days of receipt of these objections.

### XIII. SANCTIONS FOR AGREEMENT VIOLATIONS

Proposal and agreement documents shall provide that, notwithstanding any other penalties or sanctions provided by law, a respondent's violation of or failure to comply with this ordinance or this Administrative Order may result in the imposition of one or more of the following sanctions:

- A. The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
- B. Work stoppage;
- C. Issuance of fines of up to two (2%) percent of the contract amount, said fines to be deducted from invoices;
- D. Termination, suspension, or cancellation of the agreement in whole or part;
- E. In the event a respondent or CBE attempts to comply with the provisions of this ordinance through fraud, misrepresentation, or material misstatement, or is found after a hearing to have discriminated in violation of Article VII of Chapter 11A of the Miami-Dade County Code, the County shall, whenever practicable, terminate the agreement or require the termination or cancellation of the subconsultant agreement for the project on which the respondent or CBE committed such acts. In addition, and as a further sanction, the County Manager or his or her designee may impose any of the above-stated sanctions on any other agreements or subconsultant agreements the respondent or CBE has on County projects. In each instance, the respondent or CBE shall be responsible for all direct and indirect costs associated with such termination or cancellation including attorney's fees and costs. The respondent or CBE may also be subject to debarment.
- F. In the event that a respondent fails to achieve the CBE measures after the agreement completion, the respondent will be required to make up the CBE deficit for an amount equal to double the amount of the CBE measure deficiency. The procedures for making up the CBE deficit are as follows:
  1. Upon completion of a County agreement with CBE measures, the compliance monitor for DBD, in accordance with County Code governing the CBE-A/E program, will obtain the final Monthly

## EXHIBIT J

Utilization Report and determine if the respondent has met the CBE measures.

2. If the respondent has not met the CBE measures, the compliance officer will notify the respondent in writing of the CBE deficit.
3. If the respondent is found in non-compliance with the CBE measures, the compliance officer may issue a letter of non-compliance requesting that the respondent make up the CBE deficit on an existing or future County agreement for double the amount of the deficit on the agreement in question. The respondent will also be required to submit a plan indicating any current or future County agreements in which the CBE deficit will be remedied.
4. The respondent must respond to DBD in writing within ten business days from the date of the non-compliance letter. The respondent must acknowledge receipt of the non-compliance letter and provide a plan to make up the CBE measure.
5. The compliance monitor will review the plan for approval.
6. When an agreement is identified in which the CBE measure deficit will be remedied, the respondent will provide a Schedule of Participation and Letter(s) of Intent for the CBE firm(s) that will be utilized in making up the deficit.
7. The respondent will remain in a non-compliance status until the CBE make-up goal has been achieved.
8. Failure of the respondent to make up the CBE measure when opportunities are available on existing or future County agreements, will result in the sanctions or the imposition of other penalties, or as referenced in Sections XIII and XIV.

Some of the agreement violations that may result in the imposition of the sanctions listed in Section XIII above include, but are not limited to, the following:

- a. A CBE serving as a conduit for CBE work awarded to a firm as a CBE but which is being performed by a non-CBE firm;
- b. A prime consultant not meeting CBE Program subconsultant goal requirements;

## EXHIBIT J

- c. Not obtaining or retaining CBE certification while performing work designated for CBE firms;
- d. Failure to submit monthly utilization reports;
- e. Failure to comply with CBE certification requirements, including not maintaining a place of business in Miami-Dade County, not reporting organizational and operational changes, providing inaccurate or false information, and other certification related violations;
- f. Failure to maintain certification;
- g. Deviations from the Schedule of Participation without prior approval from DBD;
- h. Termination of the CBE's agreement without prior approval from DBD;
- i. Reduction of the scope of work of a CBE subconsultant agreement without prior approval from DBD;
- j. Modifications to the terms and/or prices of payment to a CBE without prior approval from DBD; or
- k. Unjustified failure to enter into a written subconsultant agreement with a CBE after listing the firm on a Schedule of Participation to meet a subconsultant goal.

### XIV. ADMINISTRATIVE PENALTIES

#### A. DEBARMENT

1. The County may debar a CBE or a non-CBE for violation of, or non-compliance with, the provisions of the County Code governing the program, this Administrative Order, or implementing proposal documents.
2. Causes for debarment are as noted in Section 10-38 of the Code. These include but are not limited to, a preponderance of evidence that the CBE has forfeited a bond or defaulted on financial assistance, either of which was provided under the CBE program; or if any individual or corporation, partnership or other entity, or any individual officer, shareholder with a significant interest, director or partner of such entity, qualifying agent or affiliated business of such entity attempts to comply with the provisions of

## EXHIBIT J

this ordinance through fraud, misrepresentation, or material misstatement.

### B. DECERTIFICATION

Violations of certification requirements are addressed in Section II of this Administrative Order.

## XV. APPEALS PROCESS

- A. This appeals process does not apply to appeals of decisions made pursuant to proposal documents implementing the CBE program when such proposal documents provide procedures for appeals of such decisions.
- B. Upon a denial of certification, a decertification, a determination of non-compliance with the requirements of this Administrative Order, the provisions of the County Code governing the CBE/AE program, or implementing proposal documents, which decision will be final unless appealed, the Compliance Monitor shall notify the affected party, in writing, setting forth the reasons for the determination and advising of this appeals process.
- C. The affected party may appeal the determination by filing a written appeal with the Director of DBD within thirty (30) days of receipt of the notice.
- D. DBD shall forward all written appeals to the RC. The RC or a committee thereof appointed by the chairperson shall hear all appeals and forward recommendations regarding the appeal to the County Manager.
- E. Decisions by the County Manager shall be final unless the County Commission agrees in its sole discretion upon request by the affected party to review the County Manager's decision.

This Administrative Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

George Burgess  
County Manager



EXHIBIT J

# SCHEDULE OF INTENT AFFIDAVIT (SOI) SMALL BUSINESS ENTERPRISE PROGRAM

**THIS FORM MUST BE COMPLETED BY BIDDERS/PROPOSERS FOR PROJECTS WITH SBE MEASURES**

Name of Bidder/Proposer \_\_\_\_\_ Contact Person \_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_  
Project Name \_\_\_\_\_ Project Number \_\_\_\_\_

SBE Contract Measure \_\_\_\_\_  
**This section must be completed by the Bidder/Proposer and the SBE Subcontractor that will be utilized for scopes of work on the project**

Name of Bidder/Proposer	Certification No. (if applicable)	Certification Expiration Date (if applicable)	Commodity Code	Type of SBE work to be performed by Bidder (if applicable)	Bidder % of Bid
Prime Contractor Total Percentage:					

The undersigned intends to perform the following work in connection with the above contract:

Name of Subcontractor	Certification No.	Certification Expiration Date	Commodity Code	Type of SBE work (Goods and Services) to be performed by Subcontractor	Subcontractor % of Bid
Subcontractor Total Percentage:					

I certify that the representations contained in this form are to the best of my knowledge true and accurate. I affirm that I will enter into a sub-contract agreement with the above listed SBE subcontractor if awarded the listed project.

Bidder/Proposer Signature \_\_\_\_\_ Bidder/Proposer Print Name \_\_\_\_\_ Bidder/Proposer Print Title \_\_\_\_\_ Date \_\_\_\_\_  
Subcontractor Signature \_\_\_\_\_ Subcontractor Print Name \_\_\_\_\_ Subcontractor Print Title \_\_\_\_\_ Date \_\_\_\_\_

The undersigned has reasonably uncommitted capacity sufficient to provide the required goods or services, all licenses and permits necessary to provide such goods or services, ability to obtain bonding that is reasonably required to provide such goods or services consistent with normal industry practice, and the ability to otherwise meet the bid specifications.

Check this box if this project is a set-aside and you are performing 100% of the work with your own work forces.

## EXHIBIT J

### COUNTY CODE - RESPONSIBLE WAGES

#### Sec. 2-11.16. County construction contracts.

(a)

In addition to the other elements of the term "responsible bidder" in law or in the discretion of the Board of Commissioners of Miami-Dade County, as applies to competitively bid County contracts in excess of one hundred thousand dollars (\$100,000.00) for the construction, alteration, and/or repair, including painting or decorating, of public buildings or public works, shall mean a bidder who provides documented proof in its bid that the various classes of laborers and mechanics will be paid no less than the specified overall hourly rates as set forth in the contract specifications. All leases and contracts entered into after the effective date of this ordinance which provide for privately funded construction, alteration or repair of buildings or improvements located on County-owned land shall require laborers and mechanics performing such work be paid no less than the overall hourly rates required on competitively bid County construction contracts under this Section unless specifically exempted below. Fees for monitoring compliance with this Section shall be charged as provided in the most current County-wide Budget as follows: for County construction contracts, the Department of Business Development shall charge the using department therefor; for leases and contracts which provide for privately funded construction, alteration or repair of buildings or improvements on County owned land, the party contracting with the County shall be charged therefor.

(b)

The specifications for each competitively bid County contract in excess of one hundred thousand dollars (\$100,000.00) for the construction, alteration and/or repair, including painting or decorating, of public buildings or public works shall specify an initial overall per hour rate to be paid to each craft or type of employee necessary to perform the contract work as listed in local area nondiscriminatory negotiated contracts (hereinafter referred to for purposes of this subsection (b) as "negotiated contracts") between organizations which represent employees and contractors. In ascertaining the initial overall per hour rate to be paid, the minimum standard shall be the combined overall dollar value on an hourly basis of the wages (paid as set forth below) and of the hospitalization, medical, pension and life insurance benefits (paid as set forth below) for such craft or type of employee under negotiated contracts in effect as of January 1st of the calendar year in which said proposal bid is expected to be advertised, or, in the case of a lease or contract providing for privately funded construction on County-owned land subject to this Section, under the negotiated contracts in effect as of January 1st of the calendar year in which said proposed lease or contract is expected to be executed. Thereafter, the specifications shall provide that the overall per hour rate to be paid for work performed under the contract during each subsequent calendar year shall be the overall per hour rate in effect as of January 1st, of the year in which the work is performed. If a particular

## EXHIBIT J

craft or type of employee is not listed in such negotiated contracts, in ascertaining the initial overall per hour rate to be paid those employees, the minimum standard shall be the combined overall dollar value on an hourly basis of the "basic hourly rate of pay" (as defined in 29 CFR 5.24) (paid as set forth below) and of the fringe benefits payments (paid as set forth below) for hospitalization, medical pension and life insurance benefits for such craft or type of employee under the Secretary of Labor's wage determination (made pursuant to the provisions of the Davis-Bacon Act) in effect for Miami-Dade County, Florida, as of the end of the calendar year in which the proposed bid is expected to be advertised. The foregoing and the provisions of Section 2-11.16(e) notwithstanding, where not otherwise precluded by state or federal law, the overall per hour rate shall be the higher rate under this Section 2-11.16 or the rate of wages to be paid under the requirements of the Davis-Bacon Act; provided, further, that the overall per hour rate shall not be the higher rate if the federal government requires the County as a condition of receiving federal funds for a project to pay no more than the wages as determined by the U.S. Department of Labor under the Davis-Bacon Act on project contracts. The specifications for such contracts shall:

(i)

Include a sum certain in dollars and cents as an initial overall per hour rate for each craft or type of employee to be paid for work performed during the period commencing on the date of issuance of the notice to proceed and continuing through the calendar year (or, in the case of a lease or contract providing for privately funded construction on County-owned land subject to this Section, ending the last day of the calendar year in which the lease or contract was executed). The specifications shall further provide that the overall per hour rate to be paid for work performed during the year period commencing the next January 1st after the date of issuance of the notice to proceed (or, in the case of a lease or contract providing for privately funded construction on County-owned land subject to this Section after the date of execution of such lease or contract) shall be such rate (as determined in accordance with subsection (b) above) for that calendar year and shall be updated thereafter on each subsequent January 1st to the rate (as determined in accordance with subsection (b) above) for the ensuing calendar year until completion of the contract work; and

(ii)

Mandate the contractor to whom the contract is awarded, and any of its subcontractors performing any of the contract work, pay not less than the specified overall per hour rate adjusted over the term of the contract as provided in subsection (i); and

(iii)



## EXHIBIT J

Provide that the contractor, and any of its subcontractors, may fulfill the obligation to pay such specified overall per hour rate by payment to the employee of the hourly wage rate listed in the negotiated contracts (or, if applicable, under subsection (i) above, the "basic hourly rate of pay" as defined in 29 CFR 5.24 contained in the Secretary of Labor's wage determination) for such craft or type of employee plus either: (i) payment on the employee's behalf of the cost (on an hourly basis) of the hospitalization, medical, pension and life insurance benefits specified for such craft or type of employee; or, (ii) payment to the employee (in addition to the listed hourly wage rate, or "basic hourly rate of pay if applicable) of an amount equal to the hospitalization, medical, pension and life insurance benefits (on an hourly basis) contractors are required to provide under the negotiated contracts (or, if applicable, under subsection (i) above, an amount equal to the fringe benefit payments on an hourly basis for hospitalization, medical, pension and life insurance benefits contained in the Secretary of Labor's wage determination) for such craft or type of employee. Payments to employees shall be counted towards fulfillment of the above obligation only to the extent that such payments are made by check or money order; and

(iv)

Provide that the contractor, and each subcontractor under him, shall post in a conspicuous place on the site where such contract work is performed: (1) the schedule of the specified overall per hour rate for each applicable classification specified by such negotiated contracts; (2) the amount of liquidated damages for any failure to pay such rates; and (3) the name and address of the responsible official in Miami-Dade County to whom complaints should be given; and

(v)

Provide that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to employees employed by the contractor (or any subcontractor under him) in the performance of the contract work the difference between the overall per hour rate required by the contract to be paid employees on the work and the amounts received by such employees and not refunded to the contractor, and any of its subcontractors or their agents; and

(vi)

Require the contractor and each subcontractor under him to keep, or cause to be kept, accurate written records signed under oath as true and correct showing the names, Social Security numbers, and craft classifications of all employees performing work on said contract, the hours and fractions of hours for every type of work performed by each employee, the combined dollar value of all wages, any contributions to benefit plans and payments made to

## EXHIBIT J

each employee of the overall per hour rate required by this Section and further require the contractor to submit to the County a list of all subcontractors and the names and Social Security numbers of all employees thereof who performed work each day on the contract and further require each subcontractor to also submit to the County a list of the names and Social Security numbers of its employees who performed work each day on the contract; and

(vii)

Provide that no contractor (or subcontractor under him) may terminate an employee performing work on the contract because of the employee's filing a complaint regarding payment of required overall per hour rates.

(c)

Miami-Dade County shall periodically examine the records required to be kept under subsection (vi) of subsection (b) of this section.

(d)

The County Manager shall establish an administrative procedure for monitoring compliance with and enforcement of the requirements of this Section. Such procedure shall provide that:

(i)

DBD may conduct investigations of compliance with the requirements of this Section and issue written notices to a contractor (or subcontractor under the contractor) when it determines based on such investigation that the contractor (or subcontractor) has not complied herewith;

(ii)

The contractor or subcontractor shall respond in writing to the notice of noncompliance;

(iii)

Based on the response, DBD may determine to rescind the notice of noncompliance or to conduct a Compliance Meeting with the affected contractor or subcontractor at which any additional evidence may be presented;

(iv)

DBD shall make a written compliance determination following any Compliance Meeting. A determination that the contractor or subcontractor has not complied with the requirements of this Section shall state the basis therefore and shall advise the contractor or subcontractor of its right to file a written request with the County Manager within 30 calendar days to schedule an administrative hearing before a hearing officer to appeal the determination as provided below; and

(v)

## EXHIBIT J

A contractor or subcontractor who fails to respond to a notice of noncompliance, fails to attend a Compliance Meeting, or who does not timely request an administrative hearing from an adverse compliance determination made by DBD after a Compliance Meeting shall be deemed not to have complied with the requirements of this ordinance as stated in the notice or determination of non-compliance and, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the employee and the contractor or subcontractor shall be fined the applicable penalty for such underpayment as provided in this subsection (d). A contractor or subcontractor who does not make the required payment of the underpaid wages or who does not pay any fine imposed hereunder shall not be deemed responsible to perform subsequent County construction contracts and shall be ineligible to be awarded such contracts for so long as the identified underpayment or any penalties imposed therefor remain outstanding, not to exceed three years.

Upon timely receipt of a request for an administrative hearing before a hearing officer to appeal a determination of non-compliance, the County Manager shall appoint a hearing officer and fix a time for an administrative hearing thereon. A notice of hearing (together with a copy of DBD's determination of non-compliance) shall be served upon the contractor (or subcontractor). Upon completion of the hearing, the hearing officer shall submit proposed written findings and recommendations together with a transcript of the hearing to the County Manager within a reasonable time. The County Manager shall determine whether the contractor (or subcontractor) failed to comply with the requirements of this ordinance. If the Manager's determination is that the contractor (or subcontractor) failed to comply, and that such failure was pervasive, the Manager may order that the contract work be suspended or terminated, and that the noncomplying contractor (or subcontractor) and the principal owners thereof be prohibited from bidding on or otherwise participating in County contracts for the construction, alteration and/or repair, including painting or decorating of public buildings or public works for a period of up to three (3) years. In addition, in the case of underpayment of the required overall per hour rate, an amount sufficient to pay any underpayment shall be withheld from contract proceeds and remitted to the affected employees and the contractor or subcontractor shall be fined the penalties provided below. If the Manager's determination is that the contractor (or subcontractor) failed to comply and that such failure was limited to isolated instances and was not pervasive, the County Manager may, in the case of underpayment of the required overall per hour rate, order an amount equal to the amount of such underpayment be withheld from the contractor and remitted to the employee, and may also fine the contractor or subcontractor for such noncompliance as follows: for the first underpayment, a penalty in an amount equal to 10% of the amount thereof; for the second underpayment, a penalty in an amount equal to 20% thereof; for the third and successive underpayments, a penalty in an amount equal to 30% thereof. A fourth violation, shall

## EXHIBIT J

constitute a default of the subject contract and may be cause for suspension or termination in accordance with the contract's terms and debarment in accordance with the debarment procedures of the County. Monies received from payment of penalties imposed hereunder shall be deposited in a separate account and shall be utilized solely to defray DBD's costs of administering this ordinance. If the required payment is not made within a reasonable period of time, the noncomplying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts for the construction, alteration, and/or repair, including painting or decorating of public buildings or public works for a period of three (3) years.

(e)

This section shall not apply to County contracts for construction or alteration which are federally funded or which are otherwise subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)).

(f)

This section shall not apply to any contract for which authority to advertise for bids has been obtained prior to the effective date of this section [Ordinance No. 90-90].

(g)

This ordinance shall not apply to blanket contracts designed to consolidate an indeterminate number of individual smaller construction, repair or alteration activities which may be needed over a fixed period of time, provided the overall contract ceiling does not exceed five hundred thousand dollars (\$500,000.00) and further provided that no individual work order issued under such contract shall exceed twenty-five thousand dollars (\$25,000.00) per craft.

(h)

As used in the construction of this section, references to the masculine shall include the feminine and neuter and references to the singular shall include the plural, and vice-versa.

(i)

Exemption for certain privately funded construction. This Section shall not apply to leases and contracts entered into after the effective date of this ordinance which provide for privately funded construction, alteration or repair of buildings or improvements located on County-owned land whose estimated cost is equal to or less than five million dollars (\$5,000,000.00) which are financed:

(1)

Solely through private sources, without one dollar (\$1.00) or more of financing provided through any federal, state, county or local governmental entity or bond sources including Industrial Development Authority (IDA) bonds or similar type of bond funding; or

(2)

## EXHIBIT J

by entities which meet all of three (3) of the following conditions: exemption from Federal Income Taxes under section 501(c)(3), not-for-profit and community-based.

(j)

The foregoing notwithstanding, any lease or contract entered into after the effective date of this ordinance which provides for privately funded construction, alteration or repair of buildings or improvements located on County-owned land whose estimated cost is equal to or less than five million dollars (\$5,000,000.00), receives IDA bond financing and also receives State and/or local development incentives (including but not limited to: waiver of or reduced impact or permit fees and reduced property or other taxes) based on job creation shall not require payment of the overall hourly rates provided by this Section. Such lease or contract shall provide that in the event the job creation requirements on which the foregoing development incentives were conditioned are not fulfilled, the lessee shall be required to pay a penalty of up to twenty (20) percent of the cost of such construction, alteration or repair. Said penalty shall be in addition to any rental or other payments required in each lease or contract to which this subsection applies. Said penalty shall be paid to Miami-Dade County for deposit in the Department of Business Development Compliance Trust Fund and used to cover the costs of monitoring compliance with this Section.

*(Ord. No. 77-17, §§ 1—4, 3-15-77; Ord. No. 90-90, § 1, 9-11-90; Ord. No. 90-123, § 1, 11-8-90; Ord. No. 90-143, § 1, 12-18-90; Ord. No. 95-183, § 1, 10-17-95; Ord. No. 99-158, § 1, 11-16-99; Ord. No. 02-129, § 1, 7-23-02; Ord. No. 05-199, § 1, 11-3-05; Ord. No. 12-43, § 1, 7-3-12)*

# EXHIBIT K

## CAD Standards, PDF and CD/DVD Requirements

This document describes the Miami-Dade Parks, Recreation and Open Spaces (PROS) Department standards for CAD drawings, PDF documents and CD/DVD/USB Flash's submittals.

### CAD Standards

#### CAD Compliance Submittal review Requirements (format and content):

- All CAD files are to be submitted as an AutoCAD .DWG format. (version 2009) And AutoCAD DWF.
- Custom menus or arx applications are not allowed if it creates a requirement for the drawing to be used. No menus, custom user interface (cui) files or arx applications are to be submitted.
- Each CAD drawing should represent a single printed sheet where the file name conspicuously identifies the sheet number using PROS File naming conventions.
- No .zip files are allowed.

#### CAD Standards (For a complete reference please review PROS CAD Standards Manual- December 2011):

- Title block
  - All sheets are to have a title block.
  - Title block information is to be on the right side of the sheet.
  - Title blocks shall contain the following information, as appropriate:
    - Date
    - Project Number
    - Park Facility Number
    - Project Name
    - Sheet Name
    - Sheet Number
    - A Key Plan
    - List of Revisions
    - Consultant Company Name
    - The A/E's Seal
- Layering Format
  - Use PROS CAD Standards
- Scale and Units
  - All objects are to be drawn at full scale for the assigned unit of measure.

210

- All drawings are to have a unit of measure assigned and not set to "unitless". External references usage in CAD Documents
- Area of Work
  - CAD drawings shall include a boundary to define the Area of Work encompassing all areas, and only those areas where work is to be performed.

Portable Document Format (PDF) Requirements:

- All documents are to be created as PDF files from the original source files, unless approved otherwise in writing by Owner.
- PDF files shall reside in the same folder as the CAD version of the sheet.
- The CAD printer shall be Autodesk DWG to PDF.pc3 print configuration.
- Layer information shall not be included.
- All documents are to be created with a resolution of not less than 300 dpi.
- All fonts are to be embedded in the PDF.
- When compression is used, the algorithm must be LZW, CITT Group 4, or PackBits.
- The PDF document size must be the same as the original document size if the document were printed (e.g., a 24x36 print should have a PDF sheet size of 24x36).
- Each document must be submitted as a single file, as follows:
  - A single document, such as a pre-design report or design calculations is one file.
  - A single drawing is one file.
  - A document larger than 11x17 inches is defined as a single document and is one file.
- No .zip files are allowed.

CD (Compact Disc)/DVD (Optical Disc Storage) /USB Flash Drive Record Documents Requirements:

- All CD/DVD /Flash Drive record documents submittals, required by the Professional Services Agreement, will be reviewed and approved by the Owner for CAD compliance and to determine completeness of the documents provided.
- The consultant may request a CAD drawing compliance review at any time during the Project through the Project Manager.
- All CAD drawings shall be provided electronically to the Project Manager, for review

Contact Information

Please direct all compliance-related questions to:

Juan Carlos Garcia, CADD & Survey Manager  
 Miami-Dade Parks, Recreation and Open Spaces Department  
 275 NW 2 ST, Miami, Fl, 33128  
 Phone: 305-755-7907

211

Email: jcgarcia@miamidade.gov

212



## EXHIBIT L

### SAFETY PLAN

1. The Developer is responsible for conditions of the site in connection with the Work over which they reasonably exercise control pursuant to this Agreement, including the safety and security of all persons, property, equipment and operations therein; and all surrounding persons, property and operations that may be impacted.
2. The Developer shall permit only those employees qualified by training or experience to be on premises, or to operate equipment and machinery.
3. The Developer is fully responsible for the safety and security of all surrounding areas that may be directly or indirectly impacted by this agreement. This includes the public and public access areas that may be directly or indirectly impacted.
4. The Developer must have a written Site Safety Program to address the comprehensive safety and security issues at the site. The Site Safety Program must be followed by all parties and must be routinely reviewed and updated by the Developer to address current, new or unexpected safety and site issues that may arise or are reported.
5. The Developer must designate at least one employee as the Site Safety Officer. The Site Safety Officer must be a competent person, capable and responsible for inspecting the job site and surrounding areas, identifying hazards, implementing prompt corrective actions of identified or reported hazards, and enforcing the Site Safety Program.
6. It shall be the responsibility of the Developer to provide for frequent and regular inspections of the job site, materials, operations and equipment by competent persons designated by the contractor. It shall be the responsibility of the Developer to allow access to the site and inspections by Miami-Dade County employees or their designees for the purpose of inspecting the safety and security measures at the site.
7. Miami-Dade County may add provisions to the Development Agreement that specify precisely the steps to be taken by the contractor to avoid certain risks, depending on the project, that may exceed requirements imposed by law or regulation.
8. The Developer is solely and completely responsible for conditions of the site in connection with this Agreement, including the safety and security of all persons and property, preparatory to and during performance of the Agreement. This requirement applies continuously and is not limited to normal working hours. The Developer shall promptly correct any deficiencies identified or reported that may impact the safety and wellbeing of persons on the site or in areas impacted by the Work or site.
9. The Developer shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with this Agreement. The Developer shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all persons or property on the Site or impacted by the Site. The Developer shall erect and properly inspect and maintain all necessary safeguards for such safety and protection.
10. The Developer shall comply with all applicable Federal, State and Local laws, regulations, and all best industry practices or standards relating to the safety of persons, work, operations or property at the site or impacted by the site.
11. Should an imminent danger be identified or reported, operations in the affected area must be suspended immediately until the condition has been corrected. Imminent danger is defined as the exposure or vulnerability to harm or risk that is impending or about to occur as defined or identified by Miami-Dade County staff or its designee. The Developer will not be entitled to future claims alleging impacts caused by stoppage of the Work due to safety reasons.

ATTACHMENT B

AMENDED AND RESTATED  
TOURNAMENT AGREEMENT

**AMENDED AND RESTATED  
TOURNAMENT AGREEMENT**

**between**

**MIAMI- DADE COUNTY, FLORIDA**

**and**

**INTERNATIONAL PLAYERS CHAMPIONSHIP, INC.**

\_\_\_\_\_, 201\_\_

215

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE 1 DEFINITIONS.....	2
1.01 Defined Terms .....	2
1.02 References.....	9
ARTICLE 2 GRANT OF RIGHTS .....	9
2.01 Use of IPC Trademarks.....	9
2.02 Video Highlights.....	10
ARTICLE 3 TOURNAMENT USE OF SITE AND FACILITIES.....	10
3.01 Use of Site by IPC.....	10
3.02 Rights to Images and Reproductions .....	11
3.03 IPC Services.....	11
3.04 Traffic and Safety Controls.....	12
3.05 Parking: Tournament Play Period.....	13
3.06 Parking Preparation Period and Breakdown Period.....	15
3.07 Road and Parking Signage; Parking Passes .....	15
3.08 Parking Shuttles .....	15
3.09 Taxi Service .....	16
3.10 Electric and Utility Service.....	16
3.11 Lighting.....	16
3.12 Storage .....	17
ARTICLE 4 TERM OF AGREEMENT.....	17
4.01 Term.....	17
4.02 Obligation to Conduct Tennis Tournament .....	17
ARTICLE 5 SECURITY MEASURES.....	18
ARTICLE 6 OPERATION OF THE TOURNAMENT .....	18
6.01 Concessions.....	18
6.02 Profits and Losses .....	19
6.03 Tournament Rights.....	19
6.04 Pricing.....	19
6.05 Publicity .....	19
6.06 Sponsors.....	19

6.07	Tournament Dates.....	19
6.08	Promotion by County.....	19
6.09	Hospitality.....	20
6.10	IPC Community Benefit Obligations.....	20
ARTICLE 7 STAGING OF THE TOURNAMENT .....		20
7.01	County Representative.....	20
7.02	Basic First-Aid Medical Services .....	20
7.03	Prize Money .....	20
7.04	Promotional Credits .....	20
ARTICLE 8 PAYMENTS AND ACCOUNTING .....		21
8.01	Base Fee and its Application.....	21
8.02	Applicable Percentages .....	21
8.03	2013 Audit Adjustment.....	22
8.04	Ticket Surcharge .....	22
8.05	Park Improvement Surcharge .....	22
8.06	Sales Tax.....	22
8.07	Additional Taxes.....	22
8.08	Records and Reports .....	23
8.09	Annual Statement.....	23
8.10	County's Right to Audit and Inspect .....	23
8.11	Discrepancies .....	24
8.12	County Sponsorship.....	24
ARTICLE 9 ADVERTISING AND SIGNAGE.....		24
9.01	Signage.....	24
9.02	Use of IPC Trademarks.....	24
ARTICLE 10 REPRESENTATIONS AND WARRANTIES AND ACKNOWLEDGEMENTS .....		25
10.01	Tournament Rights.....	25
10.02	Authority .....	25
10.03	Necessary Approvals .....	25
10.04	No Breach .....	25
ARTICLE 11 EVENTS OF FORCE MAJEURE.....		25
11.01	Force Majeure Interruption.....	25

11.02	IPC's Obligation of Force Majeure Restoration .....	26
11.03	County's Obligation of Force Majeure Restoration.....	26
ARTICLE 12 EVENTS OF DEFAULT .....		26
12.01	Monetary Defaults by IPC .....	26
12.02	Non-Monetary Default by IPC.....	26
12.03	Default for Bankruptcy and Reorganization .....	27
12.04	Default by County.....	27
12.05	No Waiver.....	27
ARTICLE 13 TERMINATION.....		27
13.01	Termination Right.....	27
13.02	Termination Rights for Unfavorable Court Decision .....	27
13.03	Cross-Termination Provisions .....	28
13.04	Effect of Termination.....	28
13.05	No Termination.....	28
13.06	Limitation of Liability.....	28
13.07	Cumulative Remedies .....	28
ARTICLE 14 INSURANCE.....		28
14.01	Coverage Requirement.....	28
14.02	Cancellation Notice.....	30
ARTICLE 15 INDEMNIFICATION.....		30
15.01	By IPC.....	30
15.02	By County .....	30
ARTICLE 16 WAIVER AND ASSIGNMENT .....		31
16.01	Waiver.....	31
16.02	Assignment .....	31
ARTICLE 17 MISCELLANEOUS PROVISIONS.....		31
17.01	Applicable Law .....	31
17.02	Non-Discrimination .....	31
17.03	Significance of Headings .....	31
17.04	Governing Law and Venue .....	31
17.05	Approvals.....	31
17.06	Independent Contractor/No Partnership .....	32
17.07	Absence of Third-Party Beneficiaries.....	32

17.08 Crandon Park Master Plan .....	32
17.09 Validity of Agreement .....	32
ARTICLE 18 ALTERNATIVE DISPUTE RESOLUTION .....	33
18.01 Voluntary Trial Resolution .....	33
18.02 ADR Procedure .....	33
18.03 Venue; Waiver of Jury Trial .....	34
ARTICLE 19 NOTICES .....	34
ARTICLE 20 CONTROLLING AGREEMENT .....	35
ARTICLE 21 INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL REVIEWS .....	35
21.01 Inspector General and Independent Private Sector Inspector General .....	35
21.02 The Inspector General shall have any and all other rights of an IPSIG as set forth below .....	36
EXHIBIT "A" SITE PLAN .....	40
EXHIBIT "B" CRANDON PARK PARKING AREAS SITE PLAN .....	41
EXHIBIT "C" COUNTY SPONSORSHIP PROGRAM .....	42
EXHIBIT "D" MANAGEMENT ADDENDUM .....	43

**AMENDED AND RESTATED  
TOURNAMENT AGREEMENT**

This Amended and Restated Tournament Agreement ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between Miami-Dade County, Florida, a political subdivision of the State of Florida ("the County"), and International Players Championship, Inc., a Florida corporation, ("IPC").

**RECITALS**

**WHEREAS**, IPC operates and conducts a sanctioned men's and women's professional tennis tournament (the "Tournament") presently known as the "Sony Open"; and

**WHEREAS**, the County owns certain property located adjacent to Key Biscayne which is appropriately located for development, redevelopment and continuing use as a tennis complex; and

**WHEREAS**, more than 20 years ago IPC brought the Tournament to Crandon Park in Miami-Dade County with hope that the Tournament would showcase the community to a world-wide audience and provide a major boost to tourism and provide both financial support and awareness to improve one of the County's most important public parks; and

**WHEREAS**, with the exception of the Stadium Court, most of the facilities used by the Tournament are temporary, requiring substantial staging areas; and

**WHEREAS**, in order to remain competitive with other facilities that host tennis tournaments of a similar caliber, expand the recreational amenities for the community, maintain the Tournament's status in the world, and continue the Tournament's presence long into the future, the Parties desire to construct and maintain, under the terms and conditions set forth in the separate Development Agreement and Management Addendum entered into between the Parties simultaneously with this Agreement; and

**WHEREAS**, IPC desires to continue to operate and conduct the Tournament at the Crandon Park Tennis Center; and

**WHEREAS**, on July 15, 1986, the County entered into an Agreement with the Developer, subsequently amended on June 7, 1988, and November 6, 1990 (the "Existing Agreement"), which provided for the County's and IPC's rights and obligations with respect to the annual Tournament; and

**WHEREAS**, in consideration of its agreement to operate the Tennis Center on an annual basis under the Management Addendum, relieving the County of a substantial ongoing expenditure, and its agreement to construct significant and substantial improvements at the Tennis Center under the Development Agreement, which improvements IPC has agreed to make at its own cost, and without any cost to the County, the Parties desire to amend and extend the Existing Agreement, on the terms and conditions set forth herein;



NOW, THEREFORE, for and in consideration of the premises and of the mutual promises and conditions contained in this Agreement, the County and IPC hereby agree as follows, which agreement amends, restates, and fully supersedes the Existing Tournament Agreement:

**ARTICLE 1**  
**DEFINITIONS**

1.01 Defined Terms. In addition to any other definitions contained elsewhere in this Agreement, the following terms, when used in the Agreement and its attachments, shall have the meanings indicated below:

“ADR” means resolution of a dispute or claims by voluntary trial resolution as described in Article 21 of this Agreement.

“Affiliates” means a person, general partner, officer, director, agent, company, or organization related through common ownership, and/or common control of management or owners, whether explicit or implied. Affiliates as used in this Agreement shall include (a) an owner of, or an entity that controls, whether directly or indirectly, the operator of the Tournament; and (b) a party that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the operator of the Tournament. Further, an affiliate relationship shall exist if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interest. Any such Affiliates and relationships shall be disclosed to the County at least annually in writing.

“Agreement” means this Amended and Restated Tournament Agreement between the County and IPC, including all its Exhibits which are hereby incorporated as part of this Agreement.

“All Media” includes, but is not limited to, broadcasting, streaming, publishing, showing, reproduction, and/or distribution of the Tournament, in whole or in part, through live or re-broadcast television (cable, satellite, or otherwise), recorded media, radio, internet, or any similar technology of the day used to view the Tournament (live or otherwise), in whole or in part, from any location.

“Annual Statement” means the accounting statement delivered after the conclusion of each Tournament Year, as defined in Section 8.07.

“Applicable Law” means any law, statute, code, ordinance, administrative order, charter, resolution, order, rule, regulation, judgment, decree, writ, injunction, franchise, permit, or license of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued.

“ATP” means the Association of Tennis Professionals.

“Base Fee” is defined in Section 8.01.

“Business Day” means any day other than a Saturday, Sunday or legal or bank holiday in Miami-Dade County. If any time period set forth in this Agreement expires on a day other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

“Capital Improvements” means improvements to the Site of a character required to be capitalized under generally accepted accounting principles and includes Emergency Capital Repairs but excludes Maintenance and Repairs.

“Capital Improvement and Repairs Reserve Fund” means a segregated account funded as described in the Management Addendum and to be used for the purposes permitted under the Management Addendum.

“Commencement Date” means the date upon which the County Mayor executes this Agreement.

“County” means Miami-Dade County, Florida, a political subdivision of the State of Florida; the County is a Party to this Agreement.

“Crandon Park Parking Areas” means Lot 1, Lot 2, Lot 3, and Lot 4.

“Crandon Park Tennis Center” is identified in the recitals, and is most often referred to as the “Tennis Center” in this Agreement.

“Department” means the Miami-Dade County Parks, Recreation and Open Spaces Department.

“Development Agreement” means the Development Agreement, dated on or about the date of this Agreement, between IPC (as “Developer”) and the County for the Project to redevelop the Site for use as an enhanced Tournament venue.

“Emergency Capital Repairs” means a Capital Improvement that must be completed immediately and without prior consent of the County in order to: (i) comply with a notice of violation or similar order issued by a Governmental Authority that requires that the Capital Improvement be completed immediately, (ii) protect public safety and welfare, or (iii) prevent unnecessary expense that would otherwise occur if the repair were not conducted immediately.

“Existing Assets” means those limited and discrete assets, infrastructure and/or components of the Tennis Center existing as of the date of this Agreement and set forth in the Management Addendum, Schedule 2.

“Existing Tournament Agreement” is defined in the Recitals.

“F & B Concession Revenues” means an amount equal to all amounts actually received by IPC, its Affiliates and third parties authorized by IPC in respect of food and beverage sales undertaken by IPC itself, its Affiliates and/or authorized third parties. F & B

Concession Revenues excludes purchases of food and beverages by IPC for Tournament staff and volunteers, media and Tournament players.

“First Extension Option” is defined in Section 4.01.

“First Extended Term” is defined in Section 4.01.

“Force Majeure” any act of God, earthquake, hurricane or other severe weather condition, flood, fire, epidemic, major accident, explosion, casualty, labor controversy (including but not limited to threatened or actual lockout, boycott or strike), riot, terrorism, civil disturbance, demonstrations, war or armed conflict, (or threats of the foregoing), delay of a common carrier, or by reason of any other cause or causes of any similar nature.

“Governmental Authority” means any federal, State, County, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them.

“Gross Revenues” means all revenues generated by IPC, its Affiliates and IPC-authorized third-party entities arising out of or relating to the Tournament for all activities or items for which a price, charge, Trade/Barter or fee is imposed, as well as all revenues or other consideration charged for or received by IPC or its Affiliates, as herein defined, for all services rendered, all sales made, and all transactions engaged in under the authority of this Agreement from any source whatsoever and whether such activities were on the Site or off-Site. Gross Revenues further includes, but is not limited to, those revenues received from, the rights paid to IPC and/or its Affiliates for the use or licensing of All Media, the sales of All Media by IPC and/or its Affiliates, from Gross Ticket Sales, from sponsorship sales, from Tournament parking, from F & B Concession Revenues, from Soft Good Concession Revenues, from Program and Drawsheet Revenues, from sales of advertising space and/or services, from the value of any trade and/or barter, from hospitality sales, and from sales of any merchandise (including without limitation retail, wholesale, direct response, mail order, internet or otherwise). All third-party and Affiliate contracts shall be in writing and on market terms. If such conditions are not on market terms and/or have resulted in a direct or indirect tangible economic benefit to IPC or an Affiliate, then the actual market value of the economic benefit provided shall be included in Gross Revenue. The only revenues and other considerations which may be excluded from Gross Revenues are taxes imposed by law and paid by a customer and directly payable by IPC to a taxing authority, credit card processing fees, and pass-through or reimburseable expenses paid by third parties through IPC to another third-party and/or Affiliate. In calculating Gross Revenues, no revenues will be counted more than once.

“Gross Ticket Sales” means an amount equal to all monies actually received by IPC, its Affiliates and/or third parties (to the extent that any third parties are selling tickets on behalf of IPC) from the initial sale of tickets for the Tournament. To the extent that IPC sells, re-sells, and/or gives tickets to an Affiliate or third party to be sold or re-sold, Gross Ticket Sales shall include an amount that represents the greater of the face-value of the ticket or the monies received by IPC, its Affiliates and/or third parties for each such ticket.

Notwithstanding anything to the contrary contained in this Agreement, no amount shall be included in Gross Ticket Sales with respect to any tickets, goods or services which are:

- (1) given away without charge to the press, players, VIPs, volunteers, officials, staff and/or guests of IPC; or
- (2) exchanged for barter or trade

Provided, however, that for purposes of calculating Gross Ticket Sales with respect to any Tournament concerned, the aggregate number of tickets given away or exchanged through barter or trade which may be excluded from the calculation of such Gross Ticket Sales shall not exceed three percent (3%) of all seats/tickets available for each session. Any such tickets referred to in the preceding sentence given away without charge which are not reasonable shall be included in Gross Ticket Sales.

“Highlights Video” is defined in Section 2.02.

“Included Taxes” means, with respect to the receipts in question, all applicable sales, excise, admission, entertainment or other taxes (other than income taxes) paid or included in the sales price of any revenues that are included in Gross Revenues.

“Initial Term” is defined in Section 4.01.

“IPC” means International Players Championships, Inc., a Florida corporation; IPC is a Party to this Agreement.

“IPC Parking Fee” refers to the parking fees which IPC may charge pursuant to Section 3.05(c).

“IPC’s Trademarks” means all trademarks, logos, or any other event identification owned or controlled by IPC – which is used in connection with or in identification of the Tournament.

“Lease Agreement” means the terms, covenants and conditions which are set forth in that certain lease agreement between the County and IPC pursuant to which IPC will occupy office space in the Stadium Court.

“License Agreements” collectively means the rights to conduct the Tournament as granted by ATP and WTA, and/or other appropriate sanctioning bodies or successor entities, as evidenced by the by-laws of those organizations and IPC’s membership interests in those organizations.

“Lot 1”, “Lot 2,” “Lot 3” and “Lot 4” mean the respective parking lots so numbered in the Crandon Park parking area east of Crandon Boulevard. “Lot 6” means the parking area adjacent to the Site at the north entrance to the Site. “Lot 7” means the parking lot south of the Stadium Court which has traditionally been used during the Tournament for valet parking and as parking for broadcasting personnel and certain vendors. Attached hereto as

Exhibit "B" is an aerial view of the Lots and the identification of that area referred to at the Crandon Park Parking Area and the On-Site Parking Area.

"Maintenance and Repairs" means work, labor and materials required in the ordinary course of business to be performed and used to: (i) maintain the Site in good, clean working order, and, repair as a result of ordinary wear and tear, including, but not limited to, the stadiums, tennis courts and lighting features, safety features, and all structures, components, systems, fixtures, landscaping, and furnishings contained therein, (ii) replace, at the end of their economic life cycle, those components of the Site whose reasonably expected economic life at the time of original installation was two years or less, or (iii) conduct routine and preventive maintenance consistent with manufacturer-provided warranty, maintenance, cleaning and best engineering and facility management practices. Maintenance and Repairs do not include Emergency Capital Repairs.

"Management Addendum" means the terms, covenants and conditions set forth in the attached Exhibit "D."

"Minimum Annual Guarantee" means an amount equal to \$1,487,000 per year.

"New Assets" means (1) any fixtures and equipment which are replaced after October 22, 2013 but before the commencement of the Work under the Development Agreement, (2) any Existing Assets which are replaced at any time after the execution of this Agreement, and (3) all assets, structures, fixtures, furnishings, and equipment that, while existing at the time of this Agreement, are not included in the definition of Existing Assets.

"Off Site Parking Areas" means any parking made available outside of Crandon Park for Tournament guests, employees and volunteers.

"On Site Parking Areas" means any available parking areas on the Site, including the surface parking lot located south of the Stadium Court and presently identified as Lots 6 and 7.

"Park Improvement Surcharge" means a surcharge separate and apart from the Ticket Surcharge, that the County with approval by IPC may from time to time charge on any and all sales for a specified purpose, amount and time period for the benefit of Crandon Park. The Park Improvement Surcharge is not included in Gross Revenues.

"Party" and "Parties" refer to the County and IPC.

"Person" means any natural person, partnership, association, corporation, limited liability company, trust, public body, authority, governmental unit or other entity.

"Priority Use" means the unimpaired right of IPC, its successors and assigns, licensees, designees to permit, reasonably restrict and control access to the Site (it being agreed that the denial of access to the Site to any person without a Tournament ticket or credential shall not be deemed unreasonable, unless the Agreement or Applicable Law permit or require access to the Site notwithstanding the lack of or absence of a Tournament ticket) and further to control and limit the use and enjoyment of the Site for Tournament purposes.

“Program and Drawsheet Revenues” means an amount equal to all monies actually received by IPC and/or its Affiliates for its account in respect of the retail sales to the general public made on Site of copies of any Tournament program, yearbook and/or drawsheet.

“Project” means the design, renovation, construction and completion of the Tennis Center Improvements, as that term is defined in the Development Agreement.

“Recreational Lighting Standards” is defined as the prevailing lighting standard for recreational use of tennis courts as established by the United States Tennis Association, but in no event shall such lighting exceed 25 feet in height during non-Tournament Periods.

“Second Extension Option” is defined in Section 4.01.

“Second Extended Term” is defined in Section 4.01.

“Site” means that certain land located within Crandon Park on Key Biscayne, Florida, which is more particularly described in Exhibit “A,” together with all permanent facilities and improvements at the site as presently existing or as to be renovated and constructed pursuant to the Development Agreement. The Site shall include, among other things, all of the elements set forth in Referendum R-660-12, all tennis courts, stadiums, roadways, walkways, landscaping, and any other permanent improvements constructed in the area shown in Exhibit “A” during the Term of this Agreement.

“Soft Goods Concession Revenues” means an amount equal to all monies received by IPC, its Affiliates and/or third parties authorized by IPC from the sales of clothing, Tournament-related merchandise (e.g., racquets, shoes, visors, hats and bags, etc.) and other merchandise from retail sales made on the Site, as well as Tournament-related merchandise from retail sales made by IPC and/or its Affiliates via internet sales, or elsewhere. Soft Goods Concession Revenues excludes purchases of clothing, Tournament-related merchandise and other merchandise from retail sales by IPC for Tournament staff, volunteers, media and Tournament players and officials, as well as corporate merchandise (such as shirts, hats, key chains, etc. and commonly referred to as “swag”) sold in bulk quantities at fair market value directly to companies that are Tournament sponsors for the purpose of providing a *de minimis* service to Tournament sponsors and which does not materially raise revenues or generate any material profits.

“Stadium Court” means the approximately 13,500 seat (including 6,000 temporary seats) tennis stadium currently existing in the Tennis Center, as the same may be renovated, expanded or replaced from time to time.

“Televised Lighting Standards” means the prevailing lighting standards, from time to time, for broadcast and cable television coverage of Masters Series top level tennis tournaments.

“Temporary Facilities” means those vehicles, equipment and temporary improvements to be installed by IPC at the Site solely for use during the Tournament Periods in connection with the conduct and operation of the Tournament, including, without limitation: temporary grandstands; stadium, court and other bleachers; the resurfacing/repainting of all

tennis courts (including surfaces which will remain after the Tournament Period); erection of tents, temporary food service, catering kitchens, plumbing, electrical cabling, electrical sub-panels and distribution panels, storage containers, office trailers, banners, furniture, video boards, temporary display units, truss structures and other temporary facilities; temporary fencing; portable restroom facilities; installation of Tournament television compound and its related equipment; operations compound; Tournament signage; scoreboards.

“Tennis Center” means the Crandon Park Tennis Center as identified in the recitals, and includes any physical modifications made pursuant to the Development Agreement.

“Term” is defined in Section 4.01.

“Ticket Surcharge” is defined in Section 8.04.

“Tournament” means the annual men’s and women’s professional sanctioned tennis tournament presently known as the “Sony Open” which is operated by IPC pursuant to the License Agreements, and all related activities and entertainment occurring within the Tournament Period.

“Tournament Breakdown Period(s)” means the period each year during the Term immediately following the Tournament Play Period to disassemble and remove all temporary bleachers, tents, food service, portable restroom, fencing, telecommunication facilities, signage, scoreboards, and all other temporary facilities installed for the operation of that year’s Tournament. Prior to the completion of Phase 1 of the Tennis Center Improvements (as those terms are defined and understood in the Development Agreement), the Tournament Breakdown Period shall consist of the thirty (30) continuous days following the conclusion of the Tournament Play Period for that year. Following the completion of Phase 1 of the Tennis Center Improvements, the Tournament Breakdown Period shall be reduced to the twenty-five (25) continuous days following the conclusion of the Tournament Play Period for that year.

“Tournament Period(s)” is a collective reference to the Tournament Preparation Period, the Tournament Play Period and the Tournament Breakdown Period.

“Tournament Play Period(s)” means the period each year during the Term commencing five days prior to the start of qualifying match play for the Tournament and continuing through the four days following the final match played for the Tournament. The Tournament Play Period in any year shall not exceed twenty-three (23) days unless any matches are rescheduled due to Force Majeure, in which case the Tournament Play Period shall be extended to include all days on which rescheduled matches are played.

“Tournament Preparation Period(s)” means the period each year during the Term reasonably necessary to prepare the Site and the Temporary Facilities in all respects for the operation and conduct of the Tournament for that year, including, without limitation, the installation of the Temporary Facilities and all other preparation work in respect of the operation and conduct of the Tournament. Prior to the completion of Phase 1 of the Tennis Center Improvements (as those terms are defined and understood in the Development Agreement), the Tournament Preparation Period shall consist of no more than forty-five (45) continuous days and shall immediately precede the Tournament Play Period. After the completion of Phase 1 of the

Tennis Center Improvements (as those terms are defined and understood in the Development Agreement), the Tournament Preparation Period shall consist of no more than forty (40) continuous days and shall immediately precede the Tournament Play Period.

“Tournament Ready” means the condition in which IPC, at its sole cost and expense, must prepare the Site so that at the beginning of each Tournament Period the Tennis Center must be (i) first-class and consistent with that of sanctioned top-level Masters Series events comparable to those held in Indian Wells, Beijing, Shanghai and Madrid and (ii) ready and suitable in all respects for the operation and conduct of the Tournaments as contemplated under this Agreement.

“Tournament Year” means a period of time of no more than 365 days prior to the last day of the current year’s Tournament.

“Trade/Barter” means the exchange of goods and/or services for other goods and/or services without using money. Trade/Barter shall not include exchanges of goods and/or services which are at or below the value of the exchange of goods and/or services for consideration other than money that occurred during the 2013 Tournament. To the extent that the exchange of good and/or services for consideration other than money exceeds the 2013 Tournament levels, then the Parties shall review the Trade/Barter for such year and mutually determine which amounts shall be included within Gross Revenues. Such determination shall consider past practices and the ability for IPC to have otherwise sold such goods and/or services for money. Any disputes hereunder shall be subject to ADR.

“WTA” means WTA Tour Inc., a New York not-for-profit corporation.

1.02 References. All references in this Agreement to particular sections or articles shall, unless expressly otherwise provided or unless the context otherwise requires, be deemed to refer to the specific sections or articles in this Agreement. The words “hereof”, “herein”, “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular section or article. All pronouns and variations thereof used in this Agreement shall, regardless of the pronoun actually used, be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or entity may require in the context in which such pronoun is used. “Exhibits” refers to the exhibits attached to the body of this Agreement; Exhibits constitute part of this Agreement.

## **ARTICLE 2**

### **GRANT OF RIGHTS**

2.01 Use of IPC Trademarks. IPC agrees (i) to identify Miami-Dade County and the Crandon Park Tennis Center as the site of the Tournament and (ii) to permit the County, subject to the conditions of this Agreement, to use IPC’s Trademarks during the Term of this Agreement solely in connection with the advertisement and promotion of Miami-Dade County, Crandon Park, and/or Greater Miami and the Beaches in connection with the Tournament, which use by the County is subject IPC’s prior approval in each instance, which approval will not be unreasonably withheld, conditioned or delayed.



2.02 Video Highlights. If IPC produces video highlights of a Tournament, then IPC will provide, upon request by the County, copies or excerpts of such video highlights to the County (a "Highlights Video"). IPC hereby grants the County a non-exclusive license to use the Highlights Video subject to the following condition: (i) the County shall use and/or permit entities engaged in the promotion of the County (e.g., without limitation, the Beacon Council, Greater Miami/Beaches Convention & Visitors Bureau, and chambers of commerce) to use the Highlights Video solely for the promotion of Miami-Dade County, Crandon Park and/or Greater Miami and the Beaches in connection with the Tournament and (ii) the County shall not use the Highlights Video at any commercial showing where a fee is charged for the viewing of such material or use or allow others to use any form of the Highlights Video in any free or paid television, radio, internet or other transmission. IPC agrees, to the extent available and upon request by the County, to furnish the County with existing group pictures, action pictures, posters and the like of the Tournaments for the County's use, subject to all applicable restrictions contained in the License Agreements, sponsorship agreements or in any other agreements or obligations of IPC relating to the Tournaments and or the use of any such material. The County will make no use of the name or likeness of any player or other person connected with the Tournaments which might in any way constitute an endorsement of any services, product, company or other entity.

### **ARTICLE 3**

#### **TOURNAMENT USE OF SITE AND FACILITIES**

##### 3.01 Use of Site by IPC.

(a) IPC's Use and Access. The County hereby grants IPC the right to full access to, and use of, the entirety of the Site, on a Priority Use basis, for the conduct and operation of the Tournament and related activities during the Tournament Play Period for each year during the Term. The Parties acknowledge that during Tournament Play Periods, IPC's use of the Site shall be exclusive. In addition, the County grants IPC certain continuous rights, and IPC agrees to undertake certain corresponding obligations, throughout the Term as set forth in the Management Addendum described in Exhibit "D," with respect to the Site and Tennis Center. During the Tournament Preparation and Breakdown Periods, IPC shall minimize disruption of normal park operations and public park access and use on those portions of the Site not immediately needed for Tournament preparation or breakdown. During the Tournament Preparation Period, IPC shall have the right to install all facilities and equipment needed for Tournament operations, including all Temporary Facilities, provided such installation, facilities and/or equipment, including all Temporary Facilities, comply with Applicable Law and the Crandon Park Master Plan. During the Tournament Preparation and Breakdown Periods, IPC shall have access to the Site for its staff vendors, contractors, construction workers and sponsors. Such access rights shall include parking in Lots 3 and 4 (as provided in Section 3.06).

(b) Damage to Site. IPC will promptly repair or pay for any damage to the Site, or any part thereof, caused by IPC or its agent, employees, contractors, and/or invitees. Prior to the commencement of each Tournament, the County Representative and a duly authorized representative of IPC will inspect the Site. Both such individuals will make notes regarding the condition of the Site and take photographs thereof as they deem necessary. The same parties, or alternative representatives designated by the parties, will similarly inspect the

Site after conclusion of each Tournament in order to determine if any damage to the Site has occurred. IPC agrees that as soon as practicable after the conclusion of each Tournament, IPC shall restore or cause to be restored the Site to substantially the same condition, or a better condition, than it was in prior to the Tournament concerned. Failure by IPC to promptly undertake and complete the repairs, replacements, restorations and/or payments required herein, shall result in the County having the right, after providing IPC with ten (10) days prior written notice, to undertake and complete any needed repairs, restoration and/or replacements and to charge IPC for the County's costs in connection with such repairs, restoration and/or replacements, but such costs shall be reasonable under then-current County standards.

3.02 Rights to Images and Reproductions. In addition to the rights granted under Section 3.01, the County hereby grants to IPC the exclusive rights to photograph, film, and otherwise record visual and audio images, records, or reproductions in any medium or format, of all Tournament play and all activities conducted upon or occurring at the Site during the Tournament Play Period in connection with the construction, operation, conduct and exploitation of the Tournament. The County acknowledges and agrees that IPC is the sole owner of the rights to the images and reproductions described above, and that IPC has the exclusive right in perpetuity to use, reuse or license others to use or to otherwise exploit such images and reproductions anywhere in the world for any purpose.

3.03 IPC Services. IPC shall, at its own cost, unless otherwise specifically indicated in this Agreement, provide the following facilities, services, and/or materials each of which shall be Tournament Ready in respect of each Tournament Period, for the conduct and operation of each of the Tournaments:

(a) Landscaping. IPC will landscape and maintain the Site so that it is in Tournament Ready condition at the beginning of each of the Tournament Play Periods.

(b) Litter and Trash. During the Tournament Periods, IPC shall maintain the Site free of all litter, trash and debris and will be responsible for pickup and removal of litter, trash and debris from the Site.

(c) Site Restoration. IPC agrees that, within the Tournament Breakdown Period, it shall disassemble and remove all temporary bleachers, tents, food service, portable restrooms, fencing, telecommunication facilities, signage, scoreboards, and all other temporary facilities installed for the operating of that year's Tournament. Further, within the thirty (30) days after the conclusion of each Tournament (which 30 days includes the Tournament Breakdown Period), IPC shall restore (or cause to be restored) the Site, the On-Site Parking Areas, and the Crandon Park Parking Areas to substantially the same condition that existed immediately prior to the Tournament with respect to all other elements and features including but not limited to landscaping, cleaning, and/or maintenance and repairs of facilities. If, after prior written demand from the County, IPC fails to so restore the Site within the time frames set forth herein, then the County, upon five (5) Business Days' prior written notice to IPC, may perform the breakdown of the Tournament and/or such restoration and charge IPC for the County's costs in connection with such breakdown and/or restoration, but such costs shall be reasonable under then-current County standards.

(d) Portable and Temporary Lighting. IPC shall, in respect of each Tournament Period, furnish and install at the Site at IPC's sole expense, such portable or temporary lighting equipment and the power to run such lighting as is needed to safely illuminate those areas of the Site that are not safely lit by the existing permanent lighting. Installation shall be completed prior to the start of the Tournament Play Period.

(e) Maintenance Staff. At all times during the Tournament Period, IPC shall provide on Site adequate and qualified maintenance staff to insure that the Tennis Center and all other Site facilities are clean, functional and able to support the Tournament events.

3.04 Traffic and Safety Controls. IPC shall, at its expense, provide the following traffic control services during the Tournament Play Period in order to facilitate parking and the efficient flow of traffic to and from all Tournament events at the Site and shall be in accordance with Article 5 of this Agreement:

(a) Within Crandon Park

- (1) During the Tournament Play Period, IPC will contract and pay for the provision of sufficient traffic and safety controls (by policemen and/or uniformed staff (to the extent permitted by this Agreement and Applicable Law)) (i) within the Site including adequate traffic, crowd and security controls on roadways within the Site and within Crandon Park, (ii) at appropriate access and ingress points to and from all parking facilities used in connection with the Tournaments and (iii) at other appropriate areas adjacent to the Site, including, without limitation, the Crandon Park Parking Areas and those specific controls identified in this Section 3.04.
- (2) Uniformed staff and sufficient fences, barricades and lighting to enable safe crossing of pedestrians to and from parking areas.
- (3) Implementation of procedures, installation of equipment and furnishing of uniformed staff and/or policemen, as required, to enable safe and efficient motorcycle access to, and parking for, all Tournament events.
- (4) Uniformed staff and/or policemen, as required, to manage all Crandon Park Parking Areas, to implement procedures, install equipment, and to enable safe and efficient bicycle and pedestrian traffic between the Tournament, the Tournament parking lots and the Village of Key Biscayne.

(b) Outside of Crandon Park. During the Tournament Play Period, IPC will contract and pay for the provision of perimeter traffic and safety controls (by policemen and/or uniformed staff, to the extent permitted by this Agreement and Applicable Law) including adequate traffic, crowd and security controls on roadways leading to Crandon Park at appropriate access and ingress points to and from all parking facilities used in connection with the Tournaments, including all Off Site Parking Areas. The Parties agree and acknowledge that the

level and placement of police officers shall be determined by the Miami-Dade Police Department in its absolute discretion.

3.05 Parking: Tournament Play Period.

(a) During the Tournament Play Period, IPC will operate, manage, maintain and oversee all of the On-Site and Crandon Park Parking Areas. Notwithstanding the foregoing, with respect to Lot 1, the County shall continue to operate, maintain, manage and oversee Lot 1 from sunrise to sundown for the benefit of Crandon Park visitors and employees, other than those associated with the Tournament (whether as ticketholders, guests, media, or as IPC's employees, contractors, or volunteers). Once Lot 1 is full, IPC shall make at least 602 additional regular parking spaces available to the County for use by non-Tournament park patrons in Lot 2 between sunrise and sundown. IPC shall not allow any persons, whether related to the Tournament or not, to park on unpaved areas. At no time during a Tournament Play Period shall the number of parking spaces in the following designated parking areas be reduced below the following levels, unless the County and IPC have previously executed a written agreement to provide equivalent alternative parking:

- (1) Lot 1 – zero spaces prior to sundown and 398 spaces after sundown;
- (2) Lot 2 – 1085 spaces;
- (3) Lot 3 - 820 spaces;
- (4) Lot 4 – 782 spaces

(b) On Site Parking Area. IPC shall have exclusive use, operation and control of the On Site Parking Areas during the Tournament Period, to be used solely for Tournament purposes, and shall determine the terms and conditions under which the On Site Parking Areas may be used for parking or staging purposes, subject to Applicable Law and the Crandon Park Master Plan.

(c) Crandon Park Parking Areas

- (1) IPC shall have the exclusive right during the Tournament Play period to sell or issue parking passes (or any other rights to park vehicles) for Lot 2, Lot 3 and Lot 4 and, after sundown, Lot 1 during the periods specified in this Section 3.05. The terms and conditions, including pricing, under which the parking passes are sold or issued, shall be at the discretion of IPC ("IPC Parking Fee"). IPC shall collect the parking passes issued by IPC to control access to Lot 1 (after sundown), Lot 2, Lot 3 and Lot 4. The County may charge during daylight hours a user fee at Lot 1 for up to 1,000 spaces at Lot 1 and Lot 2 (once Lot 1 is full) at any given time to be used by non-Tournament park patrons.

- (2) IPC shall be responsible, at its sole cost and expense, for maintaining, operating, lighting, cleaning, staffing, securing, providing shuttle service and safe pedestrian access from the Crandon Park Parking Areas to and from the Site. IPC shall be solely responsible for the collection of all parking fees derived from Lots 1 (after sundown), 2, 3 and 4 (except to the extent that spaces are used by the general public for non-Tournament purposes) as well as the costs and expenses associated therewith, including, without limitation, collection agents to take passes and (where applicable) user fees, directional staff, security agents, security lighting, barricades, directional signs within the parking lots, cleanup and maintenance.
- (3) The County shall be solely responsible for maintaining, operating, cleaning, staffing, securing, and the collection of all parking fees derived from Lot 1 (between sunrise and sundown), as well as the costs and expenses associated therewith, and shall be responsible for the collection of parking fees for Lot 2 (but entered via Lot 1) for only those spaces that are used by non-Tournament park patrons.
- (4) IPC will be solely responsible for opening Lots 2, 3, and 4 each day of the Tournament Play Period and such lots shall remain continuously open until two hours after conclusion of the last match of the day. IPC will be solely responsible for opening, at its discretion and if used by the Tournament, Lot 1 at sundown during each day of the Tournament Play Period and Lot 1 shall remain continuously open until two hours after the conclusion of the last match of the day.
- (5) IPC shall be solely responsible for providing accessible parking at the Crandon Park Parking Areas and the On-Site Parking Areas during the Tournaments, at no cost. Such accessible parking shall be in compliance with Applicable Law, including without limitation, the Americans with Disabilities Act.

(d) Off Site Parking Areas. The County will use reasonable efforts to make available up to 3,000 parking spaces for use by both the general public and Tournament staff and volunteers at the Off Site Parking Areas, subject to the following terms and conditions. The County may charge a per vehicle user fee for vehicles parked in the Off Site Parking Areas, it being understood and agreed that such user fee is intended to cover the costs of both parking and shuttle service to be provided by the County in accordance with Section 3.08(b) below. Such user fee shall be set by the County in cooperation and consultation with IPC, except that to the extent that the net loss of operating the Off Site Parking Areas and shuttle service is budgeted to exceed \$150,000 for a given Tournament Period, then the parking fees charged by the County for such Tournament Period will be increased by the County so as to ensure that the net loss does not exceed \$150,000. User fees charged by the County shall be retained by the County. The Off

Site Parking Areas must open each day of the Tournament Play Period at least two (2) hours before the first match, except for the finals, during which time the Off Site Parking Areas must open each day of the finals at least three (3) hours before the first match, and, in all instances, remain continuously open until two hours after the conclusion of the last match of the day. The County shall be responsible for maintaining, operating, lighting, cleaning, staffing and securing any such Off Site Parking Areas, and for providing shuttle service and safe pedestrian access from the Off Site Parking Areas to and from the Site for Tournament guests only. In addition, to the extent that the County is able to identify long-term, and/or to secure a contract with a third-party for Off Site Parking Areas then, within 18 months of the County identifying and/or securing on a long-term basis Off Site Parking Areas, IPC will negotiate with the County to assume any such contract and/or responsibility for Off Site Parking Areas, traffic, security, maintenance and shuttle service associated therewith. IPC shall use its best efforts to assume the responsibility for the Off Site Parking Areas. IPC and the County shall act reasonably in their negotiations to assume all expenses and revenues associated with the Off Site Parking Areas.

3.06 Parking Preparation Period and Breakdown Period. During the Tournament Preparation Period and the Tournament Breakdown Period, the County shall operate and provide parking in Lot 3 and Lot 4 during normal operating hours for all Tournament staff, guests, vendors, contractors, construction workers, sponsors, media, volunteers, and other personnel engaged in activities related to the Tournament preparation and breakdown at no cost. To the extent that IPC needs to use Lots 3 and 4 outside of the normal operating hours of such lots, then IPC may coordinate with the County to maintain Lots 3 and 4 open at the sole cost and expense of IPC during any after-hours use, including but not limited to all lighting, security, staff and any other costs associated with keeping Lots 3 and 4 open late.

3.07 Road and Parking Signage; Parking Passes. IPC shall produce and provide all parking passes issued to attendees using County parking lots in connection with the Tournament. To the extent permitted by Applicable Law and the Crandon Park Master Plan, IPC shall produce and install temporary road signage for directions and parking for use during the Tournaments. The County shall act reasonably in cooperating with IPC and, to the extent permitted by Applicable Law and the Crandon Park Master Plan, allow IPC the right to install such signage at appropriate locations throughout Miami-Dade County leading to and from the Site. To the extent permitted by Applicable Law and the Crandon Park Master Plan, IPC shall install no more than six road signs within Crandon Park at the start of the Tournament Preparation Period, and the balance shall be installed ten (10) days prior to the start of the Tournament Play Period. IPC shall remove any road signs within fourteen (14) days after the Tournament Play Period.

3.08 Parking Shuttles.

(a) Media. At IPC's sole discretion, IPC shall provide shuttles for service to and from Lot 4, or such other parking area as the County and IPC may agree, for members of the media who are attending or reporting the Tournaments or events related to the Tournaments. IPC will provide staffing for a staging area in Lots 3 and 4 for the shuttle to pickup and drop off the media in these lots. The staging area shall be as close to the front entrance as possible.

(b) Off Site Parking Areas. The County will provide a shuttle service to transport Tournament guests to and from the Off Site Parking Areas to a designated station

across from the Tennis Center entrance. To the extent that the County is able to identify long-term, and/or to secure a contract with a third-party for, Off Site Parking Areas, then, within 18 months of the County identifying and/or securing on a long-term basis Off Site Parking Areas and negotiates an agreement with IPC to assume such Off Site Parking Areas, IPC will assume responsibility for Off Site Parking Area shuttle service as part of such agreement. IPC shall use its best efforts to assume the responsibility for the shuttle service. The shuttle service shall operate continuously starting two hours prior to the start of the first match until 90 minutes after conclusion of the last match of the day. To the extent that there is off site parking provided at Virginia Key, then the shuttle service shall operate from Virginia Key with sufficient capacity and frequency so that the waiting times at Virginia Key and at the Tennis Center entrance (for shuttle service going to Virginia Key) shall not exceed, on average, ten (10) minutes. For all other Off Site Parking Areas other than Virginia Key, the Parties shall work cooperatively and shall consult with each other as to the shuttle service frequency and wait times.

(c) Lots 1 and 2 Shuttle. IPC will provide, at its sole discretion and expense, shuttles for Tournament attendees to and from Parking Lots 1 and 2 to a designated station across from the Tennis Center entrance. The shuttle service shall operate continuously while the Lots are open. This shuttle service shall be operated by IPC.

(d) Accessible Parking Shuttle. Where accessible parking is not immediately adjacent to the Site but located within Crandon Park, IPC must provide accessible shuttles, at its sole expense, during the Tournament Play Period. The shuttle service shall operate continuously while parking lots are open.

3.09 Taxi Service. To the extent taxi service is required at the Site, IPC shall be responsible for the management, supervision, and coordination of taxi service in a manner that complies with Applicable Law and the Crandon Park Master Plan.

3.10 Electric and Utility Service. IPC is responsible to ensure that, at all times during the Tournament Period, the electrical work and wiring at the Site will be sufficient to furnish adequate electricity as needed to conduct and operate the Tournament. IPC is entitled to use all such lighting and shall have access to all such equipment and wiring during the Tournament Periods for use in connection with the conduct and operation of the Tournaments. IPC and those designated by it shall be permitted to install in a safe manner and in accordance with Applicable Law and the Crandon Park Master Plan on the Site and to use in such places in and about the Site, such cables, satellite uploads, lighting facilities and apparatus as may be necessary, appropriate or convenient to permit the conduct and operation of the Tournament including the broadcasting, telecasting, recording and commercial transmission of the Tournament. Further, IPC is responsible for obtaining sufficient electrical, water and sewage service to run a world-class professional sports event of the caliber of the Tournament. All charges for utilities, cable, electrical, water and sewage service during the Tournament Period are the sole responsibility, and shall be paid by IPC.

3.11 Lighting.

(a) Courts. IPC shall provide permanent lighting for at least 11 courts to meet the Recreational Lighting Standards. Before the end of the Term, IPC shall provide lighting for

all courts to meet Recreational Lighting Standards. During the Tournament Period, IPC shall provide lighting to the Televised Lighting Standard for the Stadium Court, Grandstand Court, Court 1, Court 2 and no less than four (4) of the unenclosed courts.

(b) Site. At all times during the Tournament Period, IPC shall provide adequate lighting throughout the Site in order to provide a safe and secure environment for Tournament staff, contractors, workers, vendors, players and attendees.

3.12 Storage. IPC shall have the right to store and secure its fixtures, furniture and equipment, including Temporary Facilities, within any stadium or building (or other such designated storage areas) on the Site at all times during the Term, provided that any fixtures, furniture, equipment and/or Temporary Facilities not restrict public access and must be used only by IPC for the Tournament and/or the County for public use. IPC shall have the right to store scoreboard frames on the top of the Stadium Court at all times during the Term, so long as the height does not exceed 41 feet 6 inches in height. In no event shall IPC's storage of fixtures, furniture, equipment, and/or Temporary Facilities on the Site, during the Tournament Period or otherwise, detract from the appearance and public enjoyment of the Site as a highly attractive tourist and recreational facility.

#### **ARTICLE 4** **TERM OF AGREEMENT**

4.01 Term. This Agreement supersedes the Tournament Agreements effective as of the Commencement Date. The "Initial Term" of this Agreement shall commence upon the Commencement Date and shall expire on the earlier of: (i) the thirtieth (30th) anniversary of the Commencement Date and (ii) two months after the last Tournament to be held within the Term. Subject to Article 2 of the Development Agreement, IPC and the County shall have two options (the "First Extension Option" and the "Second Extension Option"), which options may only be exercised upon the mutual agreement and consent of both Parties, to extend the Term for consecutive terms (the "First Extended Term" and the "Second Extended Term") of ten years each. In order to exercise the First Extension Option, first, IPC must give the County written notice of its desire to exercise the First Extension Option no later than 15 months prior to the expiration of the Initial Term and, second, the County must agree, by action of its Board of County Commissioners, to the exercise of the First Extension Option. In order to exercise the Second Extension Option, first, IPC must give the County written notice of its desire to exercise the Second Extension Option no later than 15 months prior to the expiration of the First Extended Term and, second, the County must agree, by action of its Board of County Commissioners, to the exercise of the Second Extension Option. As used in this Agreement, "Term" shall refer collectively to the Initial Term, and, if applicable, the First Extended Term and the Second Extended Term.

4.02 Obligation to Conduct Tennis Tournament. During the entirety of the Term, and on an annual basis, IPC shall be required to plan, organize, promote, operate, and conduct a sanctioned first-class men's and women's professional tennis tournament that is consistent with that of sanctioned top-level Masters Series events. To comply with this obligation, IPC shall use its best efforts to induce top-ranked professional tennis players to compete at the Site by (i) promoting the Tournament to be held on the Site as one of the preeminent international tennis



competitions operated, sanctioned, and/or otherwise conducted by IPC, WTA, and/or ATP in the United States (such promotional efforts to include, without limitation, soliciting sponsors for the event; advertising through trade publications, mass media, social media, and other forms of mass communication; and characterizing the tennis event held at the Site as one of the preeminent international tennis competitions held in the United States in relevant press releases, official statements issued by IPC, WTA, and/or ATP and press conferences); (ii) maintaining and operating the Site to a first-class standard consistent with the holding of a preeminent international tennis competition; and (iii) providing a winnings purse comparable to other similar competitive tournaments operated, sanctioned, and/or conducted by IPC, WTA, and/or ATP.

## **ARTICLE 5**

### **SECURITY MEASURES**

During the Tournament Play Period, IPC shall, at its sole expense, establish security procedures and measures, in accordance with the requirements of Applicable Law and in coordination with the Miami-Dade Police and Fire Departments and other Governmental Authorities, for security and crowd control purposes on the Site and within Crandon Park, including all of the: (1) On Site Parking Areas, Crandon Park Parking Areas; and, to the extent that the operations of the Off Site Parking Areas has been transferred to IPC, then (2) on the Off Site Parking Areas. To the extent off-duty police and fire-rescue staffing is required by Applicable Law or desired by IPC for the Tournament(s), including officers hired to maintain or provide traffic control, IPC shall utilize the County Police and Fire Departments, respectively, to provide off-duty police and fire staffing within the Site and within anywhere else in Crandon Park, all at IPC's sole expense. In the event there are no County off-duty police and/or County fire rescue personnel to staff the Tournament, IPC shall have the right to staff the Tournament with other agencies or third party security personnel. Police and fire rescue staffing levels, hours and locations shall be determined by the County Police and Fire Departments, as applicable, in accordance with Applicable Law after consultation with IPC. The County will be responsible for providing security only in the Off Site Parking Areas until those functions can be transferred to IPC. This Section shall not apply to personal bodyguards or to access control personnel used to guard access to certain post-security areas within the Site as designated by IPC.

## **ARTICLE 6**

### **OPERATION OF THE TOURNAMENT**

6.01 Concessions. IPC shall, at its sole cost and expense and subject to the provisions of Applicable Law, be responsible for and have the sole and exclusive right to operate, manage, conduct and make all determinations in respect of the Tournaments. IPC shall have the right to engage subcontractors or others to assist it in operating and conducting the Tournaments. Such rights shall include the sole and exclusive right to sell, license and control all sponsorships, concessions at the Site, television, motion picture, electronic, digital and other audio or visual rights in and with respect to the Tournaments and to exploit, on such terms and conditions as IPC may determine in its sole and absolute discretion, any and all rights in and to the Tournaments. IPC's use of the Site will, however, be limited to those uses associated with and ancillary to the conduct and operation of the Tournaments and the exploitation of any and all rights in respect thereto. Nothing herein shall be construed to preclude the County from allowing other entities to

operate food, sports, merchandise or any other concession outside of the Site and Tournament controlled parking areas, both during and outside of the Tournament Period.

6.02 Profits and Losses. IPC will bear (and the County will not be required to bear except with respect to the Off Site Parking Areas, until those responsibilities can be transferred to IPC), all operating losses and costs incurred in connection with each of the Tournaments and IPC will be entitled to all profits and revenues derived from or in connection with each of the Tournaments, including, but not limited to telecasting and media transmissions or reproductions, sponsorships, and other revenues from or in connection with the Tournaments and the exploitation thereof; provided, however, that the County shall be entitled to receive such payments, including a percentage of Gross Revenues, as more specifically set forth in Article 8 and Article 3.05.

6.03 Tournament Rights. As between the County and IPC, IPC shall own and control all rights which IPC has with respect of the Tournaments.

6.04 Pricing. IPC will have the right to determine all of the terms and conditions relating to the operation, conduct and exploitation of the Tournaments, including, but not limited to all pricing and or fee policies relating to (i) sponsorships; exhibition rights in all media, including without limitation, television, broadcasting, cable, film and internet rights; (ii) ticket and box seat sales; (iii) concessions at the Site, including, without limitation, food, beverages, merchandise, goods and services; and (iv) all other aspects of the Tournaments. The County agrees that it will fully cooperate with IPC in this regard.

6.05 Publicity. IPC will cooperate with the County in its publicity efforts on behalf of Miami-Dade County and/or Greater Miami and the Beaches, provided that such cooperation will not require IPC to incur any additional costs or expenses in connection therewith. In furtherance of this publicity effort, IPC will use its best efforts to request appropriate officials of IPC, the WTA, and the ATP to cooperate in making suitable statements relating to Miami-Dade County, Crandon Park and/or Greater Miami and the Beaches. IPC will not be responsible for its inability to obtain any such cooperation or the failure of any such persons to make the favorable statements which are solicited. On a date selected by IPC during or after the conclusion of each Tournament, IPC may conduct a ceremony to recognize the participation of appropriate volunteers and County employees or other persons or entities as IPC may elect to so recognize.

6.06 Sponsors. The selection of sponsors and the terms of sponsorship arrangements shall be determined by IPC in its sole and absolute discretion. The County agrees to refer to IPC any person(s) interested in becoming a sponsor of the Tournament. IPC will determine in its sole discretion the terms upon which (and whether) such person may become a sponsor.

6.07 Tournament Dates. IPC shall give the County advance notice of the dates of the Tournaments to the extent that IPC has notice of such dates, with such dates being subject to change or extension for causes beyond IPC's control. The County acknowledges that IPC may modify those dates based on calendar changes initiated by WTA or ATP.

6.08 Promotion by County. The County agrees to use reasonable efforts to include information and promotional materials approved by IPC relating to the Tournaments in all

applicable County promotions and advertising materials distributed by the County in the normal course of promoting tourism in South Florida.

6.09 Hospitality. The County agrees to reasonably cooperate with IPC in connection with player, sponsor and VIP hospitality. In furtherance of the foregoing, the County agrees that such players, sponsors, VIP's and their families and guests will be permitted access to and may use all of the County owned facilities open to Miami-Dade County residents (including, without limitation, the golf course and beaches located in Crandon Park) and that any fees or charges for any such access or use shall be the same as those charged to residents of Miami-Dade County.

6.10 IPC Community Benefit Obligations. IPC shall promote the Parks Foundation of Miami-Dade (the "Parks Foundation") by allowing the Parks Foundation to utilize at no cost, a 10' x 10' display tent in the secondary display island at the Site during the Tournament and conducting a mutually-agreeable fundraising activity during the Tournament. The Parks Foundation shall adequately staff the tent during the Tournament. Further, IPC will encourage its advertisers and sponsors to contribute and support the Parks Foundation, and shall request and encourage players and coaches participating in the Tournament to support and participate in community activities through personal appearances at Parks Foundation events and to make financial contributions to the Parks Foundation. IPC will work with players and coaches to make appearances in support of youth sports development, education or other public service activities. IPC will provide up to 500 tickets for non-sold out sessions or the face value thereof annually to the Parks Foundation for distribution to economically disadvantaged youth in the community. If IPC chooses to make a cash donation in lieu of tickets, the money will be used to fund the Park Foundation's scholarship program.

## **ARTICLE 7**

### **STAGING OF THE TOURNAMENT**

7.01 County Representative. The County agrees to reasonably cooperate with IPC in connection with the operation and conduct of the Tournaments. The County agrees to designate one (1) County representative whose duty will be to act as the County liaison to work with IPC on an as-needed basis to assist IPC in obtaining all County and other governmental approvals and permits and other matters affecting each of the Tournaments.

7.02 Basic First-Aid Medical Services. IPC, at IPC's expense, will provide medical services (such as first aid stations) throughout the Site during the Tournament Play Period.

7.03 Prize Money. The County shall in no event be responsible for the payment of any prize money fees to be paid to participants or contestants in the Tournaments.

7.04 Promotional Credits. IPC agrees that the County will have the right from time to time to discuss with and offer suggestions to IPC in connection with the production, filming and editing of portions of telecasts which related exclusively to Miami-Dade County, Crandon Park (including the Crandon Park Tennis Center), and/or to Greater Miami and the Beaches photographically. IPC will give good faith consideration to the County's suggestions, however, as between IPC and the County, IPC will be entitled to make all decisions with respect to such production, filming, and editing. IPC agrees to use its best efforts, as long as IPC is not required

to incur any cost or expense in connection with the same, to suggest to broadcasters that they promote and identify Miami-Dade County and Crandon Park as applicable, in their telecasts as the site of the Tournaments. IPC will assist the County in connection with local public relations related to the Tournaments provided that IPC is not required to incur any cost or expenses in connection with such assistance. IPC will endeavor to solicit expressions of gratitude or credits in telecasts of the Tournaments for the County, appropriate departments and personnel thereof. However, the County recognizes that IPC has no control over the inclusion of such content in any third party media distributions.

**ARTICLE 8**  
**PAYMENTS AND ACCOUNTING**

8.01 Base Fee and its Application. In consideration of all of the County’s obligations and all of IPC’s rights under this Agreement, IPC agrees that the County shall be entitled to receive the Base Fee in addition to any other payments which the County would otherwise be entitled to receive from IPC under the Development Agreement, Management Addendum, and/or Lease Agreement. The Base Fee shall be due in accordance with Section 8.09 of this Agreement. In respect of each Tournament held during the Term from and after the Effective Date, IPC shall pay the County the “Base Fee” which is defined as an amount equal to the greater of: (a) the Minimum Annual Guarantee, or (b) the sum of the applicable percentages of Gross Revenues.

8.02 Applicable Percentages. The applicable percentage of Gross Revenues is a progressively tiered calculation based on a range of Gross Revenues as described in the table below:

% of Gross Revenues	Total Annual Gross Revenues
3.6% on revenue between	\$ 0 – \$51,500,000
plus 4.6% on revenue between	\$51,500,001 – \$56,500,000
Plus 5.6% on revenue between	\$56,500,001 – \$61,500,000
Plus 6.6% on revenue between	\$61,500,001 – \$66,500,000
Plus 7.6% on revenue between	\$66,500,001 – \$71,500,000
Plus 8.6% on revenue between	\$71,500,001-\$76,500,000
Plus 10% on revenue greater than	\$76,500,001.

By way of example, if for the 2020 Tournament IPC has Gross Revenues of \$70,000,000, then IPC shall pay the County the following: 3.6% of \$51,500,000 (or \$1,854,000); plus 4.6% of the \$5,000,000 between \$51,500,001-\$56,500,000 (or \$230,000); plus 5.6% of the \$5,000,000 between \$56,500,001-\$61,500,000 (or \$280,000); plus 6.6% of the \$5,000,000 between \$61,500,001-\$66,500,000 (or \$330,000); plus 7.6% of the amount between \$66,500,001-\$70,000,000 (or \$266,000) for a grand total of \$2,960,000.

To the extent that the 3.6% is adjusted upwards pursuant to Section 8.03 below, then each

subsequent percentage shall similarly be adjusted upwards by the same amount. For instance, if the 3.6% is adjusted upwards by 0.4% to 4%, then all other percentage categories shall be increased by 0.4%.

8.03 2013 Audit Adjustment. The Parties acknowledge that the applicable percentage of 3.6% for Gross Revenues between \$0-\$51,500,000 was established by dividing the 2013 Base Fee payment made by IPC to the County in the amount of \$1,675,614 by the total Gross Revenues generated by the Tournament for 2013. The Parties further acknowledge and recognize that the County is currently undertaking an audit of IPC and that the audit may uncover additional sums that should have been paid to the County under the Existing Tournament Agreement. To the extent that the County's final audit reveals that the County was entitled to receive more than \$1,675,614 for 2013, then IPC agrees to pay the County the deficiency identified by the audit for 2013 and for any other years. Moreover, the 3.6% shall be adjusted upwards to reflect the actual percentage of Gross Revenues to which the County must be entitled under this Agreement so that in no event will the County receive less revenues than those currently due and owing to the County pursuant to the terms of the Existing Tournament Agreement (using 2013 as a benchmark). If IPC disputes the County's final audit then, within thirty (30) days of the County's final audit, IPC may initiate the dispute resolution process in accordance with the ADR procedures set forth in Article 18. If IPC invokes the dispute resolution process to challenge the results of the County's 2013 audit, then IPC shall not be required to pay the disputed additional amounts, and the percentage of Gross Revenues set forth in Section 8.02 of this Agreement shall not be adjusted, until conclusion of the dispute resolution process.

8.04 Ticket Surcharge. The Ticket Surcharge, for which the County is entitled to receive its percentage of Gross Revenues, shall be used by IPC solely to pay its debt service on the financing undertaken to construct the Tennis Center Improvements.

8.05 Park Improvement Surcharge. The Park Improvement Surcharge, for which the County is not entitled to receive as part of its percentage of Gross Revenues, shall be a reasonable surcharge which may be placed on admission tickets, parking, or some other mutually agreed upon Tournament related fee that IPC and the County may, from time to time, agree to charge on some or all sales for a specified purpose, specified amount and specified time period to fund capital improvements for the benefit of Crandon Park.

8.06 Sales Tax. IPC shall be liable for the applicable State of Florida Sales and Use Tax imposed on rent (currently at the rate of 7%) on the amounts payable to the County, including the Base Fee payments, under this Agreement. This Sales and Use Tax shall be payable to the County, when applicable rent is due.

8.07 Additional Taxes. If at any time during the term of this Agreement or any renewal thereof, under the laws of the State of Florida, or any political subdivision thereof, a tax, charge (if applicable), capital levy, or excise on rents (fixed minimum or additional) or percentage fees, or other tax (except income tax), however described, is levied against the County on account of the Base Fee or IPC's use of the Site as set forth hereunder, IPC shall be liable for payment of such tax, charge, capital levy, or excise on rents or other taxes.

8.08 Records and Reports. IPC shall maintain, at a location within Miami-Dade County or in an electronic format immediately accessible by the County, complete and accurate books and records of all receipts, disbursements, Affiliate contracts, and third-party contracts regarding its Tournament operations and its Affiliates' records regarding Tournament operations, in a form consistent with generally accepted accounting principles for a minimum of five (5) years following the current Tournament Year. IPC shall maintain any and all records that would normally be examined by an independent certified public accountant in performing an examination of IPC's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Agreement. IPC shall maintain any and all records that would normally be examined in assessing compliance with terms of this Agreement in accordance with generally accepted auditing standards, Government Auditing Standards, and/or professional internal auditing standards.

8.09 Annual Statement. Within one hundred twenty (120) days after the completion of each Tournament, IPC shall furnish to the County a complete and accurate accounting statement setting forth all of the amounts due to the County under this Agreement (the "Annual Statement"). The Parties acknowledge that records regarding third party and Affiliate revenues may not be available to IPC within that one hundred twenty (120) day period, and accordingly, IPC will amend the Annual Statement at such time as it receives and revises such records from Affiliates and third parties (the "Amended Annual Statement"), but in no event later than two-hundred (270) days following the Tournament. The Annual Statement shall state and reconcile Gross Revenues. Upon delivery of the Annual Statement, IPC shall tender the amount due under Section 8.01 of this Agreement. Upon delivery of the Amended Annual Statement, IPC shall tender any additional amounts due under Section 8.01 of this Agreement that were not previously delivered with the Annual Statement and are now reflected in the Amended Annual Statement.

8.10 County's Right to Audit and Inspect. The County, its auditors, or designee(s) shall have the right, at any time during the Term (except during the Tournament Period), but with reasonable notice and no more than once a year, to enter into any locations which IPC may use in connection with its operations pursuant to this Agreement in accordance with Generally Accepted Auditing Standards, Government Auditing Standards and Professional Internal Auditing Standards to audit, check, inspect and review all records pertaining to the Tournament operations for purposes of determining compliance with this Agreement, including but not limited to, the books of account, financial reports, contracts, operating statements, sales tax returns and working papers and records relating to this Agreement. At least thirty (30) days prior written notice shall be provided to IPC before the County physically enters any location to conduct an audit, and during the conduct of such audit, the County shall not unreasonably interfere with the conduct of IPC's operations. The County shall not conduct audit operations during the Tournament Periods. Notwithstanding the foregoing, the County, its auditors or designee(s) shall have the right during the Tournament Period to enter any location which IPC may use in connection with its operations pursuant to this Agreement in order to observe and inspect the operations and recordations of Gross Revenues. The County shall endeavor to perform such audit on a yearly basis, and except as noted below, the period for audit may never exceed three (3) years. If during any audit, a discrepancy is noted that may effect any unaudited years within a five (5) year audit period, then only for the discrepancy noted, the County shall have the right to audit those unaudited years. Notwithstanding the foregoing, in the event that the County is unable or fails to perform an audit in any given year, that shall not mean that the

County has waived its rights to audit that year nor that the County has waived any claims it may have for non-compliance with this Agreement for such year.

If, as a result of such audit, it is established that the percentage fees for any period examined have been underpaid to the County, IPC shall forthwith pay the difference to the Department, together with interest thereon at the prevailing rate from the date such amount or amounts should have been paid.

8.11 Discrepancies. If any such audit under Section 8.10 reveals any underpayment to the County equal to or greater than 5 percent (5%) of the amount tendered by IPC in connection with the Base Fee then IPC shall pay the amount of the underpayment, plus interest, and the County's reasonable costs and expenses in connection with its audit. If IPC intentionally or willfully or as the result of its gross negligence fails to maintain its books and records in a reasonable business manner such that IPC's books and records are deemed inauditable under prevailing auditing standards and practices, then IPC agrees that it shall reimburse the County for the County's reasonable costs and expenses in connection with its audit and IPC will be in breach of this Agreement, for which the County's sole remedy shall be IPC's payment of an amount equal to one hundred fifty percent (150%) of the Base Fee due in the preceding year, which amount the Parties acknowledge is an effort to quantify an amount that is not readily ascertainable and which amount is expressly not a penalty. IPC agrees to give the County a copy of any audits of IPC conducted by third parties in respect of the Base Fee.

8.12 County Sponsorship. During the Term, the County shall enjoy status as a sponsor of the Tournament. The terms and conditions of the County's sponsorship benefits are set forth in Exhibit "C."

## **ARTICLE 9**

### **ADVERTISING AND SIGNAGE**

9.01 Signage. During each Tournament Period in accordance with Applicable Law and the Crandon Park Master Plan, IPC shall have the sole and absolute right to place or permit to be placed all temporary advertising and signage on the Site, including, without limitation, any such advertising or signage on or about the scoreboards, tennis courts, walls, fences, tents, facades, or on or about any other location or on any improvements or facilities at the Site. Under no circumstances shall the County place, or authorize any third party to place, any advertising or promotional matter in the Site or on any shuttle (except for public buses) transporting persons from the Off Site Parking Areas without the express prior written approval of IPC, which approval may be withheld by IPC in its sole discretion. IPC reserves the right to cover or temporarily remove any signage at the Site during the Tournament Periods. The County will have the right to reasonably approve any signage to be placed by IPC on the outer fence perimeter of the Site which is visible from exterior roadways. IPC will provide the County with conspicuous signage for Miami-Dade County to be located on the Site in accordance with the terms of the County's sponsor status.

9.02 Use of IPC Trademarks. Any use by the County of IPC's Trademarks to the extent permitted under this Agreement, will be subject in each case to IPC's prior written approval. IPC shall respond within twenty (20) Business Days following receipt of the proposed

use of IPC's Trademarks and IPC's approval shall not be unreasonably withheld, conditioned or delayed. In the event that IPC does not deliver specific written objections to the proposed use within such twenty (20) Business Day period, then the County may send IPC a notice of second request for approval of the use, which request shall bear a caption in bold font of 12 points or larger which states substantially the following: **"NOTICE: THIS IS A SECOND REQUEST FOR APPROVAL OF THE COUNTY'S USE OF IPC TRADEMARKS. FAILURE OF IPC TO SEND WRITTEN NOTICE OF ITS DISAPPROVAL, IDENTIFYING THE REASONS FOR SUCH DISAPPROVAL, WITHIN FIVE (5) BUSINESS DAYS OF DELIVERY OF THIS SECOND NOTICE SHALL BE DEEMED TO CONSTITUTE IPC'S APPROVAL OF THE COUNTY USE OF THE IPC TRADEMARK IN THE MANNER DESCRIBED IN THE NOTICE."** If, within five (5) Business Days after delivery of such second request bearing such caption, IPC does not provide written notice of disapproval, identifying its reasons for disapproval, then the proposed use shall be deemed approved. The County recognizes that any such use may be limited by the License Agreements, sponsorship agreements or by other agreements or obligations of IPC relating to the Tournaments and/or any such use.

## **ARTICLE 10**

### **REPRESENTATIONS AND WARRANTIES AND ACKNOWLEDGEMENTS**

10.01 Tournament Rights. IPC hereby represents and warrants that IPC has the right to conduct and operate the Tournament subject to the terms and conditions of the License Agreements.

10.02 Authority. Each of IPC and the County hereby represents and warrants that it has the right, power and authority to enter into and perform this Agreement and that this Agreement and its obligations hereunder have been duly and legally authorized by it.

10.03 Necessary Approvals. The County represents that it has obtained all necessary approvals for the execution, validity and performance of this Agreement from the Miami-Dade County Board of County Commissioners.

10.04 No Breach. The County hereby represents and warrants that, to the best of its knowledge and understanding neither the execution nor the performance of this Agreement by the County shall violate or be a breach of any agreement to which it is a party or by which it may be bound.

## **ARTICLE 11**

### **EVENTS OF FORCE MAJEURE**

11.01 Force Majeure Interruption. Notwithstanding anything to the contrary in this Agreement, neither IPC nor the County shall be deemed to be in breach of this Agreement if on one or more occasions IPC is not reasonably able to hold a Tournament as a result of a Force Majeure event that renders IPC's ability to hold a Tournament impossible or impracticable despite IPC's good-faith efforts to do so. IPC shall give the County at least sixty (60) days' written notice that a Force Majeure event has occurred that will cause the cancellation of a scheduled Tournament. Upon fifteen (15) days of the County's receipt of such notice, the



County shall have the opportunity to offer an alternate venue in Miami-Dade County for the Tournament. If the County's alternate venue is not acceptable to IPC, then IPC may conduct the Tournament at an alternate venue elsewhere. However, any revenues arising from a Tournament conducted at such an alternate venue as a result of a Force Majeure event, which revenues would be payable to the County under Section 8.01 of this Agreement, shall be due to the County as if the Tournament had occurred on the Site. IPC shall issue the Base Fee payment to the County for every year whether or not the Tournament is cancelled.

11.02 IPC's Obligation of Force Majeure Restoration. Upon the occurrence of a Force Majeure event that causes the Site to be unusable for the purpose of holding one or more Tournaments or that renders the Site unsafe for the general public, IPC shall be required to apply any insurance proceeds received as a result of such Force Majeure event towards the restoration of the damaged New Assets. Should IPC fail or refuse to repair or replace any damage that may have occurred to New Assets on the Site, the County will, as an additional insured, have the right to collect the insurance payment and complete the repairs. If insurance proceeds are insufficient to restore the damaged New Assets, IPC shall secure alternate funds for the restoration of any such damaged New Assets.

11.03 County's Obligation of Force Majeure Restoration. The County shall only have an obligation to repair Existing Assets that are damaged as a result of a Force Majeure event. The County's obligation to repair Existing Assets shall be limited to the actual (not replacement) value of the damaged asset on the day before the Force Majeure event causing the damage. Should the County fail to repair an Existing Asset damaged as a result of a Force Majeure event, then IPC shall have the right to undertake such repairs, and IPC shall be permitted to deduct the value of any such repairs from the Base Fee until IPC's repair costs are paid off, provided that IPC shall not be able to deduct an amount greater than twenty-five percent (25%) of the Base Fee due in any given year. In no event shall the County be liable to IPC for an amount greater than the actual (not replacement) value of the damaged Existing Asset.

## **ARTICLE 12**

### **EVENTS OF DEFAULT**

12.01 Monetary Defaults by IPC. IPC shall be in default and breach of this Agreement if (a) IPC fails to make any payment to the County due to the County pursuant to this Agreement when such payments are due and payable and (b) IPC fails to cure such default within ten (10) Business Days after its receipt of written notice of such default.

12.02 Non-Monetary Default by IPC. IPC shall be in default and breach of this Agreement if IPC fails to observe or perform any material covenant, condition, or agreement contained herein which IPC is otherwise required to observe and/or perform (other than as referred to in Section 12.01 hereof) for a period of more than ten (10) days after receipt by IPC of written notice of such default, unless the County agrees in writing to an extension of such time prior to its expiration or, in the case of any such default which cannot be cured with due diligence within such ten (10) day period, IPC promptly begins to cure the same and thereafter prosecute the prospective curing of such default with due diligence. The time within which IPC is to cure any default not susceptible of being prospectively cured with due diligence within thirty (30) days will be extended for such additional periods which are necessary to complete the

curing of the same with all such due diligence. However, with respect to any default by IPC that involves health or safety issues, the County shall have the right upon written notice to IPC to take such reasonable actions as may be necessary to remedy such defaults as same relates to such health or safety issues and IPC agrees to reimburse the County for the County's cost of so remedying such default(s).

12.03 Default for Bankruptcy and Reorganization. Upon written notice by the County, this Agreement shall be automatically terminated for (i) institution of proceedings in voluntary bankruptcy or reorganization by IPC; (ii) institution of proceedings in involuntary bankruptcy against IPC if such proceedings continue for a period of ninety (90) days; or (iii) assignment by IPC for the benefit of creditors.

12.04 Default by County. The County shall be in default and breach of this Agreement if the County fails to observe or perform any material covenant or condition contained herein which the County is otherwise required to observe or perform for a period of more than thirty (30) days (or such shorter period as may be reasonable as a result of the exigencies of the Tournament) after receipt of written notice, specifying such default. However, IPC may agree in writing to an extension of such thirty-day cure period or, in the case of any such default which cannot reasonably be cured with due diligence within such thirty (30) day period, then such thirty-day period shall be extended for such additional periods which are necessary to complete the curing of the default with all such due diligence.

12.05 No Waiver. No termination of this Agreement pursuant to this Article shall constitute a waiver by the terminating Party of any of its other rights or remedies with respect to any Event of Default which created the right to so terminate this Agreement.

### **ARTICLE 13** **TERMINATION**

13.01 Termination Right. Upon the occurrence of any default by the County or by IPC, then the Party which is not in default shall have the right to terminate this Agreement by giving the defaulting Party written notice of its intention to terminate this Agreement which notice shall not become effective until at least ten (10) days after receipt thereof, and thereafter may pursue any rights available at law or in equity.

13.02 Termination Rights for Unfavorable Court Decision. Both IPC and the County shall have the right, within sixty (60) days following finality of any appeals taken following a decision by a court of competent jurisdiction which: (a) determines that the Project, in whole or in part, cannot be constructed, operated or managed pursuant to the terms of the Development Agreement or this Agreement; or (b) determines that the referendum approval per the Resolution was not properly obtained, provided that each Party has used reasonable efforts to modify the Development Agreement and this Agreement in order to bring such agreements into compliance with the law, as set forth in the above-referenced final unappealable decision, for a period of not less than thirty (30) days. If this Agreement terminates under this Section 13.02, IPC shall be responsible for all costs, expended through the date of termination for the Tennis Tournament under this Agreement. If this Agreement terminates under this Section 13.02, the Development Agreement and the Lease Agreement shall, on the effective date of such termination, terminate

with respect to all future rights and obligations of performance by the Parties (except for the rights and obligations that expressly are to survive termination as provided in this Agreement and those agreements). In the event that IPC and/or the County elects to so terminate those agreements, then the rights and obligations of the Parties will be those provided by the Existing Tournament Agreement without regard to this Amended and Restated Tournament Agreement.

13.03 Cross-Termination Provisions. The occurrence of any default under this Agreement, including the Management Addendum, shall likewise be deemed a default under the Development Agreement and the Lease Agreement and a termination of this Agreement shall result in the right to terminate all of those agreements as well. Similarly, a default under the Development Agreement shall be deemed an default under this Agreement and, except as provided in Section 3.10 of the Development Agreement, the termination of the Development Agreement shall result in the County's right to terminate this Agreement.

13.04 Effect of Termination. Upon the termination of this Agreement, no Party shall have any further liability or obligation to any other Party except as expressly set forth in this Agreement; provided that no Party shall be relieved of any liability for breach of this Agreement related to events or obligations arising prior to such termination.

13.05 No Termination. Except as otherwise expressly provided in this Agreement, neither IPC nor the County will have the right to terminate this Agreement.

13.06 Limitation of Liability. Notwithstanding anything else in this Agreement, in no event shall any Party be liable under any provision of this Agreement for any lost profits, special, indirect, incidental, consequential, exemplary, treble or punitive damages, in contract, tort or otherwise, whether or not provided by statute and whether or not caused by or resulting from the sole or concurrent negligence or intentional acts of such Party or any of its affiliates or related parties. Further, in no event shall the County ever be liable for repayment of any financing obtained by IPC for the development and construction of the Tennis Center Improvements nor for the direct nor depreciated cost of those Tennis Center Improvements. This provision shall survive the expiration or earlier termination of this Agreement.

13.07 Cumulative Remedies. No termination of this Agreement pursuant to this Article shall constitute a waiver by the terminating Party of any of its other rights or remedies with respect to any Event of Default which created the right to so terminate this Agreement.

## **ARTICLE 14** **INSURANCE**

14.01 Coverage Requirement. IPC shall furnish to Miami Dade County, c/o PROS, 275 NW 2 Street, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Worker's Compensation Insurance for all employees of IPC as required by Florida Statute 440.

Commercial General Liability Insurance including products and completed operations, host liquor, advertising liability, personal injury and athletic

participants, in an amount not less than \$20,000,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage. Required limits may be obtained using a combination of General Liability Insurance and Umbrella or Excess Liability Insurance.

- B. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage. Required limits may be obtained using a combination of Automobile Liability Insurance and Umbrella or Excess Liability Insurance.
- C. Liquor Liability (if applicable) in an amount not less than \$1,000,000. Miami-Dade County must be shown as an additional insured with respect to this coverage.
- D. Property Insurance - on a Special Cause of Loss form, including named windstorm and flood insurance for the full replacement cost of the structural improvements/additions to the Site. All deductibles will be the responsibility of IPC. Miami Dade County shall be a named insured on this policy. Full replacement cost shall be determined at reasonable intervals (at the request of the County) by an appraiser mutually acceptable to IPC and the County. Appraisals conducted will be at IPC's cost. During the term of this agreement, the County may approve reduced sub-limits for certain coverage's if not available in the commercial insurance marketplace.

IPC will be responsible for insuring all IPC personal property and equipment used in connection with this Agreement. The County will not be responsible for repair or replacement of IPC owned property.

IPC will require all entities providing service to IPC in connection with this Agreement, to name Miami Dade County as an additional insured on their General Liability Insurance policies.

In the event that IPC fails to purchase, in any given year, the insurance required in this Agreement, then the County shall have the right to purchase the required insurance using the funds deposited by IPC into the Capital Improvement and Repairs Reserve Fund. IPC shall thereafter and immediately be required to replenish the Capital Improvements and Repairs Reserve Fund in the amount disbursed from such fund and used to purchase the required insurance.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, by the latest edition of Best's Insurance Guide, published by

A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division. The County agrees that it shall not unreasonably withhold, delay or condition its approval of any insurance coverage which IPC is required to obtain under this Agreement. The Parties acknowledge that from time to time IPC may seek to obtain insurance from reputable London-based or other non-United States carriers, which carriers may not have been rated by A.M. Best Company; in such cases the County shall act reasonably in determining if such policies are "equivalent."

14.02 Cancellation Notice. IPC shall promptly notify the County of any material change or cancellation of the insurance coverage required to be maintained by IPC under this Agreement.

Compliance with the foregoing requirements shall not relieve IPC of liability and obligation under this section or under any other section of this Agreement.

## **ARTICLE 15** **INDEMNIFICATION**

15.01 By IPC. IPC shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Contract by IPC or its employees, agents, servants, partners principals or subcontractors. IPC shall pay all claims and losses in connections therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. IPC expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by IPC shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

15.02 By County. The County does hereby agree to indemnify and hold harmless IPC to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a person injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum of \$300,000, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify IPC from any liability or claim arising out of the negligent performance or failure of performance of IPC, its affiliates, licensees, contractors, subcontractors, agents or any other unrelated third party. Further, the County shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including reasonable attorneys' fees and expenses) arising from or in connection with any loss or liability due to a Force Majeure.

**ARTICLE 16**  
**WAIVER AND ASSIGNMENT**

16.01 Waiver. No waiver by either IPC or the County, respectively whether express or implied, of any of the provisions of this Agreement or of any breach or default under this Agreement shall constitute a continuing waiver of such provision or any other provisions of this Agreement.

16.02 Assignment. IPC shall not sell, assign, convey, transfer, pledge, encumber or otherwise dispose of voluntarily or involuntarily (each, a "Transfer") this Agreement or any of its rights under this Agreement without the prior written consent of the County, which consent shall not be unreasonably withheld or conditioned. The transferee shall assume all of IPC's obligation under this Agreement arising after the effective date of the assignment and IPC shall be relieved from any obligations under this Agreement arising after the effective date of the assignment.

**ARTICLE 17**  
**MISCELLANEOUS PROVISIONS**

17.01 Applicable Law. IPC agrees to abide by Applicable Laws, including but not limited to, the laws of the State of Florida and the ordinances of Miami-Dade County, in the conduct and operation of the Tournament and all other activities conducted and/or undertaken by IPC on the Site.

17.02 Non-Discrimination. In connection with the conduct and operation of the Tournaments, IPC will comply with all applicable Federal, State and the County laws, ordinances, and regulations based on nondiscrimination against all members of the general public without exception based upon race, color, sex, sexual orientation or identity, age, handicap, religion or national origin.

17.03 Significance of Headings. The headings and captions of this Agreement are for the convenience of the Parties and are not to be used to interpret or construe this Agreement. Accordingly, in the event of any question with respect to the construction of this Agreement, it is to be construed as though such article or section headings have been omitted.

17.04 Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. IPC and the County agree that Miami-Dade County, Florida is the appropriate venue in connection with any litigation between the Parties with respect to this Agreement.

17.05 Approvals. Except where otherwise specifically provided to the contrary in this Agreement, any approvals by either Party to this Agreement shall not be unreasonably withheld, delayed or conditioned.

17.06 Independent Contractor/No Partnership. Both IPC and the County acknowledge that they are entering into this Agreement as independent contractors and that neither IPC nor the County is a partner or agent of the other, nor shall this Agreement in any way constitute a partnership agreement or joint venture between them. Neither Party hereto shall have the right to bind the other Party.

17.07 Absence of Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a Party to this Agreement to maintain an action pursuant to or based upon this Agreement.

17.08 Crandon Park Master Plan. The County and IPC acknowledge and agree that this Agreement is subject to and governed by, the provisions of the Crandon Park Master Plan and the Declaration of Restrictions implementing such plan ("CPMP"), as such plan may be amended from time to time, and that all development and construction performed by IPC shall be in full conformance with the requirements and provisions of the CPMP. To the extent any term or provision of this Agreement conflicts with a term or provision of the CPMP, the CPMP shall prevail. To the extent that there is a conflict between this Agreement and the Resolution, the Resolution shall prevail. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to limit, waive the rights of, preclude, or estop IPC from instituting a suit to challenge the validity of the 1993 Settlement Agreement, including the CPMP and the process that allows it to be amended, consistent with the decisions in *White v. Metropolitan Dade County*, 563 So. 2d 117 (Fla. 3d DCA 1990) and *Dade County v. Matheson*, 605 So. 2d 469 (Fla. 3d DCA 1992), either as to it specifically or the public generally and such right is expressly reserved by IPC. If a court of competent jurisdiction issues a final, non-appealable order in accordance with and/or consistent with the decisions in *White* and *Matheson*, which order invalidates, declares illegal, and/or voids the 1993 Settlement Agreement between the County and the Matheson family and the CPMP, then the Parties shall no longer be required to comply with the CPMP and, all references in this Agreement to the Crandon Park Master Plan shall cease to be effective. In such event, the Master Plan as proposed to be amended in connection with this Agreement shall be contractual provisions governing the Developer's use and operation of the Tennis Center for the Tournament.

17.09 Validity of Agreement. IPC and the County acknowledge that the Site may only be used for "public park purposes" and used and developed in accordance with the Crandon Park Master Plan and all Applicable Laws. IPC and the County agree that if a court of competent jurisdiction determines that the operation and conduct of the Tournament as contemplated in the Amended and Restated Tournament Agreement, the management by IPC of the Site as contemplated by the Management Addendum, the development of the Site by the Developer as contemplated by this Agreement, and/or the lease of space within the Site on a year-round basis by IPC as contemplated by the Lease Agreement is not in accordance with public park purposes, the Crandon Park Master Plan and/or all Applicable Laws, and if IPC and the County are unable to otherwise mutually agree as to any required changes necessary to make the operation and conduct of the Tournament, the management of the Site, the redevelopment of the Site, and/or the lease of space at the Site consistent with public park purposes, the Crandon Park Master Plan

and/or Applicable Law, as applicable, the Developer and the County shall each have the right, upon written notice to the other, to terminate this Agreement. Upon such termination, neither Party shall have any rights or obligations against the other. If this Agreement, Management Addendum, Development Agreement, and/or Lease Agreement are terminated pursuant to this paragraph, then the Parties agree to continue performance under the Existing Agreement. However, if the term of the Existing Agreement has lapsed, then upon termination pursuant to this paragraph, the parties shall have no further obligation or liability to one another.

**ARTICLE 18**  
**ALTERNATIVE DISPUTE RESOLUTION**

18.01 Voluntary Trial Resolution. Any dispute or claim between the Parties under this Agreement shall be submitted to voluntary trial resolution by a retired Miami-Dade County judge and otherwise in accordance with Fla. Stat. § 44.104 (“ADR”). Either Party may initiate ADR by written notice to the other Party, identifying the claim or dispute and the specific sections of this Agreement under which it arises (“an ADR Election Notice”).

18.02 ADR Procedure. The Parties agree that: (i) the speedy resolution of any disputes or claims between them pursuant to this Article 18 is a mutual and material inducement to enter into this Agreement; (ii) the Party initiating and filing for voluntary trial resolution shall pay all filing fees associated therewith; (iii) each Party shall pay one-half of the cost of the trial resolution judge and court reporter required for the proceedings; (iv) each Party, in any such proceedings, shall pay for its own costs and expenses incurred in the prosecution and defense, as applicable, of any dispute or claim filed hereunder, including attorneys’ fees and costs; and (v) voluntary trial resolution pursuant to this Article 18 is intended to be the sole and exclusive dispute resolution mechanism of the Parties with respect to disputes or claims between them under this Agreement. The Parties’ sole avenue for equitable or monetary relief shall be through the ADR process described in this Article 18. Without limiting the foregoing:

(a) With respect to any voluntary trial resolution hereunder and regardless of any contrary provision of law, (i) such trial shall be conducted by a retired Miami-Dade County judge having no less than five (5) years’ Civil Division experience in such judge’s final ten (10) years of his/her tenure; (ii) the Parties hereby expressly retain all appeal rights afforded by law; and (iii) if the Parties are unable to agree upon and appoint a retired judge within thirty (30) days from the effective date of ADR Election Notice, then either Party may submit a request to the court for the appointment of the voluntary trial resolution judge pursuant to Fla. Stat. § 44.104(4). Pending the appointment of voluntary trial judge under ADR, either Party, where warranted under the circumstances, may petition the appropriate court sitting in Miami-Dade County Florida for injunctive relief until the matter can be resolved pursuant to the ADR procedures described above.

(b) The voluntary trial judge shall be bound by the provisions of this Agreement and shall not have the power to add to, subtract from or otherwise modify such provisions, and shall consider only the specific issues submitted to him/her for resolution.

(c) Within ten (10) days of the selection of a trial resolution judge, the trial resolution judge shall be required to consult with the Parties and issue a trial schedule setting



forth deadlines for discovery, dispositive motions and the final hearing, which final hearing shall occur no later than one-hundred and eighty (180) days after the selection of the trial resolution judge. Unless otherwise agreed to by both Parties in advance and in writing, the final hearing shall not exceed two days in length, with one day allotted to each party to present its case, including any opening and closing arguments.

(d) The trial resolution judge shall issue written findings and conclusions of law within thirty (30) days after the trial resolution hearing.

18.03 Venue; Waiver of Jury Trial. If any claim or dispute between the Parties under this Agreement is found not to be subject to ADR, then each Party submits to the exclusive jurisdiction of any court of competent jurisdiction sitting in Miami-Dade County. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection to venue in Miami-Dade County, including objections based on lack of personal jurisdiction or the doctrine of forum non conveniens. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT WHICH ANY PARTY MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY DISPUTE OR CLAIM SUBJECT TO ADR UNDER AGREEMENT.

#### **ARTICLE 19** **NOTICES**

Any notice, demand, request, consent or other communication under this Agreement shall be in writing and shall be considered given when delivered in person, one Business Day after being sent by reputable overnight carrier, or three Business Days after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a Party may specify by notice given pursuant to this Section to the other party):

If to the County:

To the attention of:

County Mayor  
111 NW 1st Street, Suite 2900  
Miami, Florida 33128  
Attention: Lisa M. Martinez

With a copy to:

County Attorney  
111 NW 1st Street, Suite 2810  
Miami, Florida 33128  
Attention: Robert A. Cuevas, Jr.

If to IPC:

To the attention of: International Players Championship, Inc.  
1360 E. 9<sup>th</sup> Street, Suite 100  
Cleveland, Ohio 44114  
Attention: John Raleigh  
and to: International Players Championship, Inc.

1500 Douglas Road, Suite 230  
Coral Gables, Florida 33134  
Attention: Adam Barrett

With a copy to: Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
Attention: Richard E. Schatz

Notwithstanding the foregoing, periodic and ordinary course notices, deliveries and communications between IPC and the County Representative may be given (and shall be considered given when provided) by any of the means set forth above, and to the address provided by the County Representatives to IPC for such purposes.

#### **ARTICLE 20** **CONTROLLING AGREEMENT**

This Agreement sets forth the entire agreement and understanding between the parties relating in any way to the subject matter contained in this Agreement and merges all prior discussions between IPC and the County. Neither party shall be bound by any agreement, condition, warranty or representation other than as expressly stated in this Agreement (or in the Development Agreement) and this Agreement may not be amended or modified except by written instrument signed by both parties. While this Agreement constitutes the full and complete understanding of the parties, the parties agree to act in good faith with respect to all matters under this Agreement with a view to making the Tournament a success for both IPC and County.

#### **ARTICLE 21** **INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL REVIEWS**

##### **21.01 Inspector General and Independent Private Sector Inspector General.**

(a) Office of Inspector General. The attention of the Parties is hereby directed to Section 2-1076 of County Code establishing the Miami-Dade County Office of the Inspector General, which has the authority and power to investigate County affairs and review past, present and proposed County programs, accounts, projects, contracts and transactions. According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random

basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below.

The Inspector General shall have the power and authority to perform audits on all County contracts. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Developer, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to IPC from the Inspector General or IPSIG retained by the Inspector General, IPC shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in IPC's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

21.02 The Inspector General shall have any and all other rights of an IPSIG as set forth below.

(a) Independent Private Sector Inspector General.

- (1) Pursuant to Board Resolution No. R-516-96 and Administrative Order 3-20, the County may authorize, retain and coordinate the services of an independent private sector inspector general ("IPSIG") for construction, capital development, procurement, retail, concession, lease and management agreements and/or contracts and other agreements exceeding \$1 million. The County has, at its expense, appointed the Inspector General as its IPSIG for the Project. The IPSIG may audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of IPC and the County in connection with project design and

construction matters under this Agreement. The scope of services performed by the IPSIG may include, but are not limited to, monitoring and investigating compliance with contract specifications; project costs; and investigating and preventing corruption and fraud.

- (2) The IPSIG may perform its services at all levels of the construction contracting and procurement process under this Agreement, including but not limited to, project design, establishment of bid specifications, bid submittals, activities of IPC and their officers, agents and employees, lobbyists and the County staff and elected officials. Upon fifteen (15) days' written notice to IPC from the IPSIG, the Developer shall make all requested non-proprietary project-related records and documents available to the IPSIG for inspection and copying.
- (3) The IPSIG shall have the right to examine all documents and records in IPC's possession, custody or control which, in the IPSIG's reasonable judgment, pertain to the Project design and performance of construction matters under this Agreement, including but not limited to, original estimate files; Change Order estimate files; worksheets; proposals and agreements from and with subcontractors and suppliers; all Project related correspondence, memoranda, instructions, financial documents, construction documents, bid and contract documents; back-charge documents; documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received; payroll and personnel records; and supporting documentation for the aforesaid documents and records.
- (4) The provisions in this Section shall apply to IPC and its officers, agents and employees. IPC shall incorporate the provisions in this Section in all subcontracts executed by IPC in connection with the performance of this Agreement.
- (5) Nothing in this Section shall impair any independent right IPC may grant to the County to conduct audit or investigative activities. The provisions in this Section are neither intended nor shall they be construed to impose any liability on the County, IPC or third parties.

(b) Sovereign Rights.

- (1) The County retains all of its sovereign prerogatives and rights as a county under State law with respect to the planning, design, construction, development and operation of the Tennis Center Improvements. It is expressly understood that notwithstanding any

provisions of this Agreement and the Development Agreement and the County's status thereunder:

- (2) The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under State law and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations whatever nature of general applicability which is applicable to the planning, design, construction and development of the Tennis Center Improvements, the Site, or the operation thereof, or be liable for the same, including any approvals needed under a Government Facilities hearing; and
- (3) The County shall not by virtue of this Agreement or the Development Agreement be obligated to grant IPC any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature of general applicability which is applicable to the planning, design, construction, development and/or operation of the Tennis Center Improvements or the Site, including any necessary Governmental Facilities hearing.
- (4) Notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the Board of County Commissioners, the County's Planning and Zoning Department, RER, or any other County, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power. Further, notwithstanding and prevailing over any contrary provision in this Agreement or the Development Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the County Mayor, Board of County Commissioners or Elections Department to hold any future elections.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by appropriate officials of each of them, as of the date first above written.

**"COUNTY"**

MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS

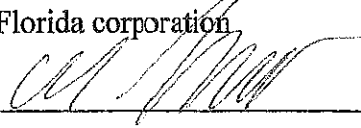
By: \_\_\_\_\_  
Carlos A. Gimenez, Mayor

By: \_\_\_\_\_  
Clerk

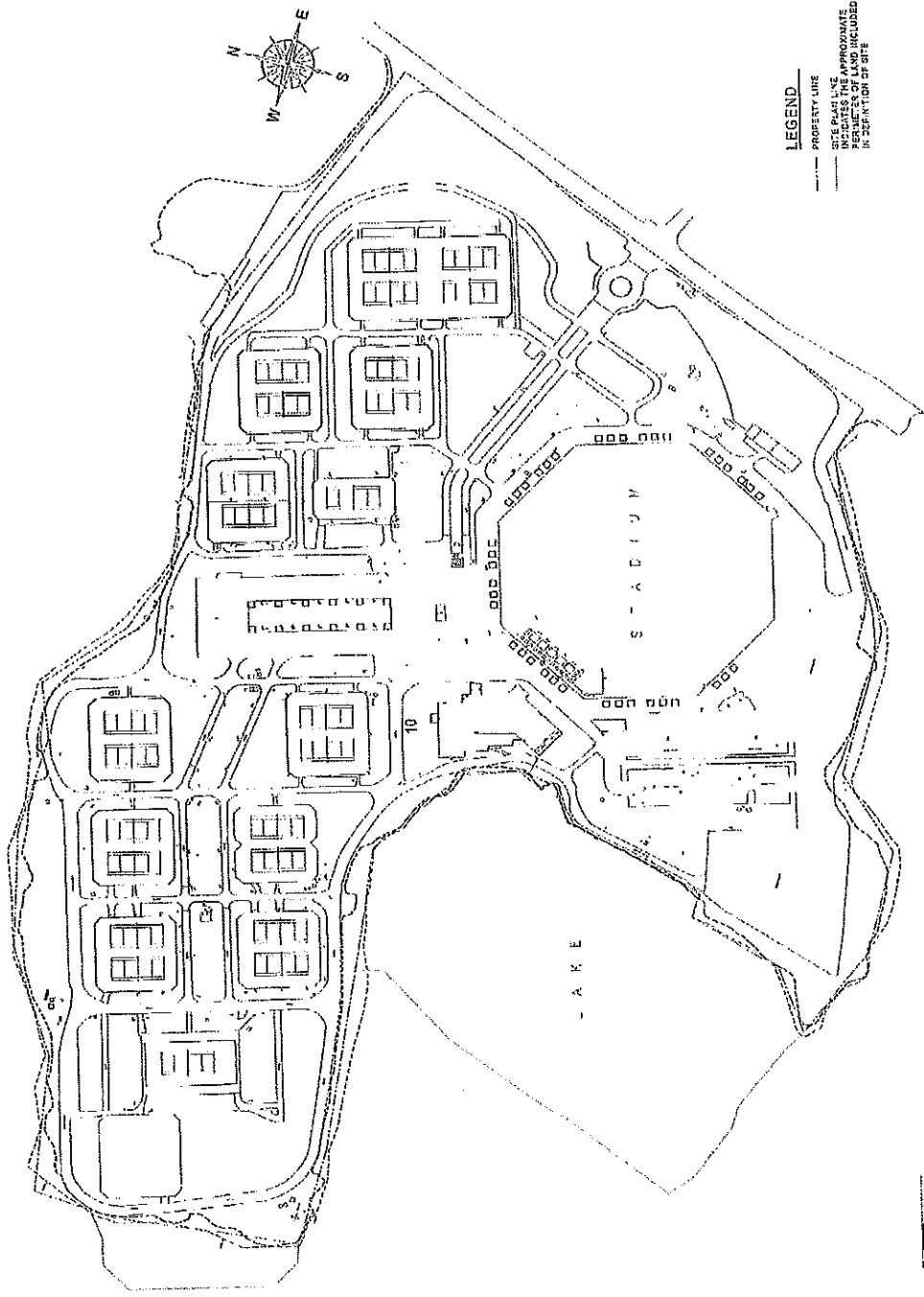
By: \_\_\_\_\_  
County Attorney (for legal sufficiency)

**"IPC"**

INTERNATIONAL PLAYERS CHAMPIONSHIP INC., a Florida corporation

By: \_\_\_\_\_  


**EXHIBIT "A"**  
**SITE PLAN**



**LEGEND**  
 - - - - - PROPERTY LINE  
 --- SITE PLAN  
 --- APPROXIMATE PERIMETER OF LAND INCLUDED IN DEFINITION OF SITE

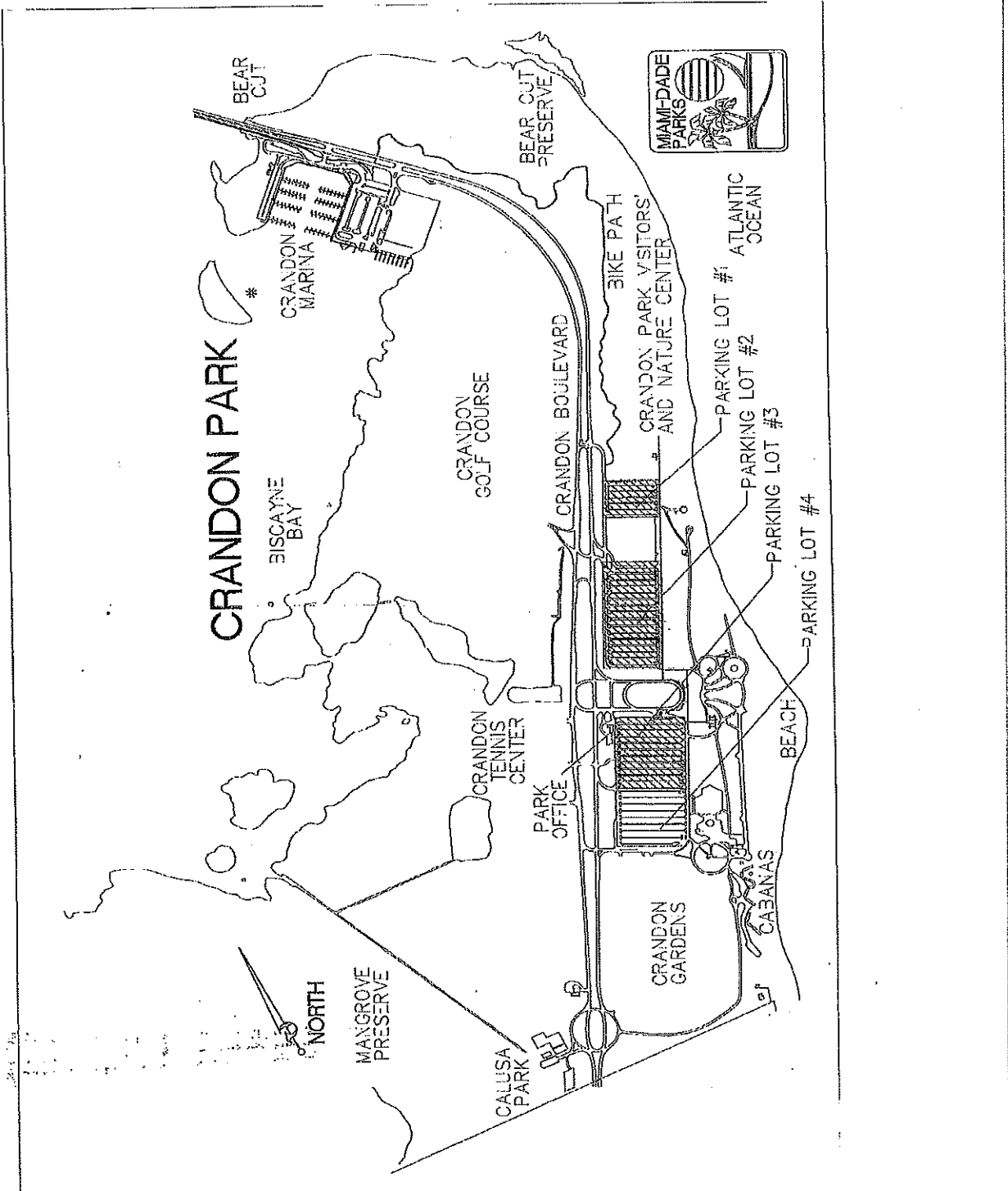
© COPYRIGHT EXPANIMEX, INC. THIS DOCUMENT IS THE PROPERTY OF EXPANIMEX, INC. ALL RIGHTS RESERVED. NO REPRODUCTION OR TRANSMISSION IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, IS PERMITTED WITHOUT THE WRITTEN PERMISSION OF EXPANIMEX, INC.

- EXHIBIT A -  
**TENNIS CENTER AT CRANDON PARK**  
 SITE PLAN  
 OCTOBER 3, 2013



259

**EXHIBIT "B"**  
**CRANDON PARK PARKING AREAS SITE PLAN**





**EXHIBIT "C"**  
**COUNTY SPONSORSHIP PROGRAM**

**Designation / Rights**

- A. The County will be designated as Site Sponsor during all Tournament under this Term\*

**Corporate Identification**

- A. One sign on Stadium permanent back wall on two foot wall directly behind back wall
- B. Corner Signs – Stadium Court – Two signs bearing Sponsor's logo.
- C. Third level -Stadium Court -2 signs bearing the Sponsor's logo .
- D. At least one sidewall sign on each of the other enclosed courts being the Sponsor's logo, if such signage exists for other sponsors.

**Advertising & Promotion**

- A. Regular announcements on the electronic scoreboards on the Stadium Court regarding Sponsor's affiliation. Frequency of announcements averaging at least one per Stadium Court match throughout the Tournament.
- B. Recognition on the Sponsor Board, prominently located on the Tournament grounds.
- C. One (1) full-page, four color advertisement in the Official Tournament Program.
  - i. One (1) full-page, four color page dedicated to Letter from the Mayor
  - ii. Listing as Sponsor on the Sponsor Page in the Official Tournament Program.
- D. Inclusion in Print and Promotion material where appropriate
  - i. Court Side Box Sign
- E. Recognition, as appropriate, for the County as a Sponsor on the Tournament web page and/or any other electronic media developed for the Tournament.

**Onsite Benefits**

The following are on site benefits to be managed by the Park Foundation of Miami-Dade:

- A. Suite Package – Suite with 26 tickets. Each suite contains 16 seats, one inside lounge area, and one private patio.
- B. \$16,000 retail food and beverage credit
- C. Preferred parking booklet per 2 seats included
- D. Credentials – As needed for working staff only. Not to be used by any County officials or employees as tickets.
- E. Access to Boxholders restaurant.
- F. The Parks Foundation of Miami-Dade will report annually to the Board of County Commissioners within 90 days after each tournament, the benefits that further the mission of the Parks Foundation, derived from use of the suite.

\*While difficult to quantify, the approximate value in 2013 of the County Sponsorship Program is \$400,000.

**EXHIBIT "D"**  
**MANAGEMENT ADDENDUM**

This Management Addendum ("Management Addendum") is attached to and forms a part of the Amended and Restated Tournament Agreement (the "Agreement") between Miami-Dade County, Florida (the "County"), and International Players Championship, Inc. ("IPC"). Unless a different meaning is specified in this Management Addendum, all capitalized words and phrases used in this Management Addendum have the same meaning as used in the Agreement. The provisions of this Management Addendum are subject to, and shall be interpreted consistently with, the definitions, terms and provisions in the body of the Agreement.

**RECITALS**

**WHEREAS**, the County has determined that it will benefit, both financially and in terms of the quality of experience delivered to the public, from the delegation to IPC of certain rights and responsibilities relative to the year-round maintenance and operation of the Site as a public park facility; and

**WHEREAS**, by delegating those rights and responsibilities to IPC under the terms and conditions set forth in this Management Addendum, the County will achieve greater use and enjoyment of the Site by the public throughout the year; and

**WHEREAS**, IPC has agreed to undertake year-round management of the Site during the Term under the terms and conditions set forth in this Management Addendum;

**NOW, THEREFORE**, IPC and the County, in exchange for valuable consideration, agree as follows:

**DEFINITIONS**

"County Contract Manager" shall mean the individual designated by the Director of the County's Parks, Recreation and Open Spaces Department to oversee IPC's compliance with this Management Addendum.

"IPC On-Site Manager" shall mean the qualified, full-time IPC employee who shall be on-Site at all times during the operating hours set forth in Schedule 1 to this Management Addendum and accessible by telephone during all other times. IPC may have more than one designated IPC On-Site Manager.

"Non-Tournament Gross Revenues" shall mean all revenues (other than those revenues included in Gross Revenues under the Tournament Agreement) or other consideration charged for or received by IPC or its Affiliates, during all times other than the Tournament Play Period, for all services rendered, all sales made, and all transactions engaged in under the authority of the Management Addendum whether such services, sales, or transactions occurred on the Site or off-Site. All third-party and Affiliate contracts shall be on market terms and in writing and, for the purpose of calculating revenues due to the County under Section 6.01, shall disclose all direct or indirect tangible economic benefit to IPC or an Affiliate.

**ARTICLE 1**  
**MANAGEMENT OF THE SITE**

1.01 Management of the Tennis Center. The County and IPC agree that IPC shall undertake the exclusive management of the Site in accordance with the terms and conditions of this Management Addendum. IPC agrees to manage and operate the Site for and on behalf of the County throughout the Term as a public park and recreation facility. All expenses that IPC incurs under this Management Addendum shall be paid by IPC and, for its services as Site manager, IPC shall be entitled to no other compensation from the County other than the Management Fee due under Article 6 of this Management Addendum.

1.02 Independent Contractor Relationship. IPC is, and shall be, in the performance of all work services and activities under this Management Addendum, an independent contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed under this Management Addendum shall at all times, and in all places, be subject to IPC's sole direction, supervision, and control. IPC shall exercise control over the means and manner in which it and its employees perform the work, and in all respects IPC's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

**ARTICLE 2**  
**TERM**

2.01 Term. The term of this Management Addendum shall commence on the later of (a) October 1, 2014, or (b) upon commencement of the Term of the Agreement. Upon commencement of the Term of the Agreement, the term of this Management Addendum shall run concurrently with the Term of the Agreement, as set forth in Section 4.01 of the Agreement, including the Initial Term and, if applicable, the First and Second Extended Terms. The Term of this Management Addendum shall terminate or expire as set forth in Sections 4.01 and 24.01 of the Agreement.

**ARTICLE 3**  
**COUNTY OVERSIGHT**

3.01 County Contract Manager. The County shall have the right to designate the County Contract Manager, who may maintain an office on the Site.

3.02 Monthly Meetings with County Contract Manager. IPC shall meet with the County Contract Manager at least monthly to discuss any matters relating to this Management Addendum and/or the Site, including, without limitation, lawsuits involving the Site and any special events planned by either party in Crandon Park. Quarterly, IPC shall deliver to the County Contract Manager, a written report summarizing all matters pertaining to the management, maintenance, revenue, expenses, and operation of the Site.

3.03 County Contract Manager Removal of IPC Employees. The County shall be entitled to a satisfactory performance of IPC's obligations under this Management Addendum. At the written request of the County Contract Manager, and for the reasons set forth in Section 4.02(c) of this Management Addendum, IPC shall promptly remove from contact with the public any of IPC's employees, contractors, subcontractors, volunteers, and/or any other person performing services

under this Management Addendum until such time as the issues can be resolved to the mutual satisfaction of IPC and the County. IPC agrees that any such removal does not require IPC's termination or demotion of the removed employee, contractor, subcontractor, volunteer, or other person.

**ARTICLE 4**  
**MANAGEMENT OF THE SITE**

4.01 Standards of Operation. During the Term, IPC agrees to diligently and in good faith, manage, operate and maintain the Site as a "first class" facility. Except during the Tournament Play Period, IPC shall continuously and uninterruptedly manage, operate, and maintain the Site open to the public as a public park and recreation facility. IPC's management and operation of the Site shall be in accordance with the provisions of the Crandon Park Master Plan and Applicable Law, including but not limited to Chapter 26 of the County Code and Article 7 of the Home Rule Charter.

(a) Minimum Hours of Operation. Operating hours for the Site shall be as specified in Schedule 1, and may vary with the prior written consent and approval of the County. The Parties, upon mutual agreement, may change the hours of operation at the Site if such a change is desirable in providing the best service to the public and consistent with other County recreational and entertainment facilities.

(b) Pricing. Pricing for the Site shall be specified in Schedule 1, and may vary from time to time with the prior written consent and approval of the County. Such consent will not be unreasonably withheld, delayed or conditioned. The County may require a change in the pricing at the Site if, in the reasonable discretion of the County, such a change is desirable in providing the best service to the public.

(c) No Discrimination Permitted. IPC shall not discriminate among County residents with respect to user fees, access, or availability based upon where a County resident resides or in a manner contrary to Applicable Law.

(d) IPC On-Site Manager. IPC shall be required to provide an IPC On-Site Manager for the Site. The IPC On-Site Manager shall have experience in the management of a tennis center and public park with amenities similar to those available at the Site. The On-Site manager shall have sufficient delegated authority to ensure the competent fulfillment and performance of IPC's duties under this Management Addendum. On a monthly basis, IPC shall provide the County with the name, address, mobile phone number, and e-mail address of each IPC On-Site Manager. The IPC On-Site Manager shall be on call, at all times, for emergencies or other matters relating to the operations of the Site.

(e) Continued Obligation During Tournament Set-up and Breakdown Periods. During the Tournament Set-up Period and Tournament Breakdown Period, IPC shall continue to operate the Site as a public park facility and shall limit and coordinate its work for the Tournament so as not to materially exclude the public from the Site and/or materially impair public access and use of the Site, consistent with the terms of this Management Addendum.

(f) Establishment of Rules and Regulations for Public Use. With the prior written approval from the County's Site Manager, IPC may establish reasonable rules and

regulations for the use of the Site for recreation by the general public outside of the Tournament Period. IPC shall be responsible for booking, managing, and overseeing the Site, and all of its components and amenities including, without limitation, all New Assets and Existing Assets. The rules and regulations adopted by IPC shall be consistent with, and comparable to (but need not be identical to), the general rules and regulations applicable to all County parks and recreation facilities. The uses and operations which IPC may conduct include, but are not limited to: court rental services; site rental services; professional tennis services, to the extent and only if the County does not already have a contract in place for professional tennis services at the Site; utility services; concessions, hospitality and catering services; gym and exercise services; water services; camps, clinics, conferences and other events.

(g) Security. IPC shall be responsible for providing general and reasonable security and protection of the Site consistent with the security and protection in place as of the Commencement Date. The County shall have no obligation to provide security for the Site. IPC may provide its own specialized security for the Site, subject to the County's written approval.

#### 4.02 Employment of Personnel.

(a) Sufficient Personnel Required. IPC shall employ a sufficient number of staff to ensure that the Site is open and operating during the timeframes specified in Schedule 1. IPC shall supervise the performance of all personnel employed in fulfillment of its obligations under this Management Addendum.

(b) Minimum Standards for Personnel. During those timeframes set forth in Schedule 1, IPC shall ensure that its personnel are adequately serving and attending to the public's needs at a level of service that is equal to or better than that currently offered by the County to Site patrons. All personnel providing services under this Management Addendum shall be courteous and cooperative and present a neat, clean, and professional appearance at all times. All personnel having contact with the public shall be able to understand and communicate in spoken English.

(c) Personnel as Responsibility of IPC. All of IPC's personnel shall be considered to be, at all times, employees of IPC under its sole direction and not employees or agents of the County. IPC shall supply competent personnel. The County may require IPC to remove from contact with the public an employee that the County reasonably deems objectionable and whose continued presence is not in the best interest of the County. All personnel shall have and wear proper identification. IPC shall control the conduct, demeanor, and appearance of its officers, employees, agents and representatives. Upon any complaints by the County (which must be in writing), or by the public, as to the conduct of any such officer, employee, agent and/or representative, IPC shall take immediate steps to address the allegations and take appropriate action.

(d) Salaries and Compensation of Personnel. IPC shall pay all wages, salaries and/or commissions of all employees, service personnel and maintenance personnel who are employed by IPC or engaged by IPC as independent contractors with respect to the Site. IPC shall pay all amounts due for workmen's compensation insurance, social security taxes, unemployment insurance, and all other taxes or levies now in force or hereafter imposed with respect to any such employees or personnel; keep and maintain all necessary payroll and employment records and make all necessary withholding deductions from the salaries and wages of such employees and personnel as required by federal, state and local laws. IPC shall promptly, upon the County's written request,

provide a list of the employees employed and contractors engaged in the management, operations, maintenance or repairs of the Site and the Site. This list will include the number of employees and their positions.

(e) Background Screening of All Employees and Contractors. In accordance with the Shannon Melendi Act, Miami-Dade County Ordinance No. 08-07 (as it may be amended from time to time), all of IPC's employees, personnel, volunteers, contractors, consultants and any other entity or persons that will provide any services or perform any work on the Site as part of this Management Addendum must comply with the Shannon Melendi Act before the scheduled start of such employment, volunteerism, or work.

4.03 Special Event Contracts. IPC shall enter into contracts for the use of the Site by groups conducting picnics, parties, amateur tennis play, camps, clinics, conferences and other events and such contracts shall be issued on a first-come, first-serve basis and to all persons and entities meeting the pre-established requirements for issuance of an event contract. The pricing for any such special event contracts entered into under this Section shall be priced in accordance with Section 4.01(b) of this Management Addendum or, if no price has been established in accordance therewith, at a price consistent with the price charged for the same type of event or service at another County facility.

4.04 Service Contracts. To discharge its obligations under this Management Addendum, including but not limited to the provision of Maintenance and Repair for the Site, IPC may negotiate and enter into service and supply contracts as it deems necessary and reasonable for the proper operation of the Tennis Center (the "Service Contracts"). IPC shall supervise the performance of all independent contractors, subcontractors, suppliers, and servicing agents required for the proper management, maintenance, repair, and operation of the Site. IPC, without the prior written consent of the County, may negotiate and enter into, bona-fide contracts Service Contracts with third parties for concessions, services (including catering services that will be rendered on a continuing basis), electricity, ash or rubbish hauling, vermin extermination, janitorial services, parking area and landscape maintenance, and such other services for the Site as IPC shall reasonably determine to be advisable. All Service Contracts shall be in writing, in the name of IPC, and assignable to the County. All Service Contracts shall be fully subject to and consistent with the Agreement and Management Addendum, including the Term.

(i) SBE Compliance Required. IPC shall comply with the County's Small Business Enterprise ("SBE") Program in awarding Service Contracts that are non-revenue generating contracts. The SBE goals shall be established by the County in accordance with the process set forth in the SBE program provisions. IPC shall comply with the SBE program and shall submit annual compliance statements to the County in a form reasonably required by and acceptable to the County.

(ii) County Indemnification Required. All Service Contracts shall include the following indemnification provision:

[Contractor] shall indemnify and hold harmless Miami-Dade County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which Miami-Dade County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the

performance of this Service Contract by the [Contractor] or its employees, agents, servants, partners principals or subcontractors. [Contractor] shall pay all claims and losses in connections therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of Miami-County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. [Contractor] expressly understands and agrees that any insurance protection required by this Service Contract or otherwise provided by [Contractor] shall in no way limit the responsibility to indemnify, keep and save harmless and defend Miami-Dade County or its officers, employees, agents and instrumentalities as herein provided.

4.05 No Other Contracts or Leases Permitted. Other than an event contract permitted by Section 4.03 or a Service Contract permitted by Section 4.04, IPC shall not enter into any contract or agreement relating to the Site, without the prior written consent of the County. The County shall not unnecessarily withhold, delay or condition its consent. The Parties acknowledge that a portion of the Site is subject to the arrangements for use of space by International Players Championship, Inc. pursuant to the Lease Agreement. Other than the Lease Agreement, neither the County nor IPC shall enter into any new leases or agreements for use of space within the Site.

4.06 Assignment of Existing County Contracts. Upon commencement of its obligations under this Management Addendum, IPC shall be required to accept assignment of the Tennis Center Operating Agreement, Contract No. EPP-RFP 668, with Cliff Drysdale Management, Inc ("CDM") on the same terms and conditions set forth in each of those contracts, subject to the approval by Cliff Drysdale and the Board of County Commissioners. Unless specifically permitted by CDM, or unless IPC obtains the written consent from CDM, IPC shall not offer or provide goods or services that compete with the goods and services provided by CDM. In no event shall IPC cause the County to default on the CDM. This Contract, No. RPP-RFP 668, was entered into on February 1, 2010 for a five year term with two options to renew, each for a two year term. IPC along with CDM shall decide whether or not to exercise the options to renew available under the CDM contract. The County will not enter into or renew any contracts for periods after October 1, 2014 without IPC's approval, which approval IPC shall not unreasonably withhold, delay or condition.

4.07 Duty to Promote and Advertise the Site. In coordination with the County, IPC shall initiate, supervise, and coordinate the advertisement and promotion of the Site to maximize the use on a year-round basis by the public. Any such advertisement shall be subject to the prior reasonable approval of the County. IPC shall not display or exhibit any kind of signage, including in the course of promoting and advertising the Site which is not in compliance with Applicable Law.

4.08 IPC's Management Office. The County shall provide IPC with office space on the Site, not to exceed 1,700 square feet, for IPC's management of the Site under this Management Addendum. From this management office, IPC shall only conduct business related to the Non-Tournament management, operation, and maintenance of the Site. The County, through its County Representative and in cooperation with IPC, may relocate IPC's management office to another location on the Site in the event of a force majeure or if necessary for the proper management of the Site and operation of Crandon Park; any relocation costs shall be borne by the County.

4.09 Restrictions on IPC's Authority. In performing management services hereunder, IPC shall not, without the prior written consent of the County: (1) defend, compromise, settle or adjust any claim against the County or condemnation of the Site nor make a claim for said proceeds; (2)

commence or discontinue any actions on behalf of the County in the nature of legal proceedings in any court, before any Governmental Authority, or in arbitration; (3) terminate existing permit agreements or license agreements; (4) sell, lease, lien, allow a lien to be placed, grant easements or otherwise encumber the Site; (5) enter into any agreements on behalf of the County with any third party; and/or (6) execute, assign, or consent/approve an amendment to any existing third-party contracts relating to the Site except as permitted under Sections 4.03 and 4.04.

## **ARTICLE 5**

### **REPAIR, MAINTENANCE AND REPLACEMENTS**

5.01 Maintenance and Repairs of the Site. IPC shall undertake, make or cause to be made, and pay for, all upkeep, Maintenance and Repairs (including preventive maintenance) of the entire Site including the new Tennis Center Improvements, New Assets, and Existing Assets. The County shall use reasonable efforts to provide IPC with all documents and records that the County has in its possession relating to warranties, repairs, and maintenance of the Existing Assets.

(a) Janitorial and Cleaning Services. IPC shall, at its sole cost and expense, provide for janitorial and cleaning services within the Site, so that the Site, all facilities within the Site, and all furnishings, fixtures and equipment at the Site are clean and orderly at all times. If the Site and all therein is not kept clean and orderly at all times, the County will provide notice to IPC of corrective action needed. Failure by IPC to take any corrective action in a reasonable time frame shall permit the County, upon notice to IPC, to cause the same to be cleaned and IPC shall be responsible for reimbursing the County for its cost of cleaning, which costs shall be reasonable under County standards.

(b) Litter and Trash. IPC shall provide litter and trash removal service, and shall provide and maintain trash receptacles throughout the Site. IPC shall reasonably maintain the Site free of litter, trash and debris. During the Tournament Periods, as well as during all other times during the Term, IPC will be responsible for pickup and removal of litter, trash and debris from the Site.

(c) Landscaping. IPC shall provide routine landscape maintenance services, such as trimming, fertilization, and irrigation sufficient to maintain the Site in a first-class condition. Replacement, renovation or redesign of plant materials, landscape features or hardscaping, or removal of diseased trees and plants shall be the responsibility of IPC.

(d) Hazardous Materials. IPC shall promptly notify the County of the presence of any hazardous materials found at the Site which come to IPC's actual knowledge, and assist the County and/or any of the County's environmental consultants in monitoring the environmental condition of the Site and in conducting any environmental testing which the County may desire to conduct. Unless the condition was exacerbated, disturbed, and/or caused by IPC through negligence, misconduct, or reckless acts or omissions in discharging its duties under this Management Addendum, any remediation shall be the sole responsibility of the County. To the extent that any hazardous materials or environmental condition was exacerbated, disturbed and/or caused by IPC (not while acting in its capacity under this Management Addendum), then the remediation and mitigation and costs associated therewith shall be the sole responsibility of IPC as set forth in the Development Agreement.



(e) Utilities. IPC shall not place an unacceptable load or burden on the capacity of the applicable building systems and utility lines of the Site, as determined by either the utility providing such service or the County, in the exercise of its reasonable judgment. IPC shall pay for all utility charges incurred in the operation of the Site including, without limitation, water, electricity, gas, telephone, waste collection and sewage services, all of which shall be at IPC's sole cost and expense.

(f) Furniture, Fixtures, and Equipment Installed by IPC. IPC, with the County's prior reasonable approval, shall furnish, install, and maintain all furnishings, fixtures, and equipment necessary for the operation and management of a world-class tennis complex, open and used by the general public. All furnishings, fixtures and equipment shall be of the same or higher quality than that found at similar facilities.

(g) Delinquent Firms. IPC shall not enter into Service Contracts with entities, or allow any entities to provide any services whatsoever at the Site, that are delinquent or in arrears in their financial obligations with the County and/or that are debarred from doing work for the County as set forth in the County's debarment and delinquent contractors' list (which is available at <http://www.miamidade.gov/business/small-business.asp>).

(h) Inspections. IPC shall inspect the Site on a regular basis and provide written reports to the County, as required under Section 3.02 of this Management Addendum, regarding the condition of the Site. IPC shall promptly provide written notice of any material problems with the physical condition of the Site, including the necessity of replacement by the County pursuant to Section 5.02(b) of this Management Addendum. Annually, on a mutually acceptable date, a representative from IPC and the County, along with any other individuals deemed necessary by either party, shall perform a joint, thorough walk-through and inspection of the Site and all components and facilities therein to assess the adequacy of the upkeep, repairs and maintenance being performed by IPC at the Site. To the extent that any deficiencies exist, the County shall provide written notice to IPC of all such deficiencies within twenty (20) days of the completion of the inspection and walk-through and IPC shall immediately commence corrective action and/or respond to the County's written notice of deficiency explaining why such corrective action is not needed. Notwithstanding the foregoing, if IPC fails to timely and/or adequately undertake corrective action, the County shall do so after ten (10) days' written notice to IPC of its intent to commence the corrective action and IPC shall reimburse the County for its cost and expense associated with such corrective action, but such cost and expense shall be reasonable under current County standards.

(i) Warranties. On behalf of the County and with the County Representative's prior consultation in each instance, IPC shall seek to enforce warranties in effect from time to time that may relate to the Site improvements, fixtures and equipment.

#### 5.02 Capital Improvements.

(a) By IPC. IPC shall be responsible, at its sole expense, for the replacement, when necessary, of New Assets. The determination of the necessity of the replacement of a New Asset shall be made jointly by the County and IPC, in the exercise of their reasonable discretion. Notwithstanding the foregoing, IPC shall be permitted to make Emergency Capital Repairs to both New Assets and Existing Assets without the prior consent of the County and, to the extent that the

Emergency Capital Repair was for an Existing Asset, the County shall reimburse IPC for the reasonable cost of it undertaking the Emergency Capital Repair of the Existing Asset. Further, IPC shall be responsible at its sole cost and expense, for the replacement of damaged or diseased trees, landscape materials and hardscaping, whether existing at the time of this Agreement or thereafter installed.

(b) By the County. The County, at its sole expense, shall be responsible for the replacement of all Existing Assets as set forth in Schedule 2. The County shall not be required to replace an Existing Asset unless the cost of repairing said Existing Asset exceeds fifty percent (50%) of its replacement value. However, the County may elect to repair an Existing Asset even if the repair cost exceeds fifty percent (50%) if such repair is mutually agreed upon by IPC and the County at the time the repair is needed. When replacing an Existing Asset under this sub-paragraph, the County's monetary obligation shall be limited to the cost of replacing the Existing Asset with an asset identical (or, a similar asset, if the Existing Asset is no longer available for purchase) in all respects (e.g., quality, make/model, and capacity). If the County is required to replace an Existing Asset under this sub-paragraph, and the County's monetary obligation under the preceding sentence is not sufficient to purchase and install the asset that IPC desires to incorporate into the Site, then the County shall have the right, but not the obligation, to tender its monetary obligation to IPC, and IPC shall apply that amount towards the purchase of the replacement asset.

5.03 Capital Improvement and Repairs Reserve Fund (Reserve Fund). Upon the Commencement Date, the Capital Improvement and Repairs Reserve Fund shall be established as a segregated and interest bearing account with a qualified trustee selected by the County (the reasonable costs and fees of the qualified trustee to be borne by IPC) to oversee the terms of a trust, escrow, or similar agreement, which agreement shall include, among other things, disbursement procedures and the requirement that IPC's contributions to the Reserve Fund not be commingled with the County's contributions to the Reserve Fund. All earnings and profits from the investment of the Capital Improvement and Repairs Reserve Fund shall be for the account of the Capital Improvement and Repairs Reserve Fund. The Capital Improvement and Repairs Reserve Fund shall be designed to protect the County's ownership of the Site.

To meet its obligations under this Addendum, IPC, beginning the first year following the substantial completion of the first New Asset, shall deposit \$100,000 from its Gross Revenues and again annually for four (4) additional years thereafter, into the Reserve Fund to pay for its responsibilities under Section 5.02(a) of this Management Addendum. IPC's obligation to contribute to the Reserve Fund beyond the first five years shall only be to ensure that it maintains throughout the Term a minimum \$500,000 balance. Irrespective of its balance in the Reserve Fund, IPC is responsible, at its sole expense, for the replacement of New Assets, as defined in the Agreement. Within thirty (30) days of the end of the Term, the Parties shall jointly inspect the Site to identify any of IPC's pending obligations under Section 5.02(a) of this Management Addendum. Any such pending obligations shall be paid from IPC's contribution to the Reserve Fund, and the balance of IPC's contribution to the Reserve Fund remaining after fulfillment of those obligations shall be distributed to IPC. Any interest accrued on IPC's contribution to the Reserve Fund shall be paid to IPC.

To secure any obligations due under Section 5.02(b) of this Management Addendum, the County shall deposit \$1,000,000 within thirty (30) days of the commencement of this Management Addendum and annually thereafter for thirteen (13) additional years. The County, however, shall

270

not be required to deposit more than \$14,000,000 into the Reserve Fund, which amount represents the estimated replacement cost of all Existing Assets and, therefore, the County's maximum liability under Section 5.02(b).

Before disbursing any funds maintained in the Reserve Fund, the qualified trustee shall be required to obtain the County's written consent which consent shall not be unreasonably withheld, delayed or conditioned. Upon the end of the Term, any funds remaining in the Reserve Fund (other than funds deposited by IPC and interest earned on IPC's contribution to the Reserve Fund) shall be distributed to the County to be used by the County within Crandon Park.

5.04 IPC's Performance of Capital Improvements. Any capital improvement work undertaken by IPC under Article 5 of this Management Addendum shall be undertaken in accordance with Applicable Law, including competitive bidding, under Fla. Stat. § 255.20.

## **ARTICLE 6**

### **FINANCIAL TERMS**

6.01 Payment of Percentage of Non-Tournament Gross Revenues. IPC shall be required to pay the County ten percent (10%) of all Non-Tournament Gross Revenues. IPC's payment to the County shall be due together with the Certification of Receipts provided under Section 6.01(a) of this Management Addendum.

(a) IPC's Certification of Receipts. During the Term of this Management Addendum, IPC shall submit to the County on or before the tenth (10th) Business Day following the end of each quarterly and on or before the tenth (10th) Business Day following the expiration or earlier termination of this Management Addendum, a written statement, signed by IPC and certified by it to be true and correct, showing the amount of Non-Tournament Gross Revenues during the preceding month. IPC shall submit to the County on or before the sixtieth (60th) day following the end of each calendar year an annual written statement, signed by a financial officer of IPC and certified by IPC to be true and correct, setting forth the amount of Non-Tournament Gross Revenue during the preceding year. The statement referred to in this sub-paragraph shall be in such form and style and contain such details and breakdowns as the County may reasonably require.

6.02 County's Right to Audit and Inspect. The County, its auditors, or designee(s) shall have the right, once a year, at any time during the Term (excluding the Tournament Period) to enter into any locations which IPC may use in connection with its operations pursuant to this Management Addendum in accordance with Generally Accepted Auditing Standards, Government Auditing Standards and Professional Internal Auditing Standards to audit, check, inspect and review all records pertaining to the Non-Tournament operations for purposes of determining compliance with this Management Addendum, including but not limited to, the books of account, financial reports, contracts, operating statements, sales tax returns and working papers and records relating to this Management Addendum. At least thirty (30) days prior written notice shall be provided to IPC before the County physically enters any location to conduct an audit, and during the conduct of such audit, the County shall not unreasonably interfere with the conduct of IPC's operations. The County shall not conduct audit operations during the Tournament Periods. Notwithstanding the foregoing, the County, its auditors or designee(s) shall have the right during the Tournament Period or Non-Tournament Period to enter any location which IPC may use in connection with its operations pursuant to this Agreement in order to observe and inspect the operations. The County shall

endeavor to perform such audit on a yearly basis, and except as noted below, the period for audit may never exceed three (3) years. If during any audit, a discrepancy is noted that may effect any unaudited years within a five (5) year audit period, then only for the discrepancy noted, the County shall have the right to audit those unaudited years. Notwithstanding the foregoing, in the event that the County is unable or fails to perform an audit in any given year, that shall not mean that the County has waived its rights to audit that year nor that the County has waived any claims it may have for non-compliance with this Management Addendum for such year.

If, as a result of such audit, it is established that the percentage fees for any period examined have been underpaid to the County, IPC shall forthwith pay the difference to the Department, together with interest thereon at the prevailing rate from the date such amount or amounts should have been paid.

6.03 Records and Reports. IPC shall maintain, at a location within Miami-Dade County or in an electronic format immediately accessible by the County, complete and accurate books and records of all receipts, disbursements, Affiliate contracts, Service Contracts, and third-party contracts regarding its non-Tournament operations in a form consistent with generally accepted accounting principles for a minimum of five (5) years. IPC shall maintain any and all records that would normally be examined by an independent certified public accountant in performing an examination of IPC's Gross Revenues in accordance with generally accepted auditing standards and the provisions of this Management Addendum. IPC shall maintain any and all records that would normally be examined in assessing compliance with terms of this Management Addendum in accordance with generally accepted auditing standards, Government Auditing Standards, and/or professional internal auditing standards.

6.04 Discrepancies. If any such audit under Section 6.01(b) reveals any underpayment to the County equal to or greater than five percent (5%) of the amount tendered by IPC in connection with its payment under Section 6.01, then IPC shall pay the amount of the underpayment, plus interest, and the County's reasonable costs and expenses in connection with its audit. If IPC intentionally or willfully or as the result of gross negligence fails to maintain its books and records in a reasonable business manner such that IPC's books and records are deemed inauditable under prevailing auditing standards and practices, then IPC agrees that it shall reimburse the County for the County's reasonable costs and expenses in connection with its audit and pay an amount equal to the one hundred fifty percent (150%) of the payment due in the preceding year under Section 6.01 of this Management Addendum, which amount the parties acknowledge is an effort to quantify an amount that is not readily ascertainable and which amount is expressly not a penalty. IPC agrees to give the County a copy of any audits of IPC conducted by third parties in respect of payments due under Section 6.01 of this Management Addendum.

6.05 Management Fee. In consideration of IPC undertaking all of the County's former obligations associated with the Tournament, and in consideration of IPC's assumption of the duties and responsibilities under this Management Addendum, including IPC's obligation to operate the Site as a first-class public park year round and be solely responsible for all Maintenance and Repairs, IPC shall receive an annual fee in an amount equal to \$1,787,000 (the "Management Fee").

6.06 Management Fee; When Due. At the commencement of each quarter (the quarters shall be October 1-December 31; January 1-March 31; April 1-June 30; and August 1-September 31), IPC shall invoice the County for the prorated amount of the Management Fee due for IPC's

services under this Management Addendum for the immediately preceding quarter. The County shall remit payment of the amount of the Management Fee due within forty-five (45) days of the County's receipt of the invoice. If the Term ends or the Agreement is terminated before the expiration of the then-current quarter, then the County shall pay the final installment of the Management Fee, prorated for the number of days within the then-current quarter, within forty-five (5) Business Days after the end of the County's receipt of the invoice for the final quarter (or any part thereof).

**ARTICLE 7**  
**INCORPORATION OF MISCELLANEOUS TERMS**

The Parties hereby incorporate by reference Articles 12-20 of the Agreement as if fully set forth herein, including the alternative dispute resolution mechanism contained therein.

## Schedule 1 – Operating Hours and Pricing

### Hours of Operation:

Except during the Tournament Play Period, the Site shall be open to the public every day of the week, including holidays. During those times, the Site shall be open to the public as follows:

Monday through Friday – 8 a.m. to 10 p.m.  
Weekends and County Holidays – 8 a.m. to 7 p.m.

### Services and Fees

Except during the Tournament Play Period, the following fees shall be in effect at the Tennis Center:

Tennis Center at Crandon Park	Current Fee
<b>Crandon Park Tennis Community Center/Plus adjacent patio:</b>	
Minimum fee/1 hour use (Plus Tax)	\$158.00
Additional half-hour (Plus Tax)	\$90.00
Cancellation fee (non-taxable)	\$26.00
<b>Tournament Special</b> – with 50+ hours of court rental, the use of clubhouse is included for free	
<b>Clay Court Rental:</b>	
Adults/Per hour/Per person	\$6.54
Youth/Per hour/Per person (17 yrs. old & under)	\$2.80
Night/Per hour/Per person	\$8.41
<b>Hard Court Rental:</b>	
Day/Adults/Per hour/Per person	\$3.73
Day/Youth/Per hour/Per person (17 yrs. old & under)	\$2.80
Night/Adults/Per hour/Per person	\$5.61
Night/Youth/Per hour/Per person (17 yrs. old & under)	\$3.74
<b>Grass Court:</b>	
Adult/Per hour/Per person	\$10.28
Youth/Per hour/Per person (17 yrs. old & under)	\$6.54
<b>Stadium:</b>	
Adults /Per hour/Per person	\$12.15
Youth/Per hour/Per person (17 yrs. old & under)	\$9.35
Night/Adults/Per hour/Per person	\$20.56
Night/Youth/Per hour/Per person (17 yrs. old & under)	\$16.82
League and Tournaments/Per hour	\$32.71
League and Tournaments/Per hour	\$41.12
<b>Senior Rate:</b> (any surface) Day-Monday-Friday 8:00am -3:00pm per person/per hour	\$3.00
<b>Tournament/League Rates:</b>	
Adult Grass Tournament per person/per hour	\$5.00

<b>Tennis Center at Crandon Park</b>	<b>Current Fee</b>
Junior tournament rate, minimum 24 people, per hr/per person	\$0.93
Adult tournament rate, minimum 24 people, per hr/per person	\$1.86
Hard Court League rate, Day minimum 24 people, per hr/per Person	\$2.37
Hard Court League rate, Night minimum 24 people, per hr/per Person	\$2.80
Clay Court League rate, Day minimum 24 people, per hr/per Person	\$2.80

275

## Schedule 2 – Existing Assets

### List of Existing Assets:

1. Stadium structural assets:
  - Expansion joints
  
2. Stadium Mechanical, Electrical and Plumbing (MEP) assets:
  - Sewer Pump (Lift) Station including motors, pipes fitting and valves
  - Life Safety systems: Fire Protection, Fire Alarm
  - Mechanical: Heating Ventilating and Air Conditioning distribution systems including cooling tower and pumps
  - Conveying Systems: Freight and Passenger Elevators
  - Electrical Systems: Emergency Generator, switchgear



ATTACHMENT C  
LEASE AGREEMENT

## LEASE AGREEMENT

This Lease Agreement is made on the \_\_\_ day of \_\_\_\_\_, 201\_\_\_, by and between Miami-Dade County, a political subdivision of the State of Florida (the "Landlord"), and the International Players Championship, Inc., a Florida corporation (the "Tenant").

### Recitals

**WHEREAS**, the County owns a tennis stadium at the Crandon Park Tennis Center adjacent to Key Biscayne, Florida, which tennis stadium includes unused space suitable for use as an office; and

**WHEREAS**, for more than twenty years, IPC has operated a major tennis tournament from the Crandon Park Tennis Center, which has showcased Miami-Dade County to a worldwide audience, provided a major boost to tourism, increased public awareness of Crandon Park, and provided financial support for Crandon Park; and

**WHEREAS**, IPC desires to extend its production of the tennis tournament (known today as the "Sony Open Tournament") on the terms and conditions set forth in the separate Amended and Restated Tournament Agreement; and

**WHEREAS**, on November 6, 2012, more than two-thirds of County voters, in a referendum conducted pursuant to Article 7 of the Miami-Dade County Home Rule Charter, authorized the County and IPC to enter into a lease agreement for IPC's year-round use of office space within the stadium to be used solely for the purpose of promoting and operating the Sony Open in accordance with the Tournament Agreement, and which lease would be at market rates, for a term of at least a year, and renewable for such term and at such conditions as determined by the County Commission in its sole and absolute discretion.

**NOW, THEREFORE**, the Landlord, for and in consideration of the restrictions and covenants contained in this Agreement, hereby leases to Tenant, and Tenant hereby agrees to lease from Landlord, the Demised Premises, as that term is defined in this Agreement, on the terms and conditions set forth in this Lease Agreement. To the extent a capitalized term is not defined in this Lease Agreement, that term shall have the definition accorded under the Amended and Restated Tournament Agreement.

### **ARTICLE 1** **THE DEMISED PREMISES**

1.01 Demised Premises. The Demised Premises consists of the real property described in Attachments Nos. 1-3 of this Agreement, comprising approximately 6,347 square feet in the Crandon Park Tennis Stadium, which is located at 7300 Crandon Boulevard, Key Biscayne, Florida 33149.

1.02 Term. This Lease Agreement shall commence on the first day of the next calendar month following the execution of this Lease Agreement by the County Mayor and run for a term of one (1) year (the "Initial Term"). Provided that Tenant is not in default beyond any applicable grace period, of this Lease Agreement, that certain Development Agreement between the parties dated [ ], and/or that certain Amended and Restated Tournament Agreement between the parties dated [ ], during or at the conclusion of the Initial Term or any Renewal Term, then Tenant shall have

the option to renew this Lease Agreement for twenty-nine (29) additional one-year periods (the "Renewal Term(s)"). However, if IPC exercises the First or Second Renewal Options (as those terms are defined in the Amended and Restated Tournament Agreement), then IPC shall be entitled to an additional ten one-year renewal options if the First Renewal Option is exercised and an additional ten one-year renewal options if the Second Renewal Option is exercised all on the same terms and conditions set forth in this Lease Agreement. Unless Tenant gives affirmative written notice to the County that it does not desire to renew this Lease Agreement at least three (3) months in advance of the expiration of the Initial Term or Renewal Term(s), then this Lease Agreement shall automatically renew for another one-year Renewal Term.

1.03 Rent Due to Landlord During Initial and Renewal Term(s). During the Initial Term, the annual rent due from Tenant to the Landlord shall be of ninety thousand four hundred and forty-four Dollars and 75/100 (\$90,444.75), payable in quarterly payments to the Parks, Recreation and Open Spaces Department, 275 Northwest 2nd Street, Suite 500, Miami, Florida 33128, or at such other place and to such other person as Landlord may from time to time designate in writing. The annual rental to be paid by Tenant for each Renewal Term(s) shall be market rates, not to exceed five percent (5%) of the rent due in the preceding term, but in no event shall such annual rent be less than \$90,444.75. Landlord and Tenant acknowledge that the fair market rate for the property is substantially below the market rate for Class A office space in the Village of Key Biscayne.

1.04 Permitted Use of the Demised Premises. Tenant shall be permitted to use the Demised Premises solely for the purpose of promoting and operating the Tournament, as that term is defined in the Amended and Restated Tournament Agreement.

1.05 Condition of the Demised Premises. Tenant hereby accepts the Demised Premises in the condition it is in at the beginning of this Lease Agreement. Upon expiration of this Lease Agreement any permanent fixtures and improvements to the Demised Premises will become the property of the Landlord. Tenant agrees to surrender to Landlord, at the end of the Initial Term of this Lease Agreement or any Renewal Term(s), if applicable, the Demised Premises in the same condition as said Demised Premises were at the beginning of the Initial Term with ordinary wear and tear, casualty or other acts of God excepted.

**ARTICLE 2**  
**MAINTENANCE, ALTERATIONS, AND UTILITIES**

2.01 Maintenance and Repair. Tenant agrees to maintain and keep the Demised Premises in good repair, condition, and appearance, during the Initial Term of this Lease Agreement or any Renewal Term(s). Tenant shall be responsible for and shall repair any damage caused to the Demised Premises and any surrounding or adjacent structures as a result of the negligence or willful acts or omissions of Tenant or Tenant's agents, employees, invitees, or visitors, ordinary wear and tear excepted. Landlord shall notify Tenant after discovering any damage which Tenant is responsible for repairing and Tenant shall make the necessary repairs promptly after said notice.

2.02 Alterations to Demised Premises. Except for any work permitted under the Development Agreement, Tenant may only make any alterations, additions, or improvements in or to the Demised Premises without the written consent of Landlord that are (a) non-structural and do not impact the structural integrity of the Demised Premises; (b) in compliance with Applicable Law; and (c) compatible with the Tennis Center and its mechanical, electrical, heating, ventilating, air-conditioning and life-safety systems ("Building Systems"). All additions, fixtures, or improvements which are not readily removable without injury to the Demised Premises shall be and remain a part

of the Demised Premises at the expiration of this Lease Agreement. In case of damage, the area of removal shall be repaired and brought back to its original condition (ordinary wear and tear excepted) at Tenant's sole expense.

Tenant will not permit any mechanic's liens or other liens or lis pendens to be placed upon the Demised Premises or the Tennis Center as a result of any materials, services, or labor ordered by or provided to Tenant or any of Tenant's agents, officers, or employees. Tenant shall immediately pay or bond over any judgment or decree rendered against Tenant, with all proper costs and charges, and shall cause any such lien or lis pendens to be released off record without cost to Landlord. In order to comply with the provisions of Section 713.10, Florida Statutes, it is specifically provided that neither Tenant nor anyone claiming by, through, or under Tenant, including but not limited to, contractors, subcontractors, materialmen, merchants, and laborers, shall permit any mechanic's lien or other liens to be placed upon the Demised Premises or the Tennis Center. All parties with whom Tenant may deal are put on notice that Tenant has no power to subject the Landlord's interest to any claim or lien of any kind or character, and all such persons so dealing with Tenant must look solely to the credit of Tenant, and not to the Landlord's interests or assets.

2.03 Utilities. The Tenant, during the Initial and Renewal Term(s), shall pay and be responsible for all charges for water, electricity, cable, sewage, custodial, landscaping, maintenance, and janitorial services used by Tenant in connection with the Demised Premises. Tenant shall be responsible for cable, telephone and data equipment, installation, maintenance and any costs associated with phones and data service, installation and equipment.

**ARTICLE 3**  
**TERMINATION OF LEASE**

3.01 Termination by Landlord. The County shall have the right to terminate this Lease Agreement, if Tenant violates or fails to perform any of the conditions, covenants, or agreements herein to be performed by Tenant, including but not limited to: (a) the failure to pay any installment of rent when due and the continuance of such failure for more than thirty (30) business days following written notice thereof from Landlord to Tenant; (b) the use or occupancy of the Demised Premises for any purpose not permitted hereunder without Landlord's consent and Tenant's failure to cure such use or occupancy within twenty days after receipt of notice thereof by Landlord to Tenant; (c) if any voluntary or involuntary petition in bankruptcy or for corporate reorganization or any similar relief shall be filed by or against Tenant or if a receiver shall be appointed for Tenant or any of the property of Tenant; (d) if Tenant shall make an assignment for the benefit of creditors or if Tenant shall admit in writing its inability to meet Tenant's debts as they mature; (e) if any insurance required to be maintained by Tenant pursuant to this Lease Agreement shall be cancelled or terminated or shall expire or shall be reduced or materially and adversely changed, except, in each case, as permitted in this Lease Agreement, or agreed to in writing, mutually, by the Parties and Tenant's failure to cure such use insurance deficiency within twenty days after receipt of notice thereof by Landlord to Tenant; (f) if Tenant dissolves, or liquidates, or Tenant fails to exist in good standing in Florida and/or its state of organization without curing such condition within twenty days after receipt of notice thereof by Landlord to Tenant; or (g) the failure to observe or perform any of the other covenants or conditions in this Lease Agreement which Tenant is required to observe and perform and which Tenant has not corrected within twenty (20) days after written notice thereof to Landlord to Tenant, provided that, if the default cannot be cured within twenty (20) days after receipt of written notice, then the County shall allow Tenant a reasonable time (the reasonableness of the time allowed to be determined from the nature of the default to be cured) to cure the default.

3.02 No Waiver. No waiver of any provision of this Lease Agreement shall be implied by any failure of Landlord or Tenant to enforce any remedy on account of the violation of such provision, even if such violation be continued or repeated subsequently, and no express waiver by Landlord or Tenant shall be valid unless in writing and shall not affect any provision other than the one specified in such written waiver and that provision only for the time and in the manner specifically stated in the waiver.

3.03 Automatic Termination. This Lease Agreement shall terminate upon written notice from either Party to the other Party if a court of competent jurisdiction has issued a final and unappealable order that: (a) invalidates this Lease Agreement; (b) determines that the Project (as such term is defined in the Development Agreement), in whole or in part, cannot be constructed, operated or managed pursuant to the terms of the Development Agreement or the Amended and Restated Tournament Agreement; and/or (C) determines that the referendum approval per Resolution No. R-660-12 was not properly obtained.

3.04 Cross Termination. This Lease Agreement shall terminate if either the Amended and Restated Tournament Agreement (or its Management Addendum) or the Development Agreement are terminated. However, termination of this Lease Agreement (for default or otherwise) shall not result in termination of the Amended and Restated Tournament Agreement or the Development Agreement (or its Management Addendum).

3.05 Termination Upon Destruction of the Demised Premises. If the Demised Premises are destroyed or so damaged by fire, windstorm, or other casualty that the Demised Premises are rendered untenable or unfit for the purpose of Tenant, either Party may cancel this Lease Agreement by the giving of thirty (30) days' prior written notice to the other. If the Demised Premises are partially damaged due to Tenant's negligence, but not rendered unusable for the purposes of this Lease Agreement, the same shall with due diligence be repaired by Tenant at its own cost and expense. If the damage shall be so extensive as to render such Demised Premises unusable for the purposes intended, but capable of being repaired within thirty (30) days or such longer period as reasonable under the circumstances of the damage, the damage shall be repaired with due diligence by Tenant from the proceeds of the insurance coverage policy and/or at its own cost and expense. If said Demised Premises are completely destroyed solely due to Tenant's gross negligence, Tenant shall repair and reconstruct the Demised Premises so that they equal the condition of the Demised Premises on the date possession was given to Tenant. Instead of reconstructing, Tenant may reimburse Landlord all expenses incurred by Landlord in restoring the Demised Premises to their original condition. The election of remedies shall be at the sole discretion of Landlord.

#### **ARTICLE 4**

#### **INSURANCE AND INDEMNIFICATION**

4.01 Insurance. Prior to occupancy, Tenant shall furnish to the Internal Services Department, c/o, Real Estate Development Division of Miami-Dade County, 111 N.W. First Street, Suite 2460, Miami, Florida 33128-1907, with a copy to the Miami-Dade Parks, Recreation and Open Spaces Department, certificate(s) of insurance which indicate(s) that insurance coverage has been obtained meeting the requirements outlined below:

- A. Commercial General Liability Insurance, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-**

**Dade County must be shown as an additional insured with respect to this coverage.**

- B. Automobile Liability Insurance, covering all owned, non-owned, and hired vehicles used in connection with the Lease Agreement in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage.
- C. Workers Compensation Insurance as required by Chapter 440, Florida Statutes.

The insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength:

The Company must be rated no less than "A-" as to management, and no less than "Class V" as to financial strength, by A. M. Best Company, Oldwick, New Jersey, or its equivalent subject to the approval of the County Risk Management Division.

Compliance with the foregoing requirements shall not relieve tenant of its liability and obligations under this Section or under any indemnification and hold harmless provisions, or any other portion of this Lease Agreement.

Tenant shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in full force for the duration of this Lease Agreement. If insurance certificates are scheduled to expire during the term of the Lease Agreement, tenant shall be responsible for submitting new or renewed insurance certificates to the Landlord prior to expiration.

4.02 Indemnification and Hold Harmless. Tenant shall indemnify and hold harmless the Landlord and its officers, employees, agents and instrumentalities from any and all liability, losses, or damages, including reasonable attorneys' fees and costs of defense, which the Landlord or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the non-performance of the Lease Agreement by the Tenant or its employees, agents, servants, partners, principals or subcontractors. Tenant shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the Landlord, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Lease Agreement or otherwise provided by Tenant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Landlord or its officers, employees, agents and instrumentalities as herein provided.

## **ARTICLE 5**

### **Liability for Damage or Injury**

5.01 Liability for Personal Injury. Landlord shall not be liable for any damage or injury which may be sustained by any party or person on the Demised Premises other than the damage or injury caused by the negligence of Landlord, its officers, employees, agents, or instrumentalities, subject to all limitations of Florida Statutes, Section 768.28.

5.02 Liability for Damage to Personal Property. All personal property placed or moved in the Demised Premises shall be at the risk of Tenant or the owner of the personal

property. Landlord shall not be liable to Tenant or any third party for any damage to said personal property unless caused by the negligence of Landlord, Landlord's agents or employees, subject to all limitations of Florida Statutes, Section 768.28.

## **ARTICLE 6**

### **MISCELLANEOUS**

6.01 No Assignment Permitted. Tenant shall not sublet, transfer, mortgage, pledge, or dispose of this Lease Agreement or the term(s) hereof without Landlord's consent except that Tenant may assign this Lease Agreement in connection with a permitted assignment or transfer of the Amended and Restated Tournament Agreement pursuant to Section 16.02 thereof, but not otherwise. This paragraph, however, shall not prohibit Tenant from granting licenses to third-parties (e.g., caterers for the use of kitchen facilities), which licenses shall not extend beyond the Initial Term or each Renewal Term, and which licenses shall not convey any interest in real property.

6.02 Compliance Excused During Force Majeure. Tenant and Landlord shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of the Lease Agreement when prevented from so doing by Force Majeure.

6.03 No Waiver. If Landlord or Tenant shall institute proceedings arising out of this Lease Agreement and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained or of any of Landlord's or Tenant's rights hereunder, unless expressly stated in such settlement agreement. No waiver by Landlord or Tenant of any provision hereof shall be deemed to have been made unless expressed in writing and signed by both parties. No waiver by Landlord or Tenant of any breach of covenant, condition, or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No payment by Tenant or receipt by Landlord of lesser amount than the monthly installments of rent (or additional rent obligations stipulated) shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent or any other amounts to Landlord be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to or waiver of Landlord's right to recover the balance of such rent or other amount owed or to pursue any other remedy provided in this Lease Agreement. No reentry by Landlord and no acceptance by Landlord of keys from Tenant shall be considered an acceptance of a surrender of this Lease Agreement.

6.04 Landlord's Right of Entry. Upon reasonable notice, Landlord or any of its agents shall have the right to enter the Demised Premises during working hours to examine the Demised Premises for any reason including, but not limited to, for the removal of placards, signs, fixtures, alterations, or additions that do not conform to this Lease Agreement or Applicable Law, as applicable.

6.05 Tenant's Right of Peaceful Possession. Subject to the terms, conditions, and covenants of this Lease Agreement, Landlord agrees that Tenant shall and may peaceably have, hold, and enjoy the Demised Premises above described, without hindrance or molestation by Landlord or anyone claiming by or through Landlord.

6.06 Permits and Regulations. Tenant covenants and agrees that during the term of this Lease Agreement, Tenant will obtain all necessary permits and approvals and that all uses of the

Demised Premises will be in conformance with all applicable laws, including all applicable zoning regulations. Any and all charges, taxes, or assessments levied against the Demised Premises not paid pursuant to the Management Addendum of the Amended and Restated Tournament Agreement shall be paid by Tenant, and Tenant's failure to do so without curing such failure upon twenty (20) days' written notice from Landlord to Tenant will constitute a breach of this Lease Agreement.

6.07 Adequacy of Money Damages. The Parties agree and acknowledge that this Lease Agreement shall not be enforceable by extraordinary remedy (e.g., remedy of injunction or specific performance) against either Party and that, for any breach of this Lease Agreement, monetary damages are an adequate remedy.

6.08 Notices. Notices of communications required under this Lease Agreement may be sent by any commercially reasonable method and addressed as follows:

If to Landlord:

Office of the Director  
Miami-Dade County Parks, Recreation and Open  
Spaces Department  
275 Northwest 2nd Street, 5th Floor  
Miami, Florida 33128

If to Tenant:

International Players Championship, Inc.  
1360 E. 9<sup>th</sup> Street, Suite 100  
Cleveland, Ohio 44114  
Attention: John Raleigh

With a copy to:

International Players Championship, Inc.  
1500 Douglas Road, Suite 230  
Coral Gables, Florida 33134  
Attention: Adam Barrett

With a copy to:

The County Attorney  
Miami-Dade County Attorney's Office  
111 Northwest 1st Street, Suite 2800  
Miami, Florida 33128

With a copy to:

Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
Attn.: Richard E. Schatz, Esquire

6.09 Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County's public health unit.

6.10 Discrimination Prohibited. The Board of County Commissioners declared and established as a matter of policy by Resolution No. 9601 dated March 24, 1964, that there shall be no discrimination based on race, color, creed, or national origin and Resolution No. 85-92 dated January 21, 1992, that there shall be no discrimination on the basis of disability in connection with any County property or facilities operated or maintained under lease agreement, license, or other agreement from the County or its agencies. Tenant agrees to comply with the intention of Resolution No. 9601 dated March 24, 1964 and Resolution



No. 85-92 dated January 21, 1992, involving the use, operation, and maintenance of the property and facilities included in this Lease Agreement.

6.11 Background Screening of All Employees and Contractors. In accordance with the Shannon Melendi Act, Miami-Dade County Ordinance No. 08-07 (as it may be amended from time to time), all of Landlord's employees, personnel, volunteers, contractors, consultants and any other entity or persons that will provide any services or perform any work on the Site must comply with the Shannon Melendi Act before the scheduled start of such employment, volunteerism, or work.

6.12 Crandon Park Master Plan. The County and IPC acknowledge and agree that this Lease Agreement is subject to and governed by, the provisions of the Crandon Park Master Plan and the Declaration of Restrictions implementing such plan ("CPMP"), as such plan may be amended from time to time, and that all development and construction performed by IPC shall be in full conformance with the requirements and provisions of the CPMP. To the extent any term or provision of this Lease Agreement conflicts with a term or provision of the CPMP, the CPMP shall prevail. To the extent that there is a conflict between this Lease Agreement and Resolution No. R-660-12, the Resolution shall prevail. Notwithstanding the foregoing, nothing in this Lease Agreement shall be deemed to limit, waive the rights of, preclude, or estop IPC from instituting a suit to challenge the validity of the 1993 Settlement Agreement, including the CPMP and the process that allows it to be amended, consistent with the decisions in *White v. Metropolitan Dade County*, 563 So. 2d 117 (Fla. 3d DCA 1990) and *Dade County v. Matheson*, 605 So. 2d 469 (Fla. 3d DCA 1992), either as to it specifically or the public generally and such right is expressly reserved by IPC. If a court of competent jurisdiction issues a final, non-appealable order in accordance with and/or consistent with the decisions in *White* and *Matheson*, which order invalidates, declares illegal, and/or voids the 1993 Settlement Agreement between the County and the Matheson family and the CPMP, then the Parties shall no longer be required to comply with the CPMP and, all references in this Lease Agreement to the Crandon Park Master Plan shall cease to be effective. In such event, the Master Plan as proposed to be amended in connection with this Lease Agreement shall be contractual provisions governing the IPC's use and operation of the Premises.

6.13 Validity of Agreement. IPC and the County acknowledge that the Premises may only be used for "public park purposes" and used and developed in accordance with the Crandon Park Master Plan and all Applicable Laws. IPC and the County agree that if a court of competent jurisdiction determines that the operation and conduct of the Tournament as contemplated in the Amended and Restated Tournament Agreement, the management by IPC of the Site as contemplated by the Management Addendum, the development of the Site by the Developer as contemplated by the Development Agreement, and/or the lease of space within the Site on a year-round basis by IPC as contemplated by this Lease Agreement is not in accordance with public park purposes, the Crandon Park Master Plan and/or all Applicable Laws, and if IPC and the County are unable to otherwise mutually agree as to any required changes necessary to make the operation and conduct of the Tournament, the management of the Site, the redevelopment of the Site, and/or the lease of space at the Site consistent with public park purposes, the Crandon Park Master Plan and/or Applicable Law, as applicable, IPC and the County shall each have the right, upon written notice to the other, to terminate this Lease Agreement. Upon such termination, neither party shall have any rights or obligations against the other. If this Lease Agreement, the Development Agreement, and/or the Amended and Restated Tournament Agreement (inclusive of the Management Addendum), are terminated pursuant to this paragraph, then the parties agree to continue performance under the Existing Tournament Agreement, as amended. However, if the term of the

Existing Tournament Agreement, as amended, has lapsed, then upon termination pursuant to this paragraph, the parties shall have no further obligation or liability to one another.

6.14 Governing Law and Dispute Resolution. This Lease Agreement, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort, or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida and venue for any action arising hereunder shall be in Miami-Dade County, Florida. Any disputes arising out of or in connection with this Lease Agreement shall be resolved in accordance with the alternative dispute resolution procedures set forth in the Amended and Restated Tournament Agreement.

6.15 Entire Agreement. This Lease Agreement sets forth the entire agreement and understanding between the Parties relating in any way to the subject matter contained in this Lease Agreement and merges all prior discussions between the Landlord and the Tenant. Neither Party shall be bound by any agreement, condition, warranty or representation other than as expressly stated in this Lease Agreement) and this Lease Agreement may not be amended or modified except by written instrument signed by both Parties.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first above written.

(CORPORATE SEAL)

INTERNATIONAL PLAYERS  
CHAMPIONSHIP, INC.

*Ester Melillo*  
Witness  
*Jay Sova*  
Witness

By: *Adam Barrett*  
Adam Barrett, President  
(Tenant)

(OFFICIAL SEAL)

ATTEST:  
HARVEY RUVIN, CLERK

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Carlos A. Gimenez  
Mayor  
(Landlord)

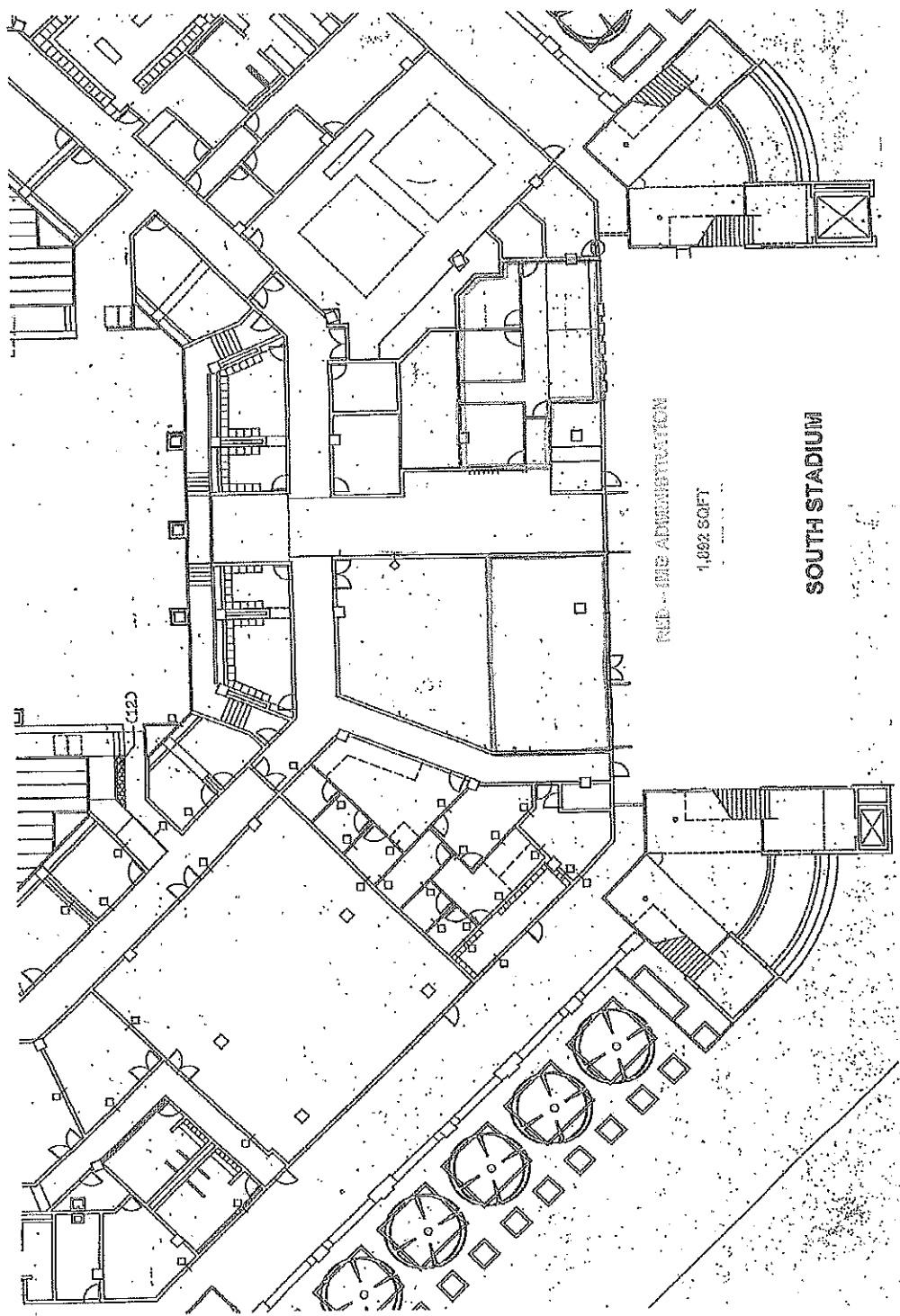
Approved by the County Attorney as  
to form and legal sufficiency\_\_\_\_\_.

**ATTACHMENT 1  
STADIUM LEASE BREAKDOWN**

<b>Area</b>	<b>Total sq ft</b>	<b>Rate per sq ft</b>	<b># of months used</b>	<b>Months Used</b>
NORTH STADIUM ADMIN	3,363	\$19/SQFT \$63,897	NINE MONTHS \$47,922.75	May -January
TICKETS	1,092	\$19/SQFT \$20,748	NINE MONTHS \$15,561.00	May-January
SOUTH STADIUM ADMIN	1,892	\$19/SQFT \$35,948	NINE MONTHS \$26,961.00	May -January
Total sq ft	6,347			
		TOTAL Rent due from IMG	<b>\$90,444.75</b>	

288

ATTACHMENT 2  
STADIUM LEASE  
SOUTH STADIUM LEASED AREA



**ATTACHMENT 3**  
**STADIUM LEASE**  
**NORTH STADIUM LEASED AREA**

