

DEPARTMENTAL INPUT
CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

☒ New contract

☐ OTR

☐ CO

☐ SS

☐ BW

☐ Emergency

Previous Contract/Project No.
Pros Permit to Conduct Business

☐ Re-Bid

☐ Other

LIVING WAGE APPLIES: __YES XNO

Project No: EPPRFP-02297

Term of Contract: 10 Years

Project Title: Tennis Center Operations at Ron Ehmann Park

Description: Miami Dade County Parks, Recreation and Open Spaces Department is soliciting proposals from capable Proposers to operate and manage the tennis Center at Ron Ehmann Park.

User Department(s): Miami-Dade County Parks, Recreation and Open Spaces Department

Issuing Department: Strategic Procurement Division

Contact Person: Jason Edelstein

Phone: 305-375-4211

Estimated Value: \$395,400

Funding Source: Revenue Generating

Revenue Generating: Yes

ANALYSIS

Commodity/Service No: 96168, 80505

Trade/Commodity/Service Opportunities

Contract/Project History of Previous Purchases For Previous Three (3) Years
Check Here __ if this is a New Contract/Purchase with no Previous History

PREVIOUS CONTRACT

2ND YEAR

3RD YEAR

Contractor:

Friends of Miami Tennis

Small Business Enterprise:

No

Estimated Value To Date:

\$111,521.55

Comments: This vendor defaulted and shuttered their business. The previous contract has subsequently been canceled.

Continued on another page (s): __Yes XNo

RECOMMENDATION:

Basis of Recommendation:

Signed: Jason Edelstein

Date to SBD: 3-17-2022



REQUEST FOR PROPOSALS (RFP) No. EPPRFP-02297EPP-RFP-01790
FOR
TENNIS CENTER OPERATIONS AT RON EHMANN PARK

ISSUED BY MIAMI-DADE COUNTY:
Internal Services Department, Strategic Procurement Division
for
Parks, Recreation and Open Spaces Department

MIAMI-COUNTY CONTACT FOR THIS SOLICITATION:

Jason B. Edelstein, Procurement Contracting Officer II
111 NW 1st Street, Suite 1300, Miami, Florida 33128
Telephone: (305) 375-4211
E-mail: Jason.Edelstein@Miamiidade.gov

IT IS THE POLICY OF MIAMI-DADE COUNTY (COUNTY) THAT ALL ELECTED AND APPOINTED COUNTY OFFICIALS AND COUNTY EMPLOYEES SHALL ADHERE TO THE PUBLIC SERVICE HONOR CODE (HONOR CODE). THE HONOR CODE CONSISTS OF MINIMUM STANDARDS REGARDING THE RESPONSIBILITIES OF ALL PUBLIC SERVANTS IN THE COUNTY. VIOLATION OF ANY OF THE MANDATORY STANDARDS MAY RESULT IN ENFORCEMENT ACTION.
(SEE IMPLEMENTING ORDER 7-7)

Electronic proposal responses to this RFP are to be submitted through a secure mailbox at BidSync until the date and time as indicated in this document. It is the sole responsibility of the Proposer to ensure its proposal reaches BidSync before the Solicitation closing date and time. There is no cost to the Proposer to submit a proposal in response to a Miami-Dade County solicitation via BidSync. Electronic proposal submissions may require the uploading of electronic attachments. The submission of attachments containing embedded documents or proprietary file extensions is prohibited. All documents should be attached as separate files. All proposals received and time stamped through the County's third party partner, BidSync, prior to the proposal submittal deadline shall be accepted as timely submitted. The circumstances surrounding all proposals received and time stamped after the proposal submittal deadline will be evaluated by the procuring department in consultation with the County Attorney's Office to determine whether the proposal will be accepted as timely. Proposals will be opened promptly at the time and date specified. The responsibility for submitting a proposal on or before the stated time and date is solely and strictly the responsibility of the Proposer. The County will in no way be responsible for delays caused by technical difficulty or caused by any other occurrence. All expenses involved with the preparation and submission of proposals to the County, or any work performed in connection therewith, shall be borne by the Proposer(s).

A Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date. The County will only consider the latest version of the proposal. For competitive bidding opportunities available, please visit the County's Internal Services Department website at: <http://www.miamidade.gov/procurement/>.

Requests for additional information or inquiries must be made in writing and submitted using the question/answer feature provided by BidSync at www.bidsync.com. The County will issue responses to inquiries and any changes to this Solicitation it deems necessary in written addenda issued prior to the proposal due date (**see addendum section of BidSync Site**). Proposers who obtain copies of this Solicitation from sources other than through BidSync risk the possibility of not receiving addenda and are solely responsible for those risks.

1.0 PROJECT OVERVIEW AND GENERAL TERMS AND CONDITIONS

1.1 Introduction

Miami-Dade County, hereinafter referred to as the County, as represented by the Miami-Dade County Parks, Recreation and Open Spaces Department (PROS) is soliciting proposals from an experienced and capable firm to manage, operate and promote the Tennis Center at Ron Ehmann Park. Proposers should have experience in the operation and maintenance of tennis facilities and the provision of tennis instructions to persons of all ability levels. **The selected Contractor for this Solicitation will not be considered for award of any contract for similar services at the County's Continental Park.**

Should you need an ADA accommodation to participate in the Pre-Proposal Conference (i.e., materials in alternate format, sign language interpreter, etc.), please contact the Internal Services Department's ADA Office five (5) days prior to scheduled conference to initiate your request. The ADA Office may be reached office by phone at (305) 665-5319 or via email at: Gisel.Prado@miamidadegov.

Contract Duration:

The County anticipates awarding a single contract for a ten (10) year period. In the event that the Joint Use Agreement for Ron Ehmann Park and Killian Sr. High School (Exhibit A, B) is terminated, this Contract will be terminated upon thirty (30) Days written notice.

1.2 Definitions

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

1. The words **"Additional Services"** to mean additions or modifications to the amount, type or value of the Work and Services as required in this Agreement, as directed and/or approved by the County.
2. The words **"Agreement"** or **"Contract"** to mean collectively terms and conditions, Scope of Services, all other appendices, attachments and amendments to the Agreement/Contract, this RFP and all associated addenda, and the Contractor's Proposal.
3. The words **"Business Hours"** to mean Monday – Sunday from 7:00 a.m. to 9:00 p.m. Miami Killian High School shall have exclusive use of the facility during school days and hours, and upon notice and coordination with the Project Manager subject to the terms and conditions listed in Exhibit A and Exhibit B.
4. The word **"Camp"** to mean Clinics organized for providing sports training and skills enhancement.
5. The word **"Clinic"** to mean teaching of tennis to a group of six (6) or more individuals per instructor.
6. The word **"Coaching"** to mean training of tennis teams sanctioned by and approved by PROS.
7. The word **"Contractor"** to mean the Proposer that receives any award of a contract from the County as a result of this Solicitation, also to be known as "the prime Contractor".
8. The word **"County"** to mean Miami-Dade County, a political subdivision of the State of Florida.
9. The word **"Demonstrations"** to mean presentation of different aspects of tennis in promotion of the associated Tennis Center.
10. The words **"Facility"**, **"Facilities"**, **"Tennis Center"** to mean the tennis courts, pro shop, and storage area, as further described in the Scope of Services.
11. The words **"Group Lessons"** to mean teaching of tennis to a group of individuals not to exceed five (5) individuals.

12. The words "**Gross Revenue(s)**" to mean all revenues generated by the Contractor and authorized third-party entities arising out of or relating to the provision of all activities or items for which price, charge, trade/barter or fee is imposed, as well as all revenues or other consideration charged for or received by the Contractor, as herein defined, for all services rendered, all sales made, and all transactions engaged in under the authority of this Agreement from any source whatsoever and whether such activities were on the Site or off-Site. Gross Revenues further includes, but is not limited to, those revenues received from the rights paid to Contractor for the use or licensing of all media, the sales of all media, from ticket sales, from sponsorship sales, tournament parking, concession revenues, retail revenues, advertising space and/or services, hospitality sales, merchandise (including without limitation retail, wholesale, direct response, mail order, internet or otherwise. All third-party contracts shall be in writing and on market terms. If such conditions are not on market terms and/or have resulted in a direct or indirect tangible economic benefit to Contractor, then the actual market value of the economic benefit provided shall be included in Gross Revenue. The only revenues and other considerations which may be excluded from Gross Revenues are taxes imposed by law and paid by a customer and directly payable by Contractor to a taxing authority, credit card processing fees, and pass-through or reimbursable expenses paid by third parties through the Contractor to another third-party.
13. The words "**Individual Lessons**" to mean teaching of tennis to an individual.
14. The words "**Junior Tennis Team**" to mean a team that is designed for children ages seven (7) to eighteen (18) which will play in a League with other Tennis Centers.
15. The word "**League**" to mean organized, structured tennis play by groups of people over a period of time.
16. The words "**Net Generation Program**" to mean a comprehensive "learn to play" platform and development program organized through the United States Tennis Association (USTA) for kids ages five through eighteen to benefit the growth of youth tennis.
17. The words "**New Normal**" to mean guidelines set forth by Miami-Dade County to allow for safe business operations as a response to the (COVID-19) pandemic. The guidelines implemented for recreational facilities may be viewed at the following website URL: <https://www.miamidade.gov/global/initiatives/coronavirus/openings.page>.
18. The words "**Operating Hours**" to mean sunrise to sunset.
19. The word "**Park**" or "**Site**" to mean Ron Ehmman Park, located at 10995 SW 97 Avenue, Miami, FL 33176.
20. The words "**Project Manager**" to mean the Miami-Dade County Parks, Recreation and Open Spaces Department Director or the duly authorized representative designated to manage the Project.
21. The words "**Pro Shop**" to mean a structure approximately 100 square feet, located adjacent to the tennis courts which shall be used for the sale of food, beverages, and/or related merchandise/services.
22. The word "**Proposal**" to mean the properly signed and completed written good faith commitment by the Proposer submission in response to this Solicitation by a Proposer for the Services, and as amended or modified through negotiations.
23. The word "**Proposer**" to mean the person, firm, entity or organization, as stated on the Submittal Form, submitting a proposal to this Solicitation.
24. The words "**Review Team**" or "**Review Team Members**" to mean appropriate County personnel and member of the community, as deemed necessary, with the appropriate experience and/or knowledge to accurately evaluate the proposals.
25. The words "**Scope of Services**" to mean Section 2.0 of this Solicitation, which details the work to be performed by the Contractor.

26. The word **"Solicitation"** to mean this Request for Proposals (RFP) or Request for Qualifications (RFQ) document, and all associated addenda and attachments.
27. The word **"Subcontractor"** to mean any person, firm, entity or organization, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Contractor.
28. The words **"Summer Tennis Program"** to mean a program established for children three (3) to sixteen (16) years of age where they are engaged in tennis training during the summer.
29. The word **"Tournaments"** to mean a scheduled series of games, competitive in nature, between teams from the Tennis Center; either traveling or hosting.
30. The acronym **"USPTA"** to mean United States Professional Tennis Association.
28. The acronym **"USPTR"** to mean United States Professional Tennis Registry.
29. The acronym **"USTA"** to mean United States Tennis Association.
30. The word **"Utilities"** to mean services used or consumed such as, but not limited to, electricity, gas, water, and sewerage.
31. The words **"Work"**, **"Services"**, or **"Project"** to mean all matters and things that will be required to be done by the Contractor in accordance with the Scope of Services, and the terms and conditions of this Solicitation.

1.3 **General Proposal Information**

The County may, at its sole and absolute discretion, reject any and all or parts of any or all proposals; accept parts of any and all proposals; further negotiate project scope and fees; postpone or cancel at any time this Solicitation process; or waive any irregularities in this Solicitation or in the proposals received as a result of this process. In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its proposal. No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. Further, no exception shall be allowed that, in the County's sole discretion, constitutes a material deviation from the requirements of the Solicitation. Proposals taking such exceptions may, in the County's sole discretion, be deemed nonresponsive. The County reserves the right to request and evaluate additional information from any Proposer regarding Proposer's responsibility after the submission deadline as the County deems necessary.

The Proposer's proposal will be considered a good faith commitment by the Proposer to negotiate a contract with the County, in substantially similar terms to the proposal offered and, if successful in the process set forth in this Solicitation and subject to its conditions, to enter into a contract substantially in the terms herein. Proposer proposal shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only, addressed to the County contact person for this Solicitation, prior to the proposal due date and time, or upon the expiration of 180 calendar days after the opening of proposals.

As further detailed in the Submittal Form, Proposers are hereby notified that all information submitted as part of, or in support of proposals will be available for public inspection after opening of proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law."

Any Proposer who, at the time of proposal submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, may be found non-responsible.

To request a copy of any code section, resolution and/or administrative/implementing order cited in this Solicitation, contact the Clerk of the Board at (305) 375-5126, Monday- Friday, 8:00 a.m. – 4:30 p.m.

1.4 Preproposal Conference

It is highly recommended that Proposers attend the Pre-Proposal Conference to become familiar with any conditions which may, in any manner affect the services to be provided. No additional allowances will be made because of lack of knowledge of these conditions. The Pre-Proposal Conference has been scheduled as follows:

Pre-Proposal Conference will be held on October 26, 2021 at 10:00a.m. (Eastern Standard Time) via Zoom Webinar. To join the Zoom Webinar, please visit <https://miamidade.zoom.us/> and join Webinar ID: 892 8518 8375

Members of the public are not required to enter their name to join the webinar if they do not wish to do so. Members may identify themselves as "Public Attendee."

Members of the public will be permitted to pose questions at the end of the Pre-Proposal Conference. In order to do so, attendees must use the "Raise Your Hand" functionality in Zoom by clicking on the three dots located in the lower right corner of the Zoom window and then select "Raise Your Hand."

Room will open at 10:00 a.m./p.m. to admit participants.

- Host: Procurement Officer Jason Edelstein
- Zoom Host Username: Jason.Edelstein@miamidade.gov
- ADA Contact: <https://zoom.us/accessibility> and

Jason Edelstein: Jason.Edelstein@miamidade.gov

Link to Download Zoom: <https://zoom.us/download>

This meeting is exempt from the 'Cone of Silence', allowing for any questions to be addressed with representatives from Miami-Dade County. This is a public meeting and multiple members of individual community councils may be present.

1.5 Aspirational Policy Regarding Diversity

Pursuant to Resolution No. R-1106-15, Miami-Dade County vendors are encouraged to utilize a diverse workforce that is reflective of the racial, gender and ethnic diversity of Miami-Dade County and employ locally-based small firms and employees from the communities where work is being performed in their performance of work for the County. This policy shall not be a condition of contracting with the County, nor will it be a factor in the evaluation of solicitations unless permitted by law.

1.6 Cone of Silence

Pursuant to Section 2-11.1(t) of the Code of Miami-Dade County, as amended, a "Cone of Silence" is imposed upon each RFP or RFQ after advertisement and terminates at the time a written recommendation is issued. The Cone of Silence prohibits any communication regarding RFPs or RFQs between, among others:

- Potential Proposers, service providers, lobbyists or consultants **and** the County's professional staff including, but not limited to, the County Mayor and the County Mayor's staff, County Commissioners or their respective staffs;
- The County Commissioners or their respective staffs **and** the County's professional staff including, but not limited to, the County Mayor and the County Mayor's staff; or
- Potential Proposers, service providers, lobbyists or consultants, any member of the County's professional staff, the Mayor, County Commissioners or their respective staffs **and** any member of the respective Competitive Selection Committee.

The provisions do not apply to, among other communications:

- Oral communications with the staff of the Vendor Outreach and Support Services Section, the responsible Procurement Contracting Officer (designated as the County's contact on the face of the Solicitation), provided the communication is limited strictly to matters of process or procedure already contained in the Solicitation document;

- Oral communications at pre-proposal conferences and oral presentations before Competitive Selection Committees during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting;
- Recorded contract negotiations and contract negotiation strategy sessions; or
- Communications in writing at any time with any County employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP or RFQ documents.

When the Cone of Silence is in effect, all potential vendors, service providers, bidders, lobbyists and consultants shall file a copy of any written correspondence concerning the particular RFP or RFQ with the Clerk of the Board, which shall be made available to any person upon request. The County shall respond in writing (if County deems a response is necessary) and file a copy with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be in the form of e-mail, with a copy to the Clerk of the Board at clerkbcc@miamidade.gov.

All requirements of the Cone of Silence policies are applicable to this Solicitation and must be adhered to. Any and all written communications regarding the Solicitation are to be submitted only to the Procurement Contracting Officer with a copy to the Clerk of the Board. The Proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

1.7 Communication with Review Team Members

Proposers are hereby notified that direct communication regarding this Solicitation, written or otherwise, with Review Team Members, or Review Team as a whole, **are expressly prohibited**. Any oral communications with Review Team Members or other than as provided in Section 2-11.1 of the Code of Miami-Dade County are prohibited.

1.8 Public Entity Crimes

Pursuant to Paragraph 2(a) of Section 287.133 of the Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal for a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

1.9 Lobbyist Contingency Fees

- a) In accordance with Section 2-11.1(s) of the Code of Miami-Dade County, after May, 16, 2003, no person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee.
- b) A contingency fee is a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent upon the passage, defeat, or modification of: 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision or recommendation of the County Mayor or any County board or committee; or 3) any action, decision or recommendation of any County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee.

1.10 Collusion

In accordance with Section 2-8.1.1 of the Code of Miami-Dade County, where two (2) or more related parties, as defined herein, each submit a proposal for any contract, such proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submittal of such proposals. Related parties shall mean Proposer, the principals, corporate officers, and managers of the Proposer; or the spouse, domestic partner, parents, stepparents, siblings, children or stepchildren of a Proposer or the principals, corporate officers and managers thereof which have a direct or indirect ownership interest in another Proposer for the same contract or in which a parent company or the principals thereof of one Proposer have a direct or indirect ownership

in another Proposer for the same contract. Proposals found to be collusive shall be rejected. Proposers who have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusive bidding may be terminated for default.

1.11 Expedited Purchasing Program

Pursuant to Section 2-8.1.6 of the Code of Miami-Dade County, the County created the Expedited Purchasing Program (EPP). Due to the expedited nature of County projects issued under the EPP, prospective Proposers should anticipate a shortened solicitation timeline for submission of proposals. Technical, professional and legal staff may be used to determine best value as set forth in the Solicitation documents without the need to utilize the formal Competitive Selection Committee process established by the County. The County Mayor's or designee's written recommendation to award a contract under the EPP shall be sufficient to commence the bid protest period and terminate the Cone of Silence. Any legislation contrary to the provisions of the EPP shall be deemed suspended or amended as necessary to give effect to the intent of this Program.

2.0 SCOPE OF SERVICES

2.1 Background

Ron Ehmann Park is located at 10995 SW 97 Avenue, Miami, FL. 33176 and currently operates from sunrise to sunset. PROS requires an experienced and capable Contractor to provide a broad range of professional tennis instruction and facility operation services at Ron Ehmann Park for (6) lighted tennis courts last resurfaced in March 2020; a Pro Shop, approximately 75 square feet; a storage room, approximately 75 square feet, and two (2) restrooms.

It is the responsibility of each Proposer before submitting a proposal to:

- Thoroughly examine every component of this Solicitation as well as the draft Agreement documents included in this Solicitation, and notify the County of any conflicts, errors, or discrepancies in the documents that may affect submission of a Proposal, prior to deadline for receipt of questions.
- Visit the Tennis Center to become familiar with conditions that may affect costs, performance, and/or furnishing of the Work.
- Take into account federal, state and local laws, regulations, permits, and ordinances that may affect costs, performance, and/or furnishing of the Work.

2.2 Preferred Certification

The County prefers Proposers to provide evidence of key personnel that are certified by the United States Professional Tennis Association (USPTA), United States Tennis Association (USTA), and/or the United States Professional Tennis Registry (USPTR) **at the time of Proposal submission**.

2.3 Ron Ehmann Description

The Contractor shall operate and maintain the following as part of this Tennis Center:

- Six (6) lighted tennis courts shall be secured, managed, operated and maintained by the Contractor. Two (2) courts must be available for public use at all times;
- A Pro Shop, approximately 75 square feet, located adjacent to the tennis courts which shall be used for the sale of food, beverages, and/or related merchandise/services;
- A storage room, approximately 75 square feet located adjacent to the restrooms. This storage room may only be used for Contractor's items; and
- Two (2) restrooms shall be managed, cleaned, stocked and maintained by the Contractor during operating hours.

2.4 **Tasks: General Services to be Provided at the Tennis Center**

- I. Operate the Tennis Center including tennis courts, Pro Shop, storage room, and related services for each as applicable, as approved by the County, in a manner associated with this type of operation and the tennis industry, in accordance with Article 7 of The Home Rule Amendment and Charter as amended, <http://www.miamidade.gov/charter/library/charter.pdf> and all Miami-Dade County ordinances and rules and regulations.
- II. Ensure two (2) tennis courts are available to the public at all times during Operating Hours. All courts may be reserved for the purpose of holding tournaments subject to the approval of the Project Manager.
- III. Provide tennis lessons and Demonstrations that may be either fee-based or complimentary, depending on mutual agreement of Contractor and the County. The Contractor shall promote and/or teach lessons to the following:
 - Individuals (Individual Lessons)
 - Groups (Group Lessons)
 - Clinics
 - Demonstrations
 - Coaching
- IV. Establish, provide, and promote tennis services to persons of all ability levels and in accordance with Americans with Disabilities Act (ADA) requirements.
- V. Establish, provide and promote a Free Community Tennis Program during the times listed below. Under this program, Contractor shall provide off-site tennis lessons for youth (ages 6-14) who live in economically disadvantaged households. Contractor can choose between providing lessons at Joseph Delancy Park, Ruben Dario Park or at both off-site parks (e.g. one week at Delancy Park; one week at Ruben Dario Park). Contractor shall provide equipment for students who are without equipment under this program, and children shall be brought onto the courts in groups of 5 to 6 at a time for a twenty minute session before rotating to the next group.-
 - **Fall (September – December)**
Tennis lessons shall be provided on Monday, Wednesday and Friday or Tuesday, Thursday and Saturday for two non-consecutive weeks. Each lesson shall last a minimum of one (1) hour in length for a total of six (6) lessons provided. The County reserves the right to determine the dates and times that lessons will be provided with a minimum of 5, maximum of 15 students shall be provided tennis lessons per class during this fall season.
 - **Spring (January - May)**
Tennis lessons shall be provided on Monday, Wednesday and Friday or Tuesday, Thursday and Saturday for two non-consecutive weeks. Each lesson shall last a minimum of one (1) hour engh for a total of six (6) lessons provided. The County reserves the right to determine the dates and times that lessons will be provided and a minimum of 5, maximum of 15 students shall be provided tennis lessons per class during this spring season.
 - **Summer (June – August)**
Tennis Lessons shall be provided Monday through Friday, and each lesson shall last a minimum of three (3) hours in length, and a camp tournament shall be held on Saturday. The County reserves the right to determine the dates and times that lessons will be provided and a maximum of 30 students shall be provided tennis lessons per class during this summer season.

_____Qualifying participants subject to the approval of the Project Manager. This programming will target after-school hours whenever possible.
- VI. Focus on the implementation of a "Net Generation" Program or equivalent. The Program will reach a new generation and a new era of tennis players to develop new play formats, curricula, and digital tools.

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- VII. Establish free adaptive community tennis programs and focus on teaching sports adapted to people with physical and mental disabilities such as;
- Adaptive tennis for people in wheelchairs
 - Adaptive tennis for blind people (using tennis balls with bells included)
 - Adaptive tennis for people with Down Syndrome
- VIII. Uphold all terms and conditions of Exhibit A and Exhibit B which detail the Joint Use Agreement for Ron Ehmann Park and Killian Sr. High School, as well as any amendments or extensions thereof. Killian High School has the right to use the facility, at no cost, during school hours from Monday through Friday. However, in the current schedule, Killian High School is only using the courts from January through March, using two courts on Mondays, Wednesday and Fridays from 2:00pm to 5:00pm.
- IX. Accommodate existing or promote new League play and Tournaments at the Tennis Center. Types of leagues should include women's leagues, men's leagues, mixed doubles leagues, doubles leagues, junior's leagues, teen's leagues, etc. One (1) or more which may exist in some fashion at different levels of skill or ability.
- X. Assist PROS in the establishment, operation, and tabulation of tennis tournaments as requested by PROS, including participation in establishing specific needs for individual tournaments.
- XI. Establish, manage, and promote a Summer Tennis Program and/or Camp to offer a youth oriented program geared toward introducing kids to the basics of tennis.
- XII. Establish, manage, and promote a Junior Tennis Team at the Tennis Center. The Contractor should monitor the following program objectives:
- Provide opportunities for kids regardless of physical or performance ability;
 - Focus on development of playing skills and not on the outcome of games;
 - Provide a fun and relaxed environment that results in success and continued play;
 - Ensure all kids play equally;
 - Provide opportunities and grow involvement of girls in sports;
 - Provide co-ed teams where possible;
 - Provide a fair and unbiased team selection process;
 - Provide age appropriate play philosophy and focus on skill development; and
 - Balance the length and number of seasons and practices to allow participants to rest and recover properly.
- XIII. Operate and manage the Pro Shop to offer the following:
- Tennis racquet services, including racquet stringing and repair;
 - Retail items related to the Tennis Center operations; and
 - Various prepackaged food items and beverages.
- ♦ **Please Note:** Cash and Checks shall be accepted at the registers within the Pro Shop. PROS has integrated County's merchant services – using Elavon for ecommerce and point-of-sale transactions. Credit card fees are paid by the County. There will be Ingenico ISC250 terminals for handling of credit card payments on-site. The Contractor's staff will be responsible for handling the point-of-sale transactions at the register and the collection of payments. The Contractor's staff shall similarly be responsible for closing out the daily register, depositing money and issuing refunds as well as any ancillary tasks related to or incidental to the processing of transactions and administration of fees.
- XIV. Assist in fundraising activities to provide additional funds for PROS capital improvements at the Tennis Center. When Contractor is performing fundraising events for vulnerable populations, those revenues shall not be included when calculating the Percentage of Gross Revenues listed in Section 2.7.
- XV. Actively promote and market the Tennis Center to foster awareness of provided services and to attract and retain customers.

- XVI. Furnish prompt and efficient service that meets the tennis patrons' needs and all other reasonable demands, including the established minimum schedule and hours of operation for tennis patrons, subject to the approval of the County.
- XVII. Manage, operate, and maintain the facilities and provide services in a manner that will be efficient, safe and customer-oriented with prompt Service, complaint resolution, effective employee training/performance and timely initiation and completion of all Work.
- XVIII. Take care of the facilities and using the same in a careful manner, at its own expense, repair County property and facilities damaged by its operations.
- XIX. Keep all equipment and supplies necessary to maintain the facilities in the same condition as at the commencement of any Agreement issued as a result of this RFP or better.
- XX. Provide assistance, expertise, and technical advice to the County regarding general changes in the industry rules and regulations, safety and operation of the facilities, suggesting the types of equipment, merchandise, services and promotional methods associated with this type of operation.
- XXI. Ensure employees are distinctively uniformed or appropriately attired so as to be distinguishable as the Contractor's employees and not as employees of the County.
- XXII. Provide all labor and materials to repair and maintain the day-to-day operations of the facilities including, but not limited to: net, wind screen, and all light bulbs and ballast replacements excluding the tennis courts.
- XXIII. Prepare plan(s) for emergencies including, but not limited to, fire, acts of nature, etc., and implement the approved plan(s) if instructed to do so by the County. Approved plans shall be, at a minimum, equal to that of the Park in which the Facilities reside.
- XXIV. Advise PROS of schedules of Clinics, Tournaments, and any relevant information on tennis, tennis merchandising, tennis management, etc.
- XXV. Comply with the New Normal recreation guidelines for the Site found at <https://www.miamidade.gov/global/initiatives/coronavirus/parks-outdoor-recreation.page>.

2.5 **County's Rights and Responsibilities for Tennis Center**

- I. The County shall have the right to request revision of the Contractor's: **1)** prices on all goods and services; **2)** reservation policy for Tennis Center related rentals; and **3)** schedule of intended hours of operation and staffing levels.
- II. The County reserves the right to schedule special events that may preclude the Contractor from operating in the facilities or providing the services, or a portion thereof, for a limited time. The County will use reasonable efforts to notify the Contractor as early as possible of these special events.
- III. The County shall have the right, without limitation, 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 a shopping service, closed circuit TV and other reasonable means.
- IV. The County shall have the authority to make periodic reasonable inspections of all the facilities, equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. The Contractor shall make any improvements in cleaning or maintenance methods reasonably required by the County. 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 Contract.
- V. The County reserves the right to determine the attractiveness and appropriateness of the facilities and to request that the Contractor make changes, if necessary, and such determinations by the County shall be considered final.

- VI. The County shall have the right, at its sole cost and expense, without limitation, to make any repairs, alterations and additions to any structures and facilities, including the facilities covered under this Contract, free from any and all liability for loss of business or damages of any nature whatsoever during the making of such repairs, alteration and additions.
- VII. The County shall be responsible for tennis court lighting fixtures and lightbulb replacement/installation.
- VIII. The County shall provide a dumpster within the Park for Contractor to discard trash.
- IX. The County shall be responsible for mowing, landscaping and tree maintenance as needed at the facilities and as determined by the County.
- X. The County shall have the right to approve or deny, in writing and in its sole discretion, any subcontractors for the services.
- XI. The County reserves the right to close the facilities prior to an act of nature or force majeure and keep said facilities closed until deemed safe in the opinion of the County.

2.6 Contractor's Rights and Responsibilities for Tennis Center

- I. The Contractor shall pay monthly, to the County, a flat rate of seven hundred and fifty dollars, (750.00, plus tax) Utilities fee which shall persist throughout the term of the Agreement, including any extensions or renewals thereof. Additionally, the Contractor shall not place any unacceptable load or burden on the capacity of the applicable building systems and Utility lines of the Park as determined either by the public utility providing such service or by the County in the exercise of reasonable judgment.
- II. The Contractor shall be responsible for trash service and pest extermination service within the facilities. The Contractor shall keep the facilities and equipment clean at all times. If the facilities and equipment are not kept clean, in the opinion of the County, the Contractor will be advised and if correction action is not immediately taken, then the County will cause the same to be cleaned and/or treated and the Contractor shall assume responsibility and liability for such associated cleaning and/or extermination costs.
- III. The Contractor shall be responsible for resurfacing all six (6) tennis courts as determined by the Project Manager.
- IV. The Contractor shall be responsible for the daily upkeep of the Tennis Center and applicable equipment/facilities, scheduling and coordinating all maintenance functions with Killian Sr. High School in accordance with the terms and conditions set forth in Exhibit A and Exhibit B. The Contractor shall repair and maintain the Tennis Center to include at a minimum:
 - Repair and replacement of nets, wind screens, furniture, and any other equipment and fixtures located within the Tennis Center.
 - Pressure cleaning of tennis courts at least once every six (6) months or as necessary.
 - Installation and upkeep of new and unused nets and windscreens.
 - Ensure exterior Tennis Center Pro Shop walls are clean and painted, as approved by PROS. The Contractor must seek approval from PROS on color of paint to be utilized prior to painting.
 - Maintain chain-link access control fence and gates in a manner so that the fence is not in any way damaged, ensuring there are no obvious breaks, that it is firmly attached to erect fencing poles, and that the chain links have all associated hardware intact.
 - Maintain existing cement sidewalk from the parking lot to and from the court, entrance gates to and from the Pro Shop, and spectator areas so as to keep the areas safe to walk through by Park patrons.

- Ensure walkways are free of debris.
 - Maintain ample roll dries for each court and an ample supply of replacement roll dry units to ensure courts can be adequately dried after rain.
 - Provide and maintain Tennis Center trash cans by placing them in the spectator seating areas and Pro Shop area (if applicable). The trash cans should be emptied into the County provided dumpster within the Park when filled to capacity and should never have trash overflowing.
 - Maintain and manage restrooms by cleaning daily, removing trash, and restocking all paper supplies as necessary. In case of rain, the restrooms will be left open and supervised by PROS staff until the rain stops.
- V. The Contractor shall, at its sole cost, obtain all permits, licenses, and approvals required for operation and performance under this Contract.
- VI. The Contractor shall comply with Miami-Dade County Ordinance No. 16-58 amending Chapter 26 of the Code of Miami-Dade County by adding Rule 36 that bans polystyrene (also known as styrofoam) in parks under any circumstances. A polystyrene article is defined as plates, bowls, cups, utensils, cutlery, tableware, containers, lids, trays, coolers, ice chests, bags, boxes, wrappings, bottles, and all similar articles that consist of polystyrene. This rule does not apply to polystyrene articles that are used for prepackaged food that have been filled and sealed prior to receipt by the Contractor.
- VII. It shall be the Contractor's full responsibility to secure the facilities included in this Solicitation, twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year. The County will not accept any responsibility for the Contractor's equipment, supplies, other personal property, money, etc.
- VIII. The Contractor shall ensure their emergency evacuation plan and hurricane plan coincides with the County's Emergency Evacuation and Hurricane Plan as set forth for the facilities.
- IX. The Contractor shall employ a qualified, full-time, on-site manager having experience in the management of this type of operation, who shall be available during Business Hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Contractor under this Contract and to accept all notices provided for herein throughout the term of this Contract or any extensions thereof.
- X. A management person of the Contractor shall be on call, at all times, for emergencies or other matters related to the operations under this Contract.
- XI. All equipment and personal property furnished by the Contractor shall be of good quality and suitable for its purpose.
- XII. The Contractor shall use the facilities only for the use permitted and shall not provide any services or sell any item or product without the prior written approval of the Project Manager. Further, all activity and use shall be in accordance with Article 7 of the Home Rule Charter of Miami-Dade County.
- No alcoholic beverages shall be sold or permitted on the tennis courts at any time and Contractor is responsible for conduct of patrons during rentals.
- XIII. The Contractor shall not permit the facilities or any part thereof to be used in any manner, or anything to be done therein, 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 facilities or Park or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the facilities or Park; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the facilities or Park or the proper and economic functioning of any other common service facility or common utility of the facilities or Park; (vi) impair or interfere with the physical convenience of any of the occupants of the facilities or Park; or (vii) impair any of the it's other obligations under this Contract.

- XIV. The Contractor shall be responsible for the timely payment (i.e. before delinquency) of any and all taxes levied on the Contractor, which taxes relate to, arise out of, or are a result of the operations and/or performance under this Agreement. The Contractor's liability for the payment of taxes shall encompass taxes imposed by any taxing authority including, state, county, and municipal taxing authorities.
- XV. The Contractor, at its expense, shall make promptly: all repairs, ordinary or extraordinary, interior or exterior, structural or otherwise, in and about the facilities or Park as shall be required by reason of (i) the performance of any work on the facilities; (ii) the installation, use or operation of Contractor's property; (iii) Contractor's portion of the utility lines in the facilities, if damaged due to Contractor's negligence; (iv) the moving of Contractor's property in or out of the facilities or Park; (v) the misuse or neglect of the Facilities or Park by Contractor or any of its employees, agents, contractors, or customers including the failure or neglect to make the repairs required. Contractor shall repair all damages to the facilities and/or Park caused by the Contractor, its employees, agents, or independent contractors.
- XVI. The Contractor shall be responsible for conduct of all individuals or groups renting the facilities.
- XVII. The Contractor shall maintain a listing or log of the use of all tennis courts. The log, at a minimum, should contain reservations made and used including number of players and the date and time used.
- XVIII. The Contractor shall refrain from utilizing outside Park surfaces for commercial advertisements including company logos.
- XIX. The Contractor shall request prior written approval from Park Manager for all Tournaments, special events, or additional Facility usage.
- XX. The Contractor shall use the Park Link system for all court reservations, and no other software system will be accepted. There will be no cost implications for the use of this County owned system. Park Link has the functionality to require payment online for reservations, for reserving courts for programs, clinics, private lessons and for tournaments as well.
- XXI. The Contractor shall request approval from the County in writing in advance for use of any subcontractors.
- XXII. The Contractor shall be responsible for any costs associated with a force majeure act at the facilities including repairs, maintenance, loss of revenues, etc., as the County will not reimburse for expenses, extend the contract term, or prorate the guaranteed monthly fee in such instances.
- XXIII. The Contractor shall be responsible for seamless transition and implementation of services pursuant to any award of this Contract.
- XXIV. The Contractor shall provide credit/debit card processing capabilities for all products and services rendered.

2.7 Payment of Revenue to the County

It is the intent of the County that the best possible Services be provided to the public, while generating revenues. The Contractor shall pay the following variable revenue to the County:

Monthly Guarantee

For consideration of providing services at Ron Ehmman Park, the County prefers payment of no less than two thousand, six hundred dollars and zero cents (\$2,600.00) plus tax, per month, which shall be received by the County from the Contractor on or before the first day of the month, without billing.

Percentage of Gross Revenues

For consideration of providing services at Ron Ehmman Park, the County prefers Percentage of Gross Revenues of no less than five (5) percent (%), plus tax, per month, which shall be received by the County from the Contractor on or before the first day of the month, without billing.

2.8 Sustainable Procurement Practices

The County is committed to responsible stewardship of resources and to demonstrating leadership in sustainable business practices. Accordingly, the County has adopted sustainability policies which are incorporated into this Solicitation. The County will continue to explore and pursue sustainable procurement, development and business practices that: (a) reduce greenhouse gases; (b) foster and integrate supplier small business opportunities; (c) support safe and fair labor practices and ethical behavior throughout the supply chain, and (d) maximize fiscally responsible "high value, high impact" actions.

3.0 RESPONSE REQUIREMENTS

3.1 Submittal Requirements

In response to this Solicitation, Proposer should **complete and return the entire Proposal Submission Package**. Proposers should carefully follow the format and instructions outlined therein. All documents and information must be fully completed and signed as required and submitted in the manner described.

The proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the proposed Services. However, overly elaborate Proposals are not requested or desired.

4.0 EVALUATION PROCESS

4.1 Review of Proposals for Responsiveness

Each Proposal will be reviewed to determine if the Proposal is responsive to the submission requirements outlined in this Solicitation. A responsive Proposal is one which follows the requirements of this Solicitation, includes all documentation, is submitted in the format outlined in this Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the Proposal being deemed non-responsive.

4.2 Evaluation Criteria

Proposals will be evaluated by a Review Team which will evaluate and rank Proposals on criteria listed below. The Review Team will be comprised of appropriate County personnel and members of the community, as deemed necessary, with the appropriate experience and/or knowledge, striving to ensure that the Review Team is balanced with regard to both ethnicity and gender. The criteria are itemized with their respective weights for a maximum total of one thousand (1,000) points per Review Team Member.

TECHNICAL EVALUATION	
TECHNICAL CRITERIA (ATTACHMENT 1)	POINTS
Proposer's Approach to Providing the Services including Management and Operations Plan	200
Proposer's Experience, Capabilities, and Past Performance	200
Proposer's Key Personnel and Subcontractors Experience, Qualifications and Past Performance	150
Proposer's Customer Programs, including Retention, Development, and Marketing	100
Proposer's Transition Plan	50
Proposer's Certification	50
TOTAL TECHNICAL POINTS	750
REVENUE EVALUATION	
REVENUE CRITERIA (ATTACHMENT 2)	POINTS
Monthly Guarantee	125
Percentage of Gross Revenues	125
TOTAL REVENUE POINTS	250
TOTAL MAXIMUM EVALUATION POINTS PER REVIEW TEAM MEMBER	1,000

Any Proposer, whether a joint venture or otherwise, may proffer the experience or qualifications of its corporate parent, sister, or subsidiary ("an affiliated company"). However, given the unique nature of individual corporate relationships, Proposers seeking to rely on the experience or qualifications of an affiliated company are advised that the Review Team shall have the discretion to determine what weight, if any, it wishes to give such proffered experience or qualification on a case-by-case basis. Review Team may base such decision on the particulars of the relationship between the Proposer and the affiliated company,

as evidenced by the information and documentation provided in the Proposer Information Section, during Oral Presentations, or otherwise presented at the request of the Review Team.

4.3 Oral Presentations

Upon evaluation of the criteria indicated above (Technical and Revenue), rating and ranking, the Review Team may choose to conduct an oral presentation with the Proposer(s) which the Review Team deems to warrant further consideration based on, among other considerations, scores in clusters and/or maintaining competition. (See Affidavit – "Lobbyist Registration for Oral Presentation" regarding registering speakers in the Proposal for oral presentations.) Upon completion of the oral presentation(s), the Review Team will re-evaluate, re-rate and re-rank the Proposals remaining in consideration based upon the written documents combined with the oral presentation.

4.4 Selection Factor

This Solicitation includes a selection factor for Miami-Dade County Certified Small Business Enterprises (SBE's) as follows. A SBE is entitled to receive an additional ten percent (10%) of the total technical evaluation points on the technical portion of such Proposer's proposal. Pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code, Proposer shall have all the necessary licenses, permits, registrations and certifications, to include SBE certification, to perform a commercially useful function in the provision of the type of goods and/or services required by this Solicitation. For certification information, contact Small Business Development Division at (305) 375-2378 or visit <http://www.miamidade.gov/smallbusiness/>.

The SBE must be certified by proposal submission deadline, at contract award, and for the duration of the contract to remain eligible for the preference. Firms that graduate from the SBE Program during the contract term may remain on the contract.

Any Proposer may enter into a Joint Venture with a Small Business Enterprise firm for the purposes of receiving an SBE Selection Factor. Joint Ventures will be considered as one entity by the County during the evaluation of the proposal in response to this Solicitation. Joint Ventures must be pre-approved by Small Business Development and meet the criteria for the purposes of receiving an SBE Selection Factor pursuant to this Section.

4.5 Local Certified Veteran Business Enterprise Preference

This Solicitation includes a preference for Miami-Dade County Local Certified Veteran Business Enterprises in accordance with Section 2-8.5.1 of the Code. "Local Certified Veteran Business Enterprise" or "VBE" is a firm that is (a) a local business pursuant to Section 2-8.5 of the Code and (b) prior to proposal or bid submittal is certified by the State of Florida Department of Management Services as a veteran business enterprise pursuant to Section 295.187 of the Florida Statutes. A VBE that submits a proposal in response to this solicitation is entitled to receive an additional five percent of the evaluation points scored on the technical portion of such vendor's proposal. If a Miami-Dade County Certified Small Business Enterprise (SBE) measure is being applied to this Solicitation, a VBE which also qualifies for the SBE measure shall not receive the veteran's preference provided in this section and shall be limited to the applicable SBE preference. At the time of proposal submission, the firm must affirm in writing its compliance with the certification requirements of Section 295.187 of the Florida Statutes and submit this affirmation and a copy of the actual certification along with the Submittal Form.

4.6 Revenue Evaluation

The revenue schedule will be evaluated subjectively in combination with the technical proposal, including an evaluation of how well it matches Proposer's understanding of the County's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed Services. The revenue evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The County reserves the right to negotiate the final terms and conditions of the Contract as may be in the best interest of the County.

4.7 Local Preference

The evaluation of competitive solicitations is subject to Section 2-8.5 of the Miami-Dade County Code of Miami-Dade County, which, except where contrary to federal or state law, or any other funding source requirements, provides that preference be given to local businesses. If, following the completion of final rankings by the Review Team a non-local Proposer is the highest ranked responsive and responsible Proposer, and the ranking of a responsive and responsible local Proposer is within 5% of the ranking obtained by said non-local Proposer, then the Review Team will recommend that a Contract be negotiated with said local Proposer.

4.8 Negotiations

The Review Team will evaluate, score and rank Proposals, and submit the results of the evaluation to the County Mayor or designee with its recommendation. The County Mayor or designee will determine with which Proposer(s) the County shall negotiate, if any, taking into consideration the Local Preference Section above. The County Mayor or designee, at their sole discretion, may direct negotiations with the highest ranked Proposer, negotiations with multiple Proposers, and/or may request better offers. In any event the County engages in negotiations with a single or multiple Proposers and/or requests better offers, the discussions may include price and conditions attendant to price.

Notwithstanding the foregoing, if the County and said Proposer(s) cannot reach agreement on a Contract, the County reserves the right to terminate negotiations and may, at the County Mayor's or designee's discretion, begin negotiations with the next highest ranked Proposer(s). This process may continue until a Contract acceptable to the County has been executed or all Proposals are rejected. No Proposer shall have any rights against the County arising from such negotiations or termination thereof. Additionally, any Proposer recommended for negotiations shall comply with the lobbyist registration requirements of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance pursuant to Section 2-11.1(s) of the Code. A principal of any corporation, partnership or other entity who appears as a lobbyist on behalf of an entity, without special compensation or reimbursement for the appearance, shall register with the Clerk as required by the Ordinance 73-21, but shall not be required to pay any registration fees.

Any Proposer recommended for negotiations shall complete a Collusion Affidavit, in accordance with Section 2-8.1.1 of the Code of Miami-Dade County. (If a Proposer fails to submit the required Collusion Affidavit, said Proposer shall be ineligible for award.)

Any Proposer recommended for negotiations may be required to provide to the County:

- a) Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.
- b) Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the Services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last three (3) years.
- c) Disclosure of any lawsuits which include allegations of discrimination in the last ten (10) years prior to date of Solicitation, the disposition of such lawsuits, or statement that there are NO such lawsuits, in accord with Resolution No. [R-828-19](#).

4.9 **Contract Award**

Any proposed Contract, resulting from this Solicitation, will be submitted to the County Mayor or designee. All Proposers will be notified in writing of the decision of the County Mayor or designee with respect to Contract award. The Contract award, if any, shall be made to the Proposer whose Proposal shall be deemed by the County to be in the best interest of the County. Notwithstanding the rights of protest listed below, the County's decision of whether to make the award and to which Proposer shall be final.

4.10 **Rights of Protest**

A recommendation for Contract award or rejection of all Proposals may be protested by a Proposer in accordance with the procedures contained in Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County, as amended, and as established in Implementing Order No. 3-21.

5.0 TERMS AND CONDITIONS

The County's anticipated form of Agreement is attached. The terms and conditions summarized below are of special note and can be found in their entirety in the Agreement:

a) **Vendor Registration**

Prior to being recommended for award, the Proposer shall complete a Miami-Dade County Vendor Registration Package. For online vendor registration, visit the Vendor Portal: <http://www.miamidade.gov/procurement/vendor-registration.asp>. **Refer to Article 48 of the Draft Form of Agreement.**

b) Insurance Requirements

The Contractor shall furnish to the County, Internal Services Department, Strategic Procurement Division, prior to the commencement of any Work under any Agreement, Certificates of Insurance which indicate insurance coverage has been obtained that meets the stated requirements. **Refer to Article 22 of the Draft Form of Agreement.**

c) Security Deposit

Within thirty (30) days from the execution of the Contract, the Contractor shall furnish to the County, Internal Services Department, Strategic Procurement Division at 111 N.W. 1st Street, Suite 1300 Attn: Amelia M. Cordova-Jimenez, a security deposit in cash equal to one and a half (1.5) months of the minimum monthly guarantee, redeemable at the end of the Contract term except for such conditions pertinent thereto. **Refer to Article 19 of the Draft Form of Agreement.**

d) Inspector General Reviews

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Office of the Inspector General may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise indicated. The cost of the audit, if applicable, shall be one quarter (1/4) of one (1) percent of the total Contract amount and the cost shall be included in any proposed price. The audit cost will be deducted by the County from progress payments to the Contractor, if applicable. **Refer to Article 49 of the Draft Form of Agreement.**

e) Shannon Melendi Act Requirements

Contractor(s) shall conduct background checks on all owners, staff, and volunteers pursuant to Miami-Dade County Ordinance No. 08-07 and ensure the safety of the patrons of the Park by meeting the requirements of Chapter 26 "Miami -Dade County Park and Recreation Department Rules and Regulations, Article III, The Shannon Melendi Act". **Refer to Article 66 of the Draft Form of Agreement.**

6.0 ATTACHMENTS

Attachment 1 – Proposer Information Packet

Attachment 2 – Revenue Schedule

Attachment 3 – Draft Form of Agreement

Exhibit A – Joint Use Agreement for Ron Ehmman Park and Killian Sr. High School

Exhibit B – First Amendment to Joint Use Agreement for Ron Ehmman Park and Killian Sr. High School

[Exhibit C – Revenue Payment History](#)

Web Forms: Submittal Form; Subcontracting Form; Lobbyist Registration for Oral Presentations Affidavit; and Contractor Due Diligence Affidavit

ATTACHMENT 1 - PROPOSER INFORMATION PACKET

PROPOSER'S APPROACH TO PROVIDING SERVICES, INCLUDING MANAGEMENT AND OPERATIONS PLAN

1. Describe Proposer's approach to organization and management of the services to be provided.
2. Describe Proposer's specific plan and procedures to be used in providing the services, including but not limited to, the following:
 - a. Proposed approach to providing high quality, prompt service and meeting customer satisfaction;
 - b. Proposed approach to maintaining safety;
 - c. List of specific reports, tasks and deliverables utilized to provide the services in a consistent and effective manner;
 - d. Provide a proposed schedule of intended hours of operation and staff levels.
3. Provide a price schedule for all services and products proposed, including a description of said products and services, prices must reflect recent trends for pricing in the industry.
4. Describe the Proposer's technical capabilities and methodology to providing the services, including but not limited to, the following:
 - a. Instruction methods;
 - b. Policies/Procedures;
 - c. Equipment, technology or software utilized, if any; and
 - d. Tracking and recording player data (i.e. number of lessons taught, age group, gender of player)
5. Describe in detail Proposer's training program, including how assessments for staff will be performed, relevant documents such as employee manual, and use representative examples of procedures used, including quality control, safety, and customer service. Proposer must describe standards and methods that address the services to be performed under the Agreement, including the following:
 - a. General orientation and areas of responsibility;
 - b. Procedures, performance standards, remedial action and retraining programs;
 - c. Tools and equipment, operation and safety;
 - d. Protection and safety of the people who participate in tennis activities;
 - e. Customer service training for all personnel having public contact; and
 - f. All human resources programs that demonstrate the Proposer's ability to promote and manage a diversified work force, promote workplace fairness and equal opportunity, prevent sexual harassment, and establish and enhance employee motivation via tangible programs and career development opportunities.
 - g. Measures taken in accordance with the New Normal as described in Section 2.4 of this Solicitation, which details health guidelines to be followed as a response to the COVID-19 pandemic.
6. Describe the Proposer's approach and capacity to support the expansion of tennis services to additional sites at the discretion of the County.

NOTE: Identify if Proposer has taken any exception to the terms of this Solicitation. If so, indicate what alternative is being offered and the cost implications of the exception(s). Only those exceptions identified herein will be considered by the County. Exceptions not specifically delineated will not be accepted from any Proposer(s) that may be invited to participate in Negotiations as outlined in Section 4.8 of the Solicitation.

PROPOSER'S EXPERIENCE, CAPABILITIES, AND PAST PERFORMANCE

7. Describe the Proposer's past performance and experience, and state the number of years the Proposer has been in existence.
8. State the current number of employees of the Proposer, including experience managing continuous tennis program(s) at one (1) or more facilities, seven (7) days a week, including holidays.
9. Identify service locations managed by the Proposer, including the number of locations administered both presently and in recent years, including sales data.
10. Provide a detailed description of contracts similar in scope of services to those requested herein, which the Proposer has either ongoing or completed within the past five (5) years. The description should identify for each project: (i) client, (ii) description of work, (iii) total dollar value of the contract, (iv) dates covering the term of the contract, (v) client contact person and phone number, and a (vi) statement of whether Proposer was the prime contractor or subcontractor. Where possible, list and describe those projects performed for government clients or similar size private entities (excluding any work performed for Miami-Dade County).
11. Provide a list of all contracts which the Proposer has performed for Miami-Dade County (the County). The County will review all contracts the Proposer has performed for the County in accordance with Section 2-8.1(g) of the Miami-Dade County Code, which requires that "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts." As such the Proposer must list and describe all work performed for Miami-Dade County and include for each project: (i) name of the County Department which administers or administered the contract, (ii) description of work, (iii) total dollar value of the contract, (iv) dates covering the term of the contract, (v) County contact person and phone number, and a (vi) statement of whether Proposer was the prime contractor or subcontractor.
12. Provide information concerning any prior or pending litigation, either civil or criminal which may affect the performance of the Services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last ten (10) years.

PROPOSER'S KEY PERSONNEL AND SUBCONTRACTORS EXPERIENCE, QUALIFICATIONS, AND PAST PERFORMANCE

13. Provide an organizational chart showing all key personnel, including their titles, to be assigned to the Park. This chart must clearly identify the Proposer's key personnel and those of the subcontractors, and shall include the functions to be performed. All key personnel includes all partners, managers, seniors and other professional staff that will perform work and/or provide services for this project. If Proposer is using the same day to day personnel at more than one tennis center, Proposer must describe how the day to day personnel will manage multiple roles in the different locations and demonstrate Proposer has

the capacity and resources to manage multiple tennis centers through the Proposer's day to day personnel.

14. Provide a list of the names and addresses of all first tier subcontractors, and describe the extent of work to be performed by each subcontractor.
15. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of all key personnel, including those of subcontractors, who will be assigned to this project.
16. Provide resumes, or an equivalent professional profile, describing the experience, qualifications and other vital information, including but not limited to, relevant experience on previous similar projects, education certifications/licenses and training, languages spoken and written, of all key personnel, and those of subcontractors, who will be assigned to this Project.

NOTE: After Proposal submission, but prior to the award of any Contract issued as a result of this Solicitation, the Proposer has a continuing obligation to advise the County of any changes, intended or otherwise, to the key personnel identified in its Proposal. Any key personnel substituted for the purposes of this Solicitation must demonstrate commensurate knowledge, skills and certifications to that of the personnel being substituted.

PROPOSER'S CUSTOMER PROGRAMS, INCLUDING RETENTION, DEVELOPMENT AND MARKETING

17. Describe the Proposer's experience in player development and retention, including core tennis players, lapsed players, women players, and all demographics including, children, youth, and seniors. Provide a detailed description of the proposed programs and/or services.
18. Describe the Proposer's approach to providing special programs including the Free Community Tennis Program, Net Generation Program and Free Adaptive Community Tennis Program.
19. Describe Proposer's approach to providing tennis activities for children and youth tennis programs including, but not limited to, the following:
 - a. Concept, function, and goal of program;
 - b. Length of program;
 - c. Methods of Instruction, including curriculum;
 - d. Eligibility/Age Groupings;
 - e. Classes/Activities Offered;
 - f. Forms and documents utilized; and
 - g. Parent involvement and communication
20. Describe Proposer's marketing strategy and advertising plan for the Services and Programs including, but not limited to, the following:
 - a. Media planning;
 - b. Signage types and design;
 - c. Target market/audience(s); and
 - d. Marketing goals

PROPOSER'S TRANSITION PLAN

21. Provide a transition plan, including a transition schedule commencing post Contract award with specific tasks and timelines. The Proposer shall also describe how it plans to start operations with a smooth transition of work from the incumbent Contractor. The transition plan must allow time for:
- a. Providing equipment and supplies;
 - b. Obtaining ID badges and security training;
 - c. Issuance of necessary keys; and
 - d. Orientation and site tours

PROPOSER'S CERTIFICATION

22. Provide evidence of key personnel that are certified by the United States Professional Tennis Association (USPTA), United States Tennis Association (USTA), and/or the United States Professional Tennis Registry (USPTR).

ATTACHMENT 2 - REVENUE SCHEDULE

Proposers shall list their Minimum Monthly Guarantee and Percentage of Gross Revenues. These amounts shall be seen as consideration retained by the County for allowing the Contractor to engage in business at Ron Ehmann Park.

Minimum Monthly Guarantee

The County prefers a Minimum Monthly Guarantee of **no less than twenty six hundred dollars and zero cents (\$2,600.00) plus tax, per month**, which shall be received by the County from the Contractor on or before the first day of the month, without billing.

Minimum Monthly Guarantee (Paid Monthly)	Year 1	Year 2	Year 3	Year 4	Year 5
	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
	Year 6	Year 7	Year 8	Year 9	Year 10
	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

Percentage of Gross Revenues

The County prefers Percentage of Gross Revenues of **no less than five (5) percent (%), plus tax, per month**, which shall be received by the County from the Contractor on or before the first day of the month, without billing.

Percentage of Gross Revenues (Paid Monthly)	Year 1	Year 2	Year 3	Year 4	Year 5
	_____ %	_____ %	_____ %	_____ %	_____ %
	Year 6	Year 7	Year 8	Year 9	Year 10
	_____ %	_____ %	_____ %	_____ %	_____ %

REVENUE SCHEDULE ACKNOWLEDGMENT

The Proposer's price data shall be submitted on this Attachment 2, Revenue Schedule, and in the manner stated herein. Proposers who do not submit pricing in accordance with the Solicitation document and this Attachment 2 may be deemed non-responsive. The amounts entered on this Attachment 2, Revenue Schedule shall be used to determine points awarded for the revenue criteria as indicated in Section 4.2, Evaluation Criteria, of this Solicitation. Notwithstanding the proposed revenue rates, the County reserves the right to negotiate the final revenue rates prior to award.

ATTACHMENT 3 – DRAFT FORM OF AGREEMENT

(This is the form of agreement the County anticipates awarding to the selected Proposer.)

Recitals Page
Tennis Center Operations at Ron Ehmann Park
Contract No. EPPRFP-02297

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between _____, a corporation organized and existing under the laws of the State of _____, having its principal office at _____ (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 Contractor has offered to provide Tennis Center Operations at Ron Ehmann Park, on a non-exclusive basis, that shall conform to the Scope of Services (Article 11); Miami-Dade County's Request for Proposals (RFP) No. EPPRFP-02297 Tennis Center Operations at Ron Ehmann Park 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 _____, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference and;

WHEREAS, the Contractor shall provide a range of professional tennis instruction services during designated hours pursuant to this Agreement at Ron Ehmann Park, located at 10995 SW 97 Avenue, Miami, FL 33176 and;

WHEREAS, the County desires to procure from the Contractor such Tennis Center Operations at Ron Ehmann Park for the County, in accordance with the terms and conditions 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:

1. The words “**Additional Services**” to mean additions or modifications to the amount, type or value of the Work and Services as required in this Agreement, as directed and/or approved by the County.
2. The words “**Agreement**” or “**Contract**” to mean collectively terms and conditions, Scope of Services, all other appendices, attachments and amendments to the Agreement/Contract, this RFP and all associated addenda, and the Contractor’s Proposal.
3. The words “**Business Hours**” to mean Monday – Sunday from 9:00 a.m. to 6:00 p.m.
4. The word “**Camp**” to mean Clinics organized for providing tennis training and tennis skills enhancement.
5. The word “**Clinic**” to mean teaching of tennis to a group of six (6) or more individuals per instructor.
6. The word “**Coaching**” to mean training of tennis teams sanctioned by and approved by PROS.
7. The words “**Contract Manager**” to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
8. The word “**Contractor**” to mean the Proposer that receives any award of a contract from the County as a result of this Solicitation, also to be known as “the Prime Contractor”.
9. The word “**County**” to mean Miami-Dade County, a political subdivision of the State of Florida.
10. The word “**Demonstrations**” to mean presentation of different aspects of tennis in promotion of the associated Tennis Center.
11. The words “**Facility**”, “**Facilities**”, “**Tennis Center**” or “**Site**” to mean the tennis courts, pro shop, and storage areas, as further described in the Scope of Services.
12. The words “**Goods**” to mean food and beverage items such as, but not limited to, drinks and snacks and retail merchandise related to the Tennis Center operation such as, but not limited to, tennis related clothing, racquets, and racquet equipment.
13. The words “**Gross Revenue(s)**” to mean all revenues generated by the Contractor and authorized third-party entities arising out of or relating to the provision of all activities or items for which a price, charge, trade/barter or fee is imposed, as well as all revenues or other consideration charged for or received by the Contractor, as herein defined, for all services rendered, all sales made, and all transactions engaged in under the authority of this Agreement from any source whatsoever and whether such activities were on the Site or off-Site. Gross Revenues further includes, but is not limited to, those revenues received from the rights paid to the Contractor for the use or licensing of all media, the sales of all media, from ticket sales, from sponsorship sales, tournament parking, concession revenues, retail revenues, advertising space and/or services, hospitality sales, merchandise (including without limitation retail, wholesale, direct response, mail order, internet or otherwise). All third-party contracts shall be in writing and on market terms. If such conditions are not on market terms and/or have resulted in a direct or indirect tangible economic benefit to the Contractor, then the actual market value of the economic benefit provided shall be included in Gross Revenue(s). The only revenues and other considerations which may be excluded from Gross Revenues are taxes imposed by

law and paid by a customer and directly payable by Contractor to a taxing authority, credit card processing fees, and pass-through or reimbursable expenses paid by third parties through the Contractor to another third-party.

14. The words “**Group Lessons**” to mean teaching of tennis to a group of individuals not to exceed five (5) individuals.
15. The words “**Hours of Operation**” to mean the regularly scheduled times that the Contractor will be at Ron Ehmann Park performing the Services described in this Agreement.
16. The words “**Individual Lessons**” to mean teaching of tennis to an individual.
17. The word “**Instructor**” to mean the Contractor or Contractor’s key personnel or subcontractors who are certified by USPTA, USTA, and/or USPTR to teach tennis.
18. The words “**Junior Tennis Team**” to mean a team that is designed for children ages seven (7) to eighteen (18) which will play in a League with other Tennis Centers.
19. The word “**League**” to mean organized, structured tennis play by groups of people over a period of time.
20. The words “**New Normal**” to mean guidelines set forth by Miami-Dade County to allow for safe business operations as a response to the coronavirus (COVID-19) pandemic. The guidelines implemented for recreational facilities may be viewed at the following website URL: <https://www.miamidade.gov/global/initiatives/coronavirus/openings.page>.
21. The word “**Park**” to mean Ron Ehmann Park located at 10995 SW 97 Avenue, Miami, FL 33176.
22. The words “**Professional Background Screener**” to mean any person, company, organization or agency which, for monetary fees, dues, or on a not-for-profit basis, regularly engages in whole or in part in the practice of researching and assembling criminal history information on specific persons for the purpose of furnishing criminal history reports to third parties.
23. The words “**Project Manager**” to mean the Miami-Dade County Parks, Recreation and Open Spaces Department Director or the duly authorized representative designated to manage the Project.
24. The acronym “**PROS**” to mean the Miami-Dade County Parks, Recreation and Open Spaces Department.
25. The words “**Pro Shop**” to mean a structure approximately 100 square feet, located adjacent to the tennis courts which shall be used for the sale of food, beverages, and/or related merchandise/services.
26. The words “**Scope of Services**” to mean Article 11 of this Agreement, which details the work to be performed by the Contractor.
27. The word “**Subcontractor**” to mean any person, firm, entity or organization, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Contractor.
28. The words “**Summer Tennis Program**” to mean a program established for children three (3) to sixteen (16) years of age where they are engaged in tennis training during the summer.

- 29. The word **“Tournaments”** to mean a scheduled series of games, competitive in nature, between teams from the Tennis Center; either traveling or hosting.
- 30. The acronym **“USPTA”** to mean United States Professional Tennis Association.
- 31. The acronym **“USPTR”** to mean United States Professional Tennis Registry.
- 32. The acronym **“USTA”** to mean United States Tennis Association.
- 33. The word **“Utilities”** to mean services used or consumed such as, but not limited to, electricity, gas, water, and sewerage.
- 34. The words **“Work”**, **“Services”**, or **“Project”** to mean all matters and things that will be required to be done by the Contractor in accordance with the Scope of Services, and the terms and conditions of this Solicitation.

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 (Article 11), 3) the Miami-Dade County's EPPRFP-02297 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 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 Services that are necessary for the completion of this Contract. All 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 tennis instruction and related services for the term, at the rate and upon the covenants and conditions as set forth in this Agreement. 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 Agreement. The Contractor shall use the amenities within the park identified within this Agreement and within any attachments (if applicable), only for the provision of tennis instruction and related services and accepts such amenities in the condition they are in at the execution of this Agreement.

ARTICLE 6. LIMITATIONS ON USE

Subject to Contractor's right to use the Park 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 identified in this Agreement or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the park identified herein; (v) materially impair or interfere with the proper and economic cleaning of such park or the proper and economic functioning of any other common service facility or common utility of the 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. GOVERNMENT 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 for 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 identified on page 1 "Recitals Page" of this agreement and shall continue through the last day of the 120th month.

ARTICLE 9. CONTRACT EXTENSION

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 10. 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 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 Parks, Recreation and Open Spaces Department
275 N.W. 2nd Street
Miami, FL 33128
Attention: Department Director
Phone: 305-755-7800
E-mail: Maria.Nardi@miamidade.gov

and,

- b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Strategic Procurement Division
Attention: Chief Procurement Officer
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Phone: (305) 375-4900
E-mail: Namita.Uppal@miamidade.gov

(2) To the Contractor

Attention:
Phone:
E-mail:

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 11. SCOPE OF SERVICES

To be inserted following negotiations with the Contractor.

ARTICLE 12. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

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 price the Contractor will charge to provide the Services to be performed under this

Agreement. The County shall have no obligation to retain funds in excess of the negotiated rates (which will be memorialized as an attachment to this Agreement), except for a change and/or modification to the Agreement, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 13. MINIMUM MONTHLY GUARANTEE / PERCENTAGE OF GROSS REVENUES

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 Gross Revenues.

All revenue produced at the Park by the Contractor shall be processed by the County through the County's Tennis Center Pro Shop cash register. The Contractor shall provide specific register keys associated with the different aspects of the Contractor's services to the Project Manager, which will be utilized when inputting sales into the register.

The Contractor, in consideration for the right to provide Services at Ron Ehmann Park, does hereby covenant and agree that the County will retain monthly, without deduction or set off of any kind, (plus tax) as the Minimum Monthly Guarantee and an amount equal to (plus tax) of Monthly Gross Revenues to be paid as listed in the tables below:

	Year 1	Year 2	Year 3	Year 4	Year 5
Minimum Monthly Guarantee	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
	Year 6	Year 7	Year 8	Year 9	Year 10
(Paid Monthly)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

	Year 1	Year 2	Year 3	Year 4	Year 5
Percentage of Gross Revenues	_____ %	_____ %	_____ %	_____ %	_____ %
	Year 6	Year 7	Year 8	Year 9	Year 10
(Paid Monthly)	_____ %	_____ %	_____ %	_____ %	_____ %

Payments by the Contractor to the County as described shall be guaranteed and persist throughout the term and conclusion of the Contract and all subsequent extensions thereof. All Services undertaken by the Contractor before the County's approval of the Contract shall be at the Contractor's risk and expense.

The amount due to the County is considered taxable revenue to the County. The County shall collect all revenues produced by the Contractor, including sales tax for those items that are taxable, and shall remit payment to the Contractor within fifteen (15) Days of the last day of that month for tennis instruction and related services, to include any sales taxes collected, minus the Minimum Monthly Guarantee and Percentage of Monthly Gross Revenues. The County will have specific cash register keys.

ARTICLE 14. UTILITY FEE

The Contractor shall pay monthly, to the County, a flat rate of seven hundred and fifty dollars,

(750.00, plus tax) Utilities fee which shall persist throughout the term of the Agreement, including any extensions or renewals thereof. Additionally, the Contractor shall not place any unacceptable load or burden on the capacity of the applicable building systems and Utility lines of the Park as determined either by the public utility providing such service or by the County in the exercise of reasonable judgment.

ARTICLE 14. METHOD AND TIMES OF PAYMENT

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County
Parks, Recreation and Open Spaces Department
3701 S.W. 70 Avenue
Miami, FL 33155
Attention: Deallo Johnson, Regional Park Manger
Phone: (305) 755-5470
E-mail: djohnso@miamidade.gov

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 15. SALES TAX

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

ARTICLE 16. 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 ten dollars (\$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 writer notice of such default. Further, in such event, the County may require that future payments required pursuant to this Contract be made by cashier's check or other mean acceptable to the County.

ARTICLE 17. PRICING FOR SERVICES RENDERED

Prices for tennis instruction services rendered by the Contractor to patrons shall remain fixed and firm for no less than twelve (12) months from the effective date of the Agreement. The Contractor may, upon written approval, and at the sole discretion of the Project Manager, increase or decrease pricing for tennis instruction services by no more than five percent (5%) of the current cost of that service per year. Such cost increases must be submitted to the Project Manager and Contract Manager no later than forty-five (45) days from the anniversary date of the Agreement. The Contractor may offer incentive discounts to the County at any time during the Contract term,

including any renewal or extension thereof.

ARTICLE 18. 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, state 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 19. SECURITY DEPOSIT

Within thirty (30) days from the execution of the Contract, the Contractor shall furnish to the County, Internal Services Department, Strategic Procurement Division, a Security Deposit in cash equal to one and a half (1.5) months of the Minimum Monthly Guarantee, redeemable at the end of the Contract term except for such conditions pertinent thereto. In lieu of the Contractor furnishing a Security Deposit, the Contractor can provide a Performance Bond or Irrevocable Letter of Credit, equal to one and a half (1.5) months of the Minimum Monthly Guarantee. This Performance Bond or Letter of Credit will be conditioned on the full and faithful performance of all covenants of this Contract. If the Contractor provides a Performance Bond, the following specifications shall apply: All bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond Amount	Best Rating
500,001 to 1,500,000	B V
1,500,001 to 2,500,000	A VI
2,500,001 to 5,000,000	A VII
5,000,001 to 10,000,000	A VIII
Over 10,000,000	A IX

- a) On contract amounts of \$500,000 or less, the bond provisions of Section 287.0935, Florida Statutes (1985) shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:
1. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued;
 2. Certifying that the surety is otherwise in compliance with the Florida Insurance Code; and
 3. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S.C. 9304-9308.

Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Acceptable Sureties on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.

- b) For contracts in excess of 500,000 the provisions of Section B will be adhered to plus the company must have been listed for at least three consecutive years, or holding a valid Certificate of Authority of at least 1.5 million dollars and on the Treasury List.
- c) Surety Bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.
- d) In lieu of a Performance Bond, an Irrevocable Letter of Credit will be acceptable. All interest will accrue to Miami-Dade County during the life of this contract and as long as the funds

- are being held by Miami-Dade County.
- e) The attorney-in-fact or the officer who signs a contract bond for a surety company must file with such bond a certified copy of power of attorney authorizing the officer to do so. The contract bond must be counter signed by the surety's resident Florida agent.

In the event that the Contractor abandons performance or fails to perform as required, the County will execute on the Performance Bond, draw upon the Irrevocable Letter of Credit or retain the cash deposit, whichever is the case, and the Contractor will be responsible for the balance of the damages, if any, that is owed. Additionally, if the County must draw upon any portion of the form of security provided, the 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 20. GROSS RECEIPTS

- a) Gross Receipts Defined: "Gross Receipts" means all receipts from the sale of services by the Contractor, and subcontractor(s) of Contractor, sold in, upon or from the Tennis Center, including such sales as shall in good faith be credited by Contractor, its Contractors, and subcontractors in the regular course of its or their business to personnel employed at the time of sale at the Tennis Center, including sub-concession agreements or contract employee payments to the Contractor and mail and telephone orders received at the Tennis Center and off-premised sales; but shall not be deemed to mean or include the following: amounts credited by Contractor or its Contractors or subcontractors 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 subcontractors in the operation of its business and not acquired or held by it for the purpose 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 subcontractors 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 a manner as not to interfere unreasonably with the conduct of Contractor's business. All informational 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 mortgage or assignment of this Contract for financing purposed 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 Contract year, adequate books and records, including but not limited to those relating to inventories and purchases, and other pertinent transactions by the Contractor. County shall 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 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 the 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 Contract. 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 Contract for financing purposes.

- e) If Contractor fails to record, maintain or make available sales supporting documentation as specified above,

ARTICLE 21. INDEMNIFICATION

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.

ARTICLE 22. INSURANCE

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Strategic Procurement Division, 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, in an amount not less than \$1,000,000 per occurrence \$2,000,000 in the aggregate, not to exclude abuse and molestation. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$1,000,000 combined single limit.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "**A-**" as to management, and no less than "**Class VII**" as to financial strength by 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 Financial Services and are members of the Florida Guaranty Fund.

The mailing address of Miami-Dade County as the certificate holder must appear on the certificate of insurance as follows:

**Miami-Dade County
111 N.W. 1st Street
Suite 1300
Miami, Florida 33128-1974**

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. If the insurance certificate is received within the specified timeframe 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 assure that the Certificates of Insurance required in conjunction with this Section remain in full force for the term of the Contract, including any renewal or extension periods that may be exercised by the County. If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct and indirect costs associated with such termination.

ARTICLE 23. NO LIABILITY FOR PERSONAL PROPERTY

All personal property placed or moved in the Park shall be at the risk of the Contractor or the owner thereof. The County shall not be liable to the Contractor or any third party for any damage to said personal property unless caused by or due to negligence of the County, the County's agents or employees, subject to all limitations of Florida Statutes, Section 786.28.

ARTICLE 24. 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 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 25. EMPLOYEES 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 26. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all 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 27. 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 comply with 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 Mayor 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 Mayor'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 Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Mayor 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 Mayor 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 Mayor 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 Mayor 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 Mayor, 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 28. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendices 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 29. 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 30. AUDITS

The County, or its duly authorized representatives and 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 Section 2-481 of the Code of Miami-Dade County, 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 31. 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. Any key personnel substituted for the purpose of this solicitation must demonstrate commensurate knowledge skills and certifications to that of the person being substituted.

ARTICLE 32. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County. Such consent to be granted in the sole discretion of the County.

ARTICLE 33. 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, before making any subcontract for any portion of the services, will 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.
- e) 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 in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County 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 34. 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 35. 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 36. 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 Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the Code of Miami-Dade County.
- d) 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 Contractor.
- e) In the event that the County exercises its right to terminate this Agreement, 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 non-cancelable 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
- f) In the event that the County exercises its right to terminate this Agreement, 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. non-cancelable 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.
- g) All compensation pursuant to this Article are subject to audit.

ARTICLE 37. 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 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.
- 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 the 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 timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement; and
 - 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.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 38. 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 any amount of the Minimum Monthly Guarantee and Percentage of Monthly Gross Revenues 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 PARKS, RECREATION AND OPEN SPACES to be an "habitual violator". At the time that such determination is made, the PARKS, RECREATION AND OPEN SPACES department 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 39. 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 40. 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 41. 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 re-procurement 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 42. 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 43. NO WAIVER OR 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 Monthly Guarantee or Percentage of Monthly Gross Revenues 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.

ARTICLE 44. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other

third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

- d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

ARTICLE 45. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any

such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 46. 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 47. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods,

specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.

- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 48. VENDOR REGISTRATION/CONFLICT OF INTEREST

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

- | | |
|---|--|
| 1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the Code of Miami-Dade County) | (Section 2-8.1 of the Code of Miami-Dade County) |
| 2. Miami-Dade County Employment Disclosure Affidavit
(Section 2.8.1(d)(2) of the Code of Miami-Dade County) | 7. Miami-Dade County Code of Business Ethics Affidavit
(Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County) |
| 3. Miami-Dade County Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the Code of Miami-Dade County) | 8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 of the Code of Miami-Dade County) |
| 4. Miami-Dade County Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the Code of Miami-Dade County) | 9. Miami-Dade County Living Wage Affidavit
(Section 2-8.9 of the Code of Miami-Dade County) |
| 5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the Code of Miami-Dade County) | 10. Miami-Dade County Domestic Leave and Reporting Affidavit (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County) |
| 6. Miami-Dade County Vendor Obligation to County Affidavit | 11. Miami-Dade County E-Verify Affidavit
(Executive Order 11-116) |

12. **Miami-Dade County Pay Parity Affidavit**
(Resolution R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**
(Resolution R-919-18)
14. **Subcontracting Practices**
(Section 2-8.8 of the Code of Miami-Dade County)
15. **Subcontractor/Supplier Listing**
(Section 2-8.1 of the Code of Miami-Dade County)
16. **Form W-9 and 147c Letter**
(as required by the Internal Revenue Service)
17. **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

18. **Office of the Inspector General**
(Section 2-1076 of the Code of Miami-Dade County)
19. **Small Business Enterprises**
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
20. **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.

Conflict of Interest and Code of Ethics: Section 2-11.1(d) of the Code of Miami-Dade County 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 Ethics 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. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

ARTICLE 49. 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 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, 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. 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 Implementing Order 3-38; (m) federal, state and local government-funded grants; and (n) inter-local 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 shall have the power 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 50. 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 Small Business Enterprises Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- e) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."
- f) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."
- g) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- h) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- i) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- j) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- k) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."
- l) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."
- m) Any other laws prohibiting wage rate discrimination based on sex.

Pursuant to Resolution R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items "h" through "m" above.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

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 51. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants 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 52. 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 award 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 53. 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 54. 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 55. 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 56. DAMAGE OR DESTRUCTION OF PREMISES

In all events, Contractor shall repair all damages to the Park caused by the Contractor, its employees, agents, contractors and/or sub-contractors at its own cost and expense. In the event the Park is damaged or destroyed, through no fault of the Contractor, its employee, agents, contractors or sub-contractors, the Contractor and the County shall be under no obligation to repair and/or reconstruct the premises and an adjustment of the Minimum Monthly Guarantee or Percentage of Gross Revenues retained 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 57. 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 58. 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 Revenues 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 59. 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 60. 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 61. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.careersourcesfl.com/firstsource/>.

ARTICLE 62. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128

ARTICLE 63. 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.

ARTICLE 64. ADDITIONAL SERVICES – MODIFICATIONS

The County, at its sole discretion, may allow the Contractor to provide additional services and/or use County adjacent space or within the Park, upon such terms as the parties may agree. Any additional services must be associated with, and be incidental to, normal tennis pro service operations. However, any right to additional services by Contractor are subordinate to the County's right to provide the additional service itself and the County's right to Agreement with others. Any changes shall be added to this Agreement by formal written modification.

a) Court Surfacing

The County may, at its sole and absolute discretion, grant exceptions to change or modify tennis court surfaces, for tennis related usages (racquet sports) at the Contractor's expense, based on written permission submitted to the County for approval. These exceptions would require plans, and/or drawing changes, in reference to tennis court usage and include an outcome statement that complies with the master plan of the proposed County facility.

ARTICLE 65. SIGNS

The nature, size, shape and installation of Contractor's business signs within the facility or in, on or adjacent to the facility must first be approved in writing by the County. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to the requirements set forth in the Article 7 of the Miami-Dade Home Rule Charter and Chapter 26 of the County Code. All signs shall be removed by the Contractor at the termination of this Agreement and any damage or unsightly condition caused to premises because of or due to said signs shall be satisfactorily corrected or repaired by the Contractor.

ARTICLE 66. SHANNON MELENDI ACT

The Contractor shall comply with 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". The Contractor shall ensure that all management, staff, and volunteers:

- Have had nationwide criminal background checks conducted by a Professional Background Screener.
- Have been screened through the Florida Department of Law Enforcement Sexual Predator/Offender Database, and a check of the National Sex Offender Public Registry.
- Have been verified as being United States Citizens or having legal immigrant status employment.
- Complete an affidavit affirming that no Services or volunteer duties will be performed on Park property owned or operated by Miami-Dade County in violation of this Ordinance and that an arrest will be reported to the Contractor within forty-eight (48) hours of such arrest.
- Wear picture identification at all times while on County property and when in direct contact with patrons and the general public.
- Retain all records demonstrating compliance with the background screening required herein for not less than three (3) years beyond the end of the contract term. The Contractor shall provide the County with access to these records annually, or at the request of the County.

ARTICLE 67. E-VERIFY VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Contractor effective January 1, 2021 and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Contractor may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

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

Contractor

Miami-Dade County

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Corporate Secretary/Notary Public

By: _____

Name: For Daniella Levine Cava

Title: Mayor

Date: _____

Attest: _____

Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

Assistant County Attorney