

Golf Instruction and Related Services at Country Club of Miami

Contract No. EPP-RFP807

THIS AGREEMENT made and entered into as of this 1st day of May 2012 by and between Lawrence N. Levow, an Individual, residing at 8512 Shadow Court, Coral Springs, FL 33071 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the County owns the Country Club of Miami ("the Park") located at 6801 NW 186 Street, Miami, Florida, for the recreation and entertainment of park patrons, which is administered for the County by Park, Recreation and Open Spaces or designee and,

WHEREAS, the Contractor has offered to provide golf instruction and golf related services ("the Concession") at the Park, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (EPP-RFP) No.807 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated January 20, 2012, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the Contractor's Proposal is recommended as being in the best interest of the County, and formed the basis for award of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Agreement Year" means a twelve-month period beginning on the effective date and ending twelve months thereafter.
- b) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), EPP-RFP807 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- c) The words "Contract Date" to mean the date on which this Agreement is effective.
- d) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- e) The word "Contractor" to mean Lawrence N. Levow and permitted successors and assigns.
- f) The word "Days" to mean Calendar Days.
- g) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- h) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- i) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- j) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Project.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "sub-Contractor" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's EPP-RFP807 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- e) The Contractor acknowledges that the County shall be responsible for making all policy

decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. USE:

The Contractor shall provide golf instruction and related services for the term, at the rate and upon the covenants and conditions as set forth, in this Contract. The Contractor shall not conduct any business nor provide any services nor sell any item or product without the prior written approval of the County. Any sales by the Contractor of services or items not specifically authorized in writing by the County may constitute a default. Contractor shall conduct its business at all times in accordance with this Contract. The Contractor shall use the amenities within the Park identified in Appendix A, Scope of Service, only for the provision of the golf instruction and related services and accepts such amenities in the condition they are in at the execution of this Contract.

ARTICLE 6. LIMITATIONS ON USE:

Subject to Contractor's right to use the golf course for the purposes specified in this Agreement, Contractor shall not suffer or permit the site or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements; (ii) cause structural injury to the Park or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Park; (v) materially impair or interfere with the proper and economic cleaning, of the Park or the proper and economic functioning of any other common service facility or common utility of Park; (vi) impair or interfere with the physical convenience of any of the occupants of the Park; or (vii) impair any of the Contractor's other obligations under this Agreement.

ARTICLE 7. GOVERNMENTAL APPROVALS:

If any governmental license or permit shall be required for the proper and lawful conduct of Contractor's business, or any part thereof, Contractor, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. Contractor shall at all times comply with the terms and conditions of each license and permit.

ARTICLE 8. CONTRACT TERM

The Contract shall become effective on the date indicated on the first page of this Contract and shall continue through the last day of the 60th month. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for two, two year periods. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 9. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

a) to the Project Manager:

Miami-Dade County Park, Recreation and Open Spaces
275 N.W. 2nd Street
Miami, FL 33128
Attention: Department Director
Phone: (305) 755-7800
Fax: (305) 755-7946

and,

b) to the Contract Manager:

Miami-Dade County
Internal Services Department
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Assistant Director/Procurement Management
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) To the Contractor

Lawrence N. Levow
6801 Miami Gardens Drive
Hialeah, FL 33015
Phone: (305) 829-8456x254 (561) 702-9202 cell
Fax: (305) 829-8457
e-mail: llpga@yahoo.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 10. MINIMUM MONTHLY GUARANTEE / PERCENTAGE OF MONTHLY GROSS RECEIPTS

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the Minimum Monthly Guarantee and Percentage of the Monthly Gross Receipts.

The Contractor, in consideration for the right to provide golf instruction and related services, does hereby covenant and agree to pay to the County monthly, without deduction or set off of any kind, **\$600.00** (plus tax) as the Minimum Monthly Guarantee **or** an amount equal to **10%** (plus tax) of Monthly Gross Receipts, whichever amount is greater. The Minimum Monthly Guarantee **and** Percentage of Monthly Gross Receipts shall be guaranteed for the term of the

contract. The Contractor may offer incentives such as additional payments to the County at any time during the Contract term, including any option or extension thereof.

The amount due to the County is considered taxable revenue to the County. The County will collect all of the revenue produced daily at the golf facility by the Contractor, including sales tax for those items that are taxable. The County will not collect sales tax for those items that are not taxable. The Contractor is responsible for properly reporting and paying all the sales taxes as a result of sales related to this Contract.

ARTICLE 11. REMITTANCE OF REVENUE COLLECTED:

The County shall remit to the Contractor, on or before the 10th day of each month all revenues collected for the previous month for golf instruction and related services, to include any sales taxes collected, minus the amount due the County pursuant to Article 10 above and any amounts due herein. The County will have specific cash register keys associated with the different aspects of the Contractor's services which will be utilized when inputting sales into the cash register. The Contractor will be provided a report from the County Golf Facility Pro Shop cash register showing which revenues were taxable and non-taxable.

In the event the Contractor is required to pay an additional amount to meet its obligation relevant to the Minimum Monthly Guarantee or any other amounts due herein to the County, the additional amount shall be deducted from the gross receipts produced at the golf course from the golf instruction and related services.

ARTICLE 12. SALES TAX:

The Contractor shall be liable for the prevailing State of Florida Sales and Use Tax imposed (currently at the rate of 7%) on the amounts payable to the County under this Agreement. This Sales and Use Tax shall be payable to the County, when applicable payment is due. The County will remit same, less authorized handling deductions, to the State. Said tax is applicable to Minimum Annual Guarantee and Percentage of Monthly Gross Receipts, unless otherwise determined by the State of Florida.

ARTICLE 13. WORTHLESS CHECK OR DRAFT:

In the event that the Contractor delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Contractor shall incur and pay a service charge of \$10.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment shall be made within not more than five (5) days from written notice of such default. Further, in such event, the County may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the County.

ARTICLE 14. ACCORD AND SATISFACTION:

No payment by Contractor or receipt by County of a lesser amount than any payment herein stipulated, shall be deemed to be other than amount of the earliest stipulated Minimum Monthly Guarantee or Percentage of Monthly Gross Receipts then due and payable. No endorsement, statement on any check, any letter accompanying any check or payment for Minimum Monthly Guarantee or Percentage of Monthly Gross Receipts shall be deemed an accord and satisfaction. The County may accept such check or payment without prejudice to County's right to recover the balance of such Minimum Monthly Guarantee or Percentage of Monthly Gross Receipts or pursue any other remedy provided in this Agreement, at law or in equity.

ARTICLE 15. SECURITY DEPOSIT:

Within 30 days from the execution of this Agreement, Contractor shall furnish to the County a Security Deposit in cash equal to three (3) months Minimum Monthly Guarantee redeemable at the end of the Agreement term except for such conditions pertinent thereto.

The Contractor may, in lieu of a Security Deposit with the County, provide a Performance Bond or Irrevocable Letter of Credit in the same amount. This Bond or Letter of Credit will be conditioned on the full and faithful performance of all covenants of this Agreement.

In the event that Contractor abandons performance or fails to perform as required, the County will execute on the Bond, draw upon the irrevocable letter of credit or retain the cash deposit, whichever is the case, and Contractor will be responsible for the balance of the debt, if any, that is owed. Additionally, if the County must draw upon any portion of the form of security provided, Contractor shall restore the security to its original amount within seven (7) days of receiving notice by the County that the security was drawn upon.

ARTICLE 16. GROSS RECEIPTS:

- A. a) Gross Receipts Defined: "Gross Receipts" means all receipts from the sale of services by the Contractor, and sub-Contractor(s) of Contractor, sold in, upon or from the Golf Facility, including such sales as shall in good faith be credited by Contractor, its Contractors, and sub-Contractors in the regular course of its or their business to personnel employed at the time of sale at the Golf Facility, including sub-concession agreements or contract employee payments to the Contractor and mail and telephone orders received at the Golf Facility and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Contractor or its Contractors or sub-Contractors for returned or defective merchandise; sales, excise and similar taxes; or the proceeds of sales of Contractor's trade fixtures, operating equipment or other property used by Contractor or its Contractors in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when services or merchandise has been served, shipped or delivered or when charged against the purchaser on the books of Contractor, or its Contractors, whichever of such events shall first occur.
- B. Examination of Contractor's Books and Records: Such books and records as are necessary to determine the amount of any Percentage of Monthly Gross Receipts payable to County shall be subject to examination by County or its authorized representatives at reasonable times during Contractor's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Contractor's business. All information obtained by County or its authorized representatives from Contractor's books and records shall be kept confidential by County and all such representatives except in connection with any mortgage or assignment of this Agreement for financing purposes or if subject to the requirements of Florida Public Records Act.
- C. Contractor's Receipts Records: For the purpose of computing and verifying the Percentage of Monthly Gross Receipts due hereunder, if any, Contractor shall prepare and keep, for a period of not less than three (3) years following the end of each Agreement year, adequate books and records, including but not limited to those relating to inventories and purchases, and other pertinent transactions by Contractor. County shall record at the time of sale each receipt from sales or other transactions, whether for cash or on credit, in one or more sealed cash registers having a cumulative total.

- D. Audit of Contractor's Business Affairs and Records: County shall have the right to cause, upon five (5) days written notice to Contractor, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by the Department, or the Audit and Management Services Department of the County. Contractor shall make all such records available for said examination at a mutually agreeable location. If the result of such audit shall show that Contractor's Gross Receipts for any period has been understated, Contractor shall pay County the amount due. If such understatement is three percent (3%) or more, Contractor shall pay County the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency, all of which shall be collectible hereunder as payments. A report of the findings of said accountant shall be binding and conclusive upon County and Contractor. The furnishing by Contractor of any grossly inaccurate statement shall constitute a breach of this Agreement. Any information, excluding written documents, obtained by County as a result of such audit shall be held in strict confidence by County except in any proceeding or action to collect the cost of such audit or deficiency, or except in connection with any mortgage or assignment of this Agreement for financing purposes.
- E. If Contractor fails to record, maintain, or make available sales supporting documentation as specified above, then Contractor may be deemed by the County to be in default of this Agreement.

ARTICLE 17. INDEMNIFICATION AND INSURANCE

The Contractor 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 Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor 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 County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor 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.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Procurement Management, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Commercial General Liability Insurance- on a comprehensive basis, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. Coverage must include advertising liability and products liability. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. 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 "B" as to management, and no less than "Class V" as to financial strength, according to 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.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of recommendation to award. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 18. NO LIABILITY FOR PERSONAL PROPERTY:

All personal property placed or moved in the Park shall be at the risk of Contractor or the owner thereof. County shall not be liable to Contractor or any third party for any damage to said personal property unless caused by or due to negligence of County, County's agents or employees, subject to all limitations of Florida Statutes, Section 768.28.

ARTICLE 19. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any of its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 20. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove

an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 21. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor'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.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 22. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable

meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 23. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 24. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 25. AUDITS

The County, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting

system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 26. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 27. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, shall provide written notice to the County at least thirty (30) days prior to making any subcontract for any portion of the services and shall state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- f) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 28. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 29. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 30. TERMINATION AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Concessionaire may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Concessionaire and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole

purpose of this Agreement and not incorporated in the Services:

- v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
 - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

ARTICLE 31. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
 - i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
 - viii. the Contractor delivers a dishonored check or draft to the County for a second time, at the County's option.
 - ix. the Contractor violates or fails to comply with any other term, provision, or requirement of this Agreement not otherwise specified within this subsection.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's

request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

- i. treat such failure as a repudiation of this Agreement;
- ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

ARTICLE 32. TERMINATION BY COUNTY:

The occurrence of any of the following may cause this Agreement to be terminated by the County upon the terms and conditions also set forth below:

- A. Automatic Termination upon written notice by the County if any of the following occurs:
 - i. Institution of proceedings in voluntary bankruptcy or reorganization by the Contractor.
 - ii. Institution of proceedings in involuntary bankruptcy against the Contractor if such proceedings continue for a period of ninety (90) days.
 - iii. Assignment by Contractor for the benefit of creditors.
 - iv. Abandonment or discontinuation of operations for more than a 24 hour period without prior written approval from the County.
 - v. The discovery of any misstatement in the Contractor's Proposal leading to award of this Agreement, which in the determination of the County significantly affects the Contractor's qualifications to perform under the Agreement.
 - vi. Unapproved change of ownership interest in Contractor and/or failure to submit the ownership list within 24 hours upon the request of the County.
 - vii. Failure to cease any activity which may cause limitation of County's use of the Park.
 - viii. A final determination in a court of law in favor of the County in litigation instituted by the Contractor against the County or brought by the County against Contractor.
- B. Termination after seven (7) calendar days written notice by the County either by posting on or at the Concession and by certified or registered mail to any known address of Contractor set forth in this Agreement hereof for doing any of the following:
 - i. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Contractor makes the required payment(s) during the seven (7) calendar day period following mailing of the written notice. Additionally, the County may sue for Minimum Annual Guarantee and Percentage of Monthly Gross Receipts for the unexpired term of this Agreement.
 - ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.
- C. Termination after fourteen (14) days from receipt by Contractor of written notice having either been posted on or at the Concession or by certified or registered mail to the address of the Contractor set forth in this Agreement:

- i. Non-performance of any covenant of this Agreement other than non-payment of any sum or sums due or performance fees and others listed in A and B above, and failure of the Contractor to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.
- D. Revenue Control and Audit Defaults: The inability or failure of the Contractor to provide the County with an unqualified certified statement of Gross Sales, or to strictly adhere to the revenue control procedures established in this Agreement shall constitute a non-curable default and in such event the County shall have the right to terminate this Agreement upon seven (7) calendar days written notice to the Contractor. In addition to termination for such default, the County shall be entitled to collect damages in the full amount of the payments of the security deposit required in this Agreement.
- E. Habitual Default: Notwithstanding the foregoing, in the event that the Contractor has repetitively defaulted or breached four (4) times within a 12 month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Contractor, regardless of whether the Contractor has cured each individual condition of breach or default as provided herein above, the Contractor may be determined by the Director of MDPH to be an "habitual violator". At the time that such determination is made, MDPH shall issue to the Contractor a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Contractor that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach (es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, County may terminate this Agreement upon the giving of written notice of termination to the Contractor, such cancellation to be effective upon the tenth (10th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Contractor shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Contractor shall discontinue its operations at the Park, and proceed to remove all its personal property in accordance with this Agreement.

In the event that the County terminates this Agreement by operation of any of the provisions as stated in this Agreement, then in addition to other rights and remedies available to the County under the law, the County may accelerate the payments under this Agreement, whereupon the entire balance owed by the Contractor under this Agreement shall become immediately due and payable without further notice or demand.

ARTICLE 33. LIMITING LEGISLATIVE OR JUDICIAL ACTION:

In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of the Park for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. In the event that a referendum vote of the electorate of Miami-Dade County in any way restricts or prohibits the use of the Park for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. If the County deems the Agreement null and void by function of

this Paragraph, the County will not be liable to the Contractor for damages arising there from and the County shall have no further liability under this Agreement.

ARTICLE 34. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 35. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprourement of Services, including procurement and administrative costs; and,
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 36. EXPIRATION OR TERMINATION OF CONTRACT:

Following the expiration or termination of this Agreement the Contractor, within fifteen (15) calendar days, or earlier if determined by the County, shall forthwith remove all of its personal property from the Park. Any personal property of Contractor not removed in accordance with this paragraph may be removed by the County for storage at the cost of the Contractor or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interests of the County. The County shall not be liable to Contractor for the safekeeping of Contractor's personal property during or after expiration or termination of this Agreement. The County shall have the senior interest in the Contractor's personal property.

ARTICLE 37. NO WAIVER OF RIGHT TO ENFORCE:

The waiver by County of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Minimum Annual Guarantee or Percentage of Monthly Gross Receipts hereunder by County shall not be deemed to be a waiver of any preceding breach by Contractor of any term, covenant, or condition of this Agreement, other than the failure of Contractor to pay the particular Minimum Annual Guarantee or Percentage of Monthly Gross Receipts so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Minimum Annual Guarantee or Percentage of Monthly Gross Receipts.

ARTICLE 38. PATENT AND COPYRIGHT INDEMNIFICATION

The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 39. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 40. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST**a) Vendor Registration**

The Contractor shall be a registered vendor with the County – Internal Services Department, Procurement Management, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

- | | |
|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the County Code) | (Section 2-8.1 of the County Code) |
| 2. Miami-Dade County Employment Disclosure Affidavit
(Section 2.8-1(d)(2) of the County Code) | 7. Miami-Dade County Code of Business Ethics Affidavit
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code) |
| 3. Miami-Dade County Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the County Code) | 8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 of the County Code) |
| 4. Miami-Dade County Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the County Code) | 9. Miami-Dade County Living Wage Affidavit
(Section 2-8.9 of the County Code) |
| 5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the County Code) | 10. Miami-Dade County Domestic Leave and Reporting Affidavit
(Article 8, Section 11A-60 11A-67 of the County Code) |
| 6. Miami-Dade County Vendor Obligation to County Affidavit | 11. Subcontracting Practices |

(Ordinance 97-35)

12. Subcontractor /Supplier Listing
(Section 2-8.8 of the County Code)

13. Environmentally Acceptable Packaging
(Resolution R-738-92)

14. W-9 and 8109 Forms
(as required by the Internal Revenue Service)

15. FEIN Number or Social Security Number

In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- Identification of individual account records

- To make payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. Office of the Inspector General
(Section 2-1076 of the County Code)

17. Small Business Enterprises

The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. Antitrust Laws

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 41. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

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 cost of the audit for this Contract shall be one quarter

(1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. 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 Contractor, 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 Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor 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 Contractor'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.

ARTICLE 42. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as

amended and applicable to this Contract.

- b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- i) Miami-Dade County Ordinance No. 08-07, Chapter 26 "Miami-Dade County Park and Recreation Department Rules and Regulations, Article III, The Shannon Melendi Act".

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 43. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at

the time it submitted its affidavit.

ARTICLE 44. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 45. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information

would be harmful to the public interest or is in any way undesirable; and

- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 46. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 47. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

ARTICLE 48. INSPECTION AND MONITORING BY COUNTY:

The County shall have the right, without limitation, to make periodic reasonable inspections of all operations during the normal operating hours and to monitor and test the quality of services of the Contractor, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of the shopping service, closed circuit TV, and other reasonable means. Such periodic inspections may also be made at the County's discretion to determine whether the Contractor is operating in compliance with the terms and provisions of this Agreement.

ARTICLE 49. DAMAGE OR DESTRUCTION OF PREMISES:

In all events, Contractor shall repair all damages to the Park caused by the Contractor, its employees, agents, contractors or sub-consultants at its own cost and expense.

In the event the Park is destroyed or damaged through no fault of the Contractor, its employee, agents, contractors or sub-consultants, the Contractor and the County shall be under no obligation to repair and reconstruct the premises, and adjustment of the Minimum Annual Guarantee payable hereunder shall be proportionately made up to the time of such damage or destruction, and the portion of the Agreement which pertains to such destroyed property shall cease and terminate, and all adjustments which are proper including restoration of the site to a clean, neat and usable condition shall be made accordingly. However, at the option of the County, and through negotiations pertaining to all matters for continuing the Concession, the Contractor may reconstruct the premises at its own cost.

ARTICLE 50. DIMINUTION FOR COUNTY'S REPAIR:

Except as elsewhere specifically provided in this Agreement, there shall be no allowance to Contractor for a diminution of payment and no liability on the part of the County by reason of inconvenience, annoyance or interference with Contractor's business arising from the County or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Park or the building or buildings contained within the Park, or in or to fixtures, appurtenances or equipment thereof, provided such work (except in case of emergency and to the extent practical) does not unreasonably interfere with Contractor's use of the Park.

ARTICLE 51. INGRESS AND EGRESS:

Subject to County rules and regulations, statutes and ordinances, and terms of this Agreement governing the use of the Park, Contractor, its agents and servants, patrons and invitees, and his suppliers of service and furnishers of materials shall have right of ingress and egress to and from the premises.

ARTICLE 52. ASSIGNMENT, SUB-CONTRACTING AND SUCCESSORS IN INTEREST:

A. Contractor shall not assign, mortgage, pledge nor otherwise encumber this Agreement nor any portion thereof, nor any property associated with this Agreement without prior written approval of the County. Unapproved assignment, mortgaging, pledging or encumbering shall be grounds for immediate termination of this Agreement. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on assignees and other successors as may be approved by the County.

B. Contractor shall not enter into any sub-contract for services required to be provided under this Agreement without prior written approval of the County. Unapproved sub-contracting shall be grounds for immediate termination of this Agreement. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on any subcontractors, including percentage payments on gross receipts as defined in this Agreement. Contractor shall be liable for acts and omissions by any subcontractor affecting this Agreement. The County reserves the right to directly terminate (and pursue any applicable remedy) any subcontractor of the Contractor for any cause for which Contractor may be terminated.

Any sub-contract for Services must be made available and accounted for through the Contractor so as to provide seamless service to the public as if provided directly by the Contractor.

ARTICLE 53. OWNERSHIP OF CONTRACTOR:

The ownership of the Contractor is very important to the County. Therefore, the County reserves the right to terminate this Agreement at any time if more than 10% of the ownership of the Contractor has not been specifically approved by the County. The County shall reject any proposed new owner for any reason it believes is in the best interests of the public. Contractor agrees to provide on 24-hour notice to the County an accurate list of all owners of the Contractor, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. Contractors, for which stock is listed on a major stock exchange, may be wholly or partially exempted from the list requirement of this paragraph at the discretion of the County.

ARTICLE 54. RIGHTS RESERVED TO COUNTY:

All rights not specifically granted to the Contractor by this Agreement are reserved to the County. The designation of any particular remedy for the County is without prejudice to any other relief available in law or equity, and all such relief is reserved to the County.

ARTICLE 55. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

By: Lawrence N. Levoco

Name: Lawrence N. Levoco

Title: owner

Date: March 1, 2012

Attest: [Signature]
Corporate Secretary/Notary Public

Miami-Dade County

By: Miriam Singer

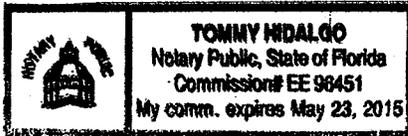
Name: Miriam Singer

Title: AD, Internal Services Dept

Date: 4/23/12

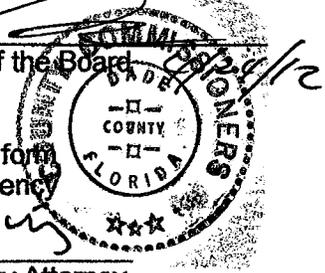
Attest: [Signature]
Clerk of the Board

Corporate Seal/Notary Seal



Approved as to form and legal sufficiency

[Signature]
Assistant County Attorney



APPENDIX A
SCOPE OF SERVICES

Golf Instruction and Related Services at Country Club of Miami

1. Background/Introduction

The Contractor shall provide professional golf instruction and related services to the general public at Country Club of Miami (CCM) Golf Course. Miami-Dade County Parks, Recreation and Open Spaces objective is to offer the patrons of the golf course training, instruction, and related services that are normally associated with the golf industry.

2. General Description and Amenities of CCM

A. CCM

CCM is located at 6801 NW 186 Street, Miami, FL. CCM is comprised of two beautifully manicured golf courses, CCM East and CCM West.

- 1) CCM East, a 6,353-yard par-70 layout with a slope of 124, requires shot placement and strategy from both the novice and serious golfer.
- 2) CCM West, a 7,017-yard par-72 golf course with a slope of 132. Its treacherous bunkers, lush fairways, and rolling greens offer a challenging adventure.

The services and amenities are as follows:

- 36 hole championship golf courses
- Lighted driving range
- Grass hitting, putting, pitching and chipping practice areas
- Golf carts
- Tournament, League and group outing events
- Junior golf program
- Pro shop stocked with latest golf apparel.
- Equipment rentals
- Sports Grill's world famous special grilled chicken wings
- Single rider carts for people with disabilities are available (24-hours advance notice required).

3. Qualifications

The Contractor's Golf Professionals (Golf Pros) and assistant Golf Pros shall maintain their certifications as Class "A" members, in good standing by the Professional Golfers Association (PGA) of America, the Ladies Professional Golf Association (LPGA) of America, or any other recognized Professional Golfers Association.

4. Services to be Provided

A. General Services at Golf Course

The Contractor shall:

- 1) Provide an operation that is available to the general public during designated hours. The Contractor shall be operational within thirty days of the contract award.

- 2) Provide golf instruction and related golf services in a manner normally associated with the golf industry.
- 3) Submit a schedule of intended hours of operation and staff levels to Miami-Dade County Parks, Recreation and Open Spaces for approval. At a minimum, golf instruction shall be available, by appointment or set schedule, during the regularly scheduled operating hours of the golf course. Miami-Dade County Parks, Recreation and Open Spaces may require changes in hours of operation or staff levels, if in the discretion of Miami-Dade County Parks, Recreation and Open Spaces, such a change is desirable or necessary in providing services.
- 4) Ensure that a Golf Pro is on staff and available during the regularly scheduled operating hours of the golf course. The Contractor shall ensure staff is properly trained to provide quality service for retail assistance in the Pro Shop and Golf Instruction at the golf course.
- 5) Market and promote golf instruction and related services at the golf course.
- 6) Ensure its staff is distinctively uniformed so as to be distinguishable as the Contractor's staff and not as employees of Miami-Dade County Parks, Recreation and Open Spaces
- 7) Provide prompt and efficient customer service, adequate to meet all reasonable demands of the patrons.
- 8) Ensure students and golf course patrons receive complaint resolutions within 72 hours of notification.
- 9) Provide, at a minimum, three, one-hour free golf clinics per year to the public to be organized by the Contractor.
- 10) Take proper care of the golf carts, driving range and stations provided by Miami-Dade County Parks, Recreation and Open Spaces.
- 11) The Contractor shall use the same in a careful manner and shall, at its own cost and expense, repair any Miami-Dade County Parks, Recreation and Open Spaces property damaged by the Contractor's operation.
- 12) Notify Miami-Dade County Parks, Recreation and Open Spaces of changes, regarding the golf industry in general, including, but not limited to, golf rules and regulations, equipment and promotional methods associated with the operation of the golf course.

Note: Miami-Dade County Parks, Recreation and Open Spaces reserves the right to schedule special events that may preclude the Contractor from operating during that event. Miami-Dade County Parks, Recreation and Open Spaces will use reasonable efforts to notify the Contractor as early as possible of these special events, but in no event later than two weeks prior to the special event.

B. Golf Instruction

The Contractor shall:

- 1) Provide Miami-Dade County Parks, Recreation and Open Spaces with a schedule and cost associated with any golf lessons, tournaments, and golf programs to be offered at the golf course for review and approval. The schedule of services and associated cost must be submitted to Miami-Dade County Parks, Recreation and Open Spaces for review and approval.
- 2) Provide golf lessons to:
 - i. Individuals which shall be defined as "individual lessons";
 - ii. A group of not more than five persons, which shall be defined as "group lessons";
 - iii. Groups of six or more persons per instructor, which shall be defined as "clinics";
 - iv. Demonstrations of different aspects of golf in promotion of the golf course which shall be defined as a "demonstration"; and
 - v. Miami-Dade County Parks, Recreation and Open Spaces staff, using a "Train the Trainer" program.
- 3) Promote golf instruction to individuals and groups, of all ability levels, in accordance with American with Disabilities Act requirements.
- 4) Assist Miami-Dade County Parks, Recreation and Open Spaces in the development, operation, management and/or tabulation of scores at golf tournaments as needed or requested by Miami-Dade County Parks, Recreation and Open Spaces.

Note: Tournaments are defined as a scheduled series of games, competitive in nature, between teams from respective golf courses; either traveling or hosting.

C. Summer Golf Program/Camp

The Contractor shall establish, manage and promote a Summer Golf Program and offer a youth camp geared towards introducing the basics of golf.

D. Junior Golf Program

The Contractor shall:

- 1) Promote junior golf by establishing a junior golf program, designed for youth between the ages of eight years through 18 years. The junior golf program will include individual lessons, group lessons, clinics and participation in junior golf teams.
- 2) Coordinate the logistics for the annual Miami-Dade County Parks, Recreation and Open Spaces hosted junior golf tournament at no charge to Miami-Dade County Parks, Recreation and Open Spaces.

E. Other Related Services

The Contractor may provide related services and incidental goods as approved by Miami-Dade County Parks, Recreation and Open Spaces. All services and incidental goods provided, together with their price, must have prior approval by Miami-Dade County Parks, Recreation and Open Spaces. Such services, fees and charges may be modified only by written request of the Contractor to Miami-Dade County Parks, Recreation and Open Spaces and approval by the Miami-Dade County Parks, Recreation and Open Spaces Director.

Such approval shall be in writing at least 30 days prior to implementation of the modification. The following are examples of other related services which may be provided by the Contractor:

- 1) Golf club repairs, replacement of shafts, heads and grips.
- 2) Assistance in golf pro shop with fitting golf shoes, golf gloves, golf clothing, golf clubs, etc.

5. Background Screening

In accordance with Miami-Dade County Ordinance No. 08-07 titled Chapter 26, Park and Recreation Department Rules and Regulations, Article III, The Shannon Melendi Act (the Act), all Contractor's personnel, and volunteers that will provide any service at the golf course, must be in compliance with the requirements set forth under the Act prior to the scheduled start of employment or volunteerism.

- A. Background checks shall be conducted by a Professional Background Screener at the Contractor's expense. The Contractor shall obtain and maintain a report as to whether each child event worker, park vendor, staff member or volunteer is listed on the National Sex Offender Public Registry.
- B. A comprehensive report and analysis shall be obtained from no less than two independent sources, on the nationwide criminal history of such child event worker, park vendor, staff member or volunteer. This background information shall be part of the background check report that shall be kept and maintained by the Contractor and be available to law enforcement personnel upon request.
- C. The Contractor shall conduct background checks every three years after start of service. Any subsequent arrest of Contractor's personnel and volunteers shall be reported to the Contractor within 48 hours of such arrest. Miami-Dade County Parks, Recreation and Open Spaces shall be notified within 24 hours of Contractor's notification by the Contractor's personnel or volunteers.

6. Miami-Dade County Parks, Recreation and Open Spaces Responsibilities

Miami-Dade County Parks, Recreation and Open Spaces will:

- a) Provide to the selected Proposer, at no cost, the use of existing electricity and phone service at the golf course.
- b) Provide an 8 x 12 office space located in the golf cart area.
- c) Waive golf course green fees that are related to the provision of instructional and promotional demonstration services.
- d) Provide the use of a limited amount of golf carts as determined by Miami-Dade County Parks, Recreation and Open Spaces for lessons, clinics or demonstrations at no cost to the selected Proposer.
- e) Provide range balls at no cost to the selected Proposer.

- f) Provide two stations at the driving range for individual golf lessons at all times at no cost to the selected Proposer. Driving range requirements for group lessons, clinics, demonstrations and camps must be coordinated through Miami-Dade County Parks, Recreation and Open Spaces to prevent scheduling conflicts.
- g) Provide reasonable advance notice of free clinics, demonstrations, special events, or other related free services so as not to conflict with already established private lessons. The times of such clinics, demonstrations or services are at the discretion of Miami-Dade County Parks, Recreation and Open Spaces.

7. Addition of Golf Courses

Miami-Dade County Parks, Recreation and Open Spaces reserves the right to allow the Contractor to expand its services to another golf course that may require the services in the future, if deemed to be in the best interest of Miami-Dade County Parks, Recreation and Open Spaces. Any additions of golf courses will be subject to negotiations. Upon project award, the selected Contractor's agreement will be supplemented, identifying additional golf courses and revenue information.