



To: Honorable Mayor and Village Council

Date: September 12, 2011

From: Ron E. Williams, Village Manager

Re: Recommendation for
Award: RFP#2011-PR-002

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA; RELATING TO PARKS AND RECREATION; AUTHORIZING AN AWARD PURSUANT TO RFP#2011-PR-002 FOR THE MANAGEMENT AND OPERATIONS OF THE CORAL REEF PARK TENNIS CENTER, TO FRIENDS OF MIAMI TENNIS, INC. AS THE MOST RESPONSIVE PROPOSER; AND FURTHER AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE GOVERNING AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS:

In an effort to secure quality management, operations and programming for the Coral Reef Tennis Center, the Village Council authorized the letting of RFP#2011-PR-002. Upon receipt of proposals, an evaluation committee appointed by the Village Manager conducted interviews with each proposer, analyzed proposals, and determined a ranking of proposals for review and consideration by the Village Manager. Upon deliberation which included minor negotiations with Friends of Miami, Inc., the Village Manager subsequently recommended Friends of Miami Tennis, Inc. as the most responsive proposer meriting an award of contract.

A summary of proposal highlights are as follows:

- Monthly monetary payment to the Village in the amount of \$1500; with an additional \$1000 to be remitted and deposited by the Village into a Special Maintenance account entitled 'Coral Reef Park Tennis Center Maintenance Account'; with authorized expenditures as described below
- Annual monetary payment to the Village equaling twenty percent (20%) of annual gross revenues exceeding \$150,000; with an additional ten percent (10%) of annual gross revenues exceeding \$150,000 to be deposited by the Village into said Special Maintenance account
- Friends of Miami Tennis, Inc, shall be responsible for payment of electricity for the tennis center and main parking lot; as well as performance of all required maintenance functions

- FOMT shall comply with court availability requirements; hours of operation; and all other terms and conditions of the RFP
- The initial term of contract shall be for a period of three years, with provisions for a series of one-year extensions as described in the Agreement

Coral Reef Park Tennis Center Special Maintenance Account: requested withdrawals from this account may only be done so for the following maintenance needs/expenditures and with authorization of the Village Manager, whose consent shall not be unreasonably withheld. Funds shall be carried over year-to-year throughout the term of this agreement, including authorized extensions; and any and all funds remaining at the termination of this agreement shall be retained by the Village.

- Major repairs such as the structural replacement or rebuilding of racquetball walls and/or courts (cosmetic repairs shall not qualify); structural repair and/or replacement of tennis courts; and other major structural work
- Replacement of large spans of fencing (on-going fencing repairs shall not qualify)
- Resurfacing/Repainting of tennis and/or racquetball courts
- Replacement of court lighting towers and/or brackets (fixtures/lamps shall not qualify)
- Major electrical replacements exceeding \$2500
- Any single repair and/or replacement or improvement which exceeds \$10,000 in cost
- Other major work as authorized by the Village Manager

It is recommended that the Village Manager be authorized to execute the governing agreement for the management and operations of this facility, as attached, with an effective date of October 1, 2011.

FISCAL IMPACT:

The Village has no monetary/expenditure liability, and can expect to receive annually a minimum of \$18,000; plus twenty percent (20%) of the gross revenues exceeding \$150,000.

RECOMMENDATION:

Approval of this item is recommended.

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APPROVED AS TO FORM:

Eve Boutsis
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____
Council Member Howard Tendrich _____
Council Member Joan Lindsay _____
Vice-Mayor Brian Pariser _____
Mayor Shelley Stanczyk. _____

AGREEMENT BETWEEN
THE VILLAGE OF PALMETTO BAY
AND FRIENDS OF MIAMI TENNIS, INC.
FOR THE MANAGEMENT AND OPERATIONS OF THE CORAL REEF PARK
TENNIS CENTER

THIS AGREEMENT is made and entered into this ____ day of _____, 2011, by and between the Village of Palmetto Bay, a Florida municipal corporation (the "Village"), and Friends of Miami Tennis, Inc.. ("Contractor").

RECITALS

1. The Village has under its control five (5) parks in which a myriad of activities occur, including a very active tennis center located at Coral Reef Park.

2. The Village desires to obtain professional services for the management and operations of the Coral Reef Park Tennis Center pursuant to the terms of this agreement as described in RFP#2011-PR-002.

NOW THEREFORE, in consideration of \$10.00, the mutual covenants and conditions contained herein, the receipt of which is acknowledged, the parties agree as follows:

PURPOSE/AUTHORIZATION

1. The purpose of this Agreement is to provide for the Village's retention of Contractor to provide professional management and operations of the Coral Reef Park Tennis Center as described in Section 2 below.

2. **Scope of Services**

Management, Operations and Programming:

a. The Village grants to the Contractor the non-exclusive right to provide management and operations services for the Coral Reef Park Tennis Center as contemplated herein. The Contractor shall adhere to established and/or generally accepted rules and conditions concerning tennis services at this facility. Neglecting or intentionally failing to abide by these rules shall be grounds for contract termination.

b. The Contractor shall be responsible for the complete management and operations of the Coral Reef Park Tennis Center, including specific maintenance responsibilities; day-to-day opening/closing, programming of tennis activities including professional instruction, clinics, league/match play, tennis related special events/socials, summer and non-school day camps, after-school program; and optional control of court reservations and collection of court rental fees. The Contractor shall also be responsible for all utilities associated with the Coral Reef Park Tennis Center, including the electricity costs to illuminate the courts for nighttime play and the main parking lot to accommodate code requirements for nighttime operations of the center. The Contractor may utilize the existing park dumpster for appropriate disposals.

- c. Pursuant to the terms and conditions of RFP#2011-PR-002 (attached as a part of this agreement), the Contractor shall provide professional management and operations services necessary to effectuate a comprehensive tennis program maximizing the facilities to full potential while affording the tennis community ample opportunities for court rental time for open play
- d. Unless waived by the Village Manager, the Contractor and Contractor instructors must be United States Professional Tennis Association (USPTA) certified. All personnel must possess good human relations skills; and all must be able to successfully pass a background investigation to include, but not limited to, a criminal background check, which will include an FDLE (Florida Department of Law Enforcement), medical examination which includes drug screening; all which shall be the financial responsibility of the Contractor. All must be a Citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by an Alien Registration Receipt Card Form I-151. Acceptable evidence for citizenship shall be a birth certificate or appropriate naturalization papers.
- e. The Contractor must provide its own personnel to be present during hours of operations to perform operational, programming, customer service and/or maintenance services, including management personnel in the form of a manager or tennis professional during all peak or programming times.
- f. The Contractor must provide competent tennis instruction and programming incorporating all age groups and level of play including Tiny Tennis (Ages 3-5); Quick Start Tennis (10 and Under); Juniors (10-17; beginners, intermediate and advanced); competitive youth tennis-league play and instruction; Adult tennis (intro, intermediate, advanced, Cardio, leagues and instruction); and special events (socials, ladders. etc). Contractor must also accommodate any local schools (middle/high – public/private) regarding agreed upon practices and/or matches.
- g. Personnel must not be employed under this contract if they have currently or have in the past been involved in military conduct resulting in dishonorable or undesirable discharge; any pattern of irresponsible behavior, including but not limited to unreasonable driving or a problem employment record; or any criminal conviction (felony and misdemeanor). The Village reserves the right to request the replacement of an employee anytime during this contract term; and further reserves the right to demand that the Contractor relieve/suspend an employee from his/her assignment. The Village will not tolerate inappropriate actions such as nonperformance of duties; being under the influence of alcohol, drugs or non-prescription medications which effect job performance; inability to communicate (both verbally and in writing); theft; and unprofessional conduct. Personnel are not to be accompanied in their work area or performance of their duties by acquaintances, family members or other persons unless authorized by the Contractor.
- h. The Contractor is required to provide appropriate training to all personnel, including on-site training as may be necessary, in order that the Village be assured said personnel are capable of assuming the responsibilities of respective assignments. Said on-site training should be performed by a tennis professional. The costs of any and all training shall be considered as a part of the Contractor's operational expenses. The Contractor agrees to initiate periodic re-training as may be required in order to ensure continued and expected level of service.

- i Contractor may provide related tennis pro-shop services such as stringing of racquets and installation of new handles, as well as the selling of tennis items and equipment such as racquets, balls, wrist bands, hats and clothing. No food or beverage of any kind may be offered or sold under this contract. The Contractor is encouraged to work with the existing food and beverage concessionaire at the ParkView Café regarding such service for summer camps , etc
- j As per the Request for Proposals (RFP#2011-PR-002), as described in the attached contract document, the initial term shall be for a three (3) year period, with three additional one-year extensions as approved by the Village Council. The Village Council may also approve three additional one-year extensions during the final year (year six) extension as noted above.
- k. All Contractor personnel must be well groomed and neatly uniformed in order to be readily identifiable to the general public. The Contractor is responsible for assuring that personnel maintain a neat appearance in accordance with contract standards, up to and including responsibility for maintenance and replacement of uniforms as may be necessary. All patrons shall be treated courteously and respectfully at all times.
- l. Contractor personnel shall not be permitted to provide themselves with any unauthorized equipment such as concealed weapons/firearms, personal radios or other items not specifically approved by this Contract or the Village.
- m. The Contractor is responsible for providing all necessary supplies and equipment required to conduct programs and activities. All equipment used by the Contractor is also to be kept clean, well-maintained and in safe operating conditions at all times; free from defects or wear which may constitute a hazard to any persons on Village property. The Contractor is responsible for the quantity and quality of such equipment, as agrees to maintain a high level of aesthetics, reliability, safety, etc. The Village reserves the right to refuse use, on Village property, any and all such equipment deemed by the Village as non-usable or in non-compliance.
- n. The Coral Reef Tennis Center consist of eight (8) tennis courts and four (4) racquetball courts; all hard surfaces; tennis office and main parking lot during evening tennis center hours. The Contractor may install appropriate signage, including Contractor's identity and activity bulletin board(s), contingent upon review and approval by the Village Manager or his/her appointee. Contractor logos shall be considered as signage, and may be incorporated contingent upon review and approval of the Village Manager. Use of banners must be in compliance with Village Banner Permit Ordinance.
- o. Number of courts which must remain available for reservations/walk-up open play during specific times:
- Daytime hours (7:00am-5:00pm): minimum four (4) courts excluding tournaments
 - Evenings hours (5:00-10:00pm): minimum five (5) courts excluding tournaments or special events
 - Weekends: minimum five (5) courts excluding tournaments

- p. Number of tournaments and/or league play allowable: maximum three (3) weekdays per week; and must conclude by 4:00pm; weekends – two (2) days per month.
- q. Number of court reserved for professional tennis instruction from contractor's instructors may not exceed three (3) during evening hours. Tennis professionals not a part of the Contractor instructional staff shall be prohibited from utilizing the courts for instructional purposes.
- r. Contractor shall include in his/her proposal the desired fees and charges for the tennis center including league play, tournaments, clinics, professional instruction and court rental. The Village reserves the right to deem certain fees as excessive, and require a modification of same to that which is considered reasonable and in keeping with the industry. Additional fees and charges for new programs shall be proposed to the Village for consideration and approval.
- s. Contractor shall be responsible for the supervision of the tennis center to ensure that improper and/or unauthorized uses do not occur.
- t. Contractor shall provide the Village on a monthly basis, a detailed record (via established record keeping system) of all fees collected by activity (court rentals; leagues; clinics; private lessons/instruction; tournaments; socials; children's, youth and adult programs; etc. The contractor shall include in this monthly report a daily calendar to court uses and activities. The Contractor shall be required to procure an independent audit for submittal to Village at Contractor's sole cost and expense. Audit shall line-item all fees by respective activities as noted above.
- u. Preferred hours of operation for the tennis center are weekdays: 7:00am to 10:00am; weekends: 7:00am to 9:00pm.
- v. The Contractor shall offer tennis related activities and services only. No other services, such as sports camps, etc, shall be allowable unless advance written approval of the Village Manger is obtained.
- w. Contractor shall adhere to all applicable Village policy, rules and regulations, codes and/or laws.
- x. Contractor shall be responsible for proper closure of the facility, including the locking of the community building and parking lot gate.
- y. The Contractor agrees to initiate and complete hurricane preparedness procedures for the tennis center in accordance with established Village Hurricane Preparedness Procedures; i.e. removal and storage of unanchored items such as tables, umbrellas and receptacles; securing of windscreens and nets; cable-tie on-court storage shed (over roof); secure signage/banners/etc; close hurricane shutters, etc.
- z. The Contractor agrees to temporary closure and/or opening of the tennis center to accommodate Village sponsored special events; i.e., annual picnic, movie night(s), etc; at the dates and times as requested by the Village.

Unless advanced approval is granted by the Village for the Contractor's use of the Coral Reef Park Community Center Recreation-Room and/or other park amenity, the Contractor shall be required to reserve, register and pay the prevailing rental rate for use of respective amenities.

The Village Manager may grant variations to the above requirements contingent upon the contractor providing justification to show that the tennis community is not denied open play availability of court rental times.

Maintenance:

- a. The contractor shall be responsible for the following maintenance functions:
 - The supplying of all personnel, equipment and/or materials necessary to maintain the facility in a continually clean and attractive state daily.
 - Maintain courts daily as may be necessary to keep at a high standard/level of play including sweeping, blowing, washing, repairing and resurfacing/repainting. Dispose of trash from receptacles daily.
 - Maintain and repair/replace as needed all windscreens, fencing, gates, nets, posts, and all tennis/racquetball components (surfaces, walls, etc).
 - Maintain and keep clean and attractive the pro shop/tennis office interior and exterior counter and windows/doors.
 - Provide and maintain appropriate signage (as approved in advance by Village).
 - Keep walkway to courts in clean, safe and attractive manner.
 - Maintain and repair/replace as necessary all electric from the breaker panel to the pro shop office. The Village will maintain and repair/replace as necessary all electric leading to electrical room from electric provider, and all components within including breakers, wiring, fuses, etc. The Contractor shall maintain and repair/replace as necessary all electric from the breaker to pro shop (wiring, receptacles, etc). Regarding the court lighting system, the Village shall continue its responsibility from the electrical room up to the individual light pole(s) connection(s). The Contractor shall be responsible for the light poles, fixtures, brackets, hardware, lamps, fuses, etc. The contractor shall also be responsible for the on-court receptacles/outlets, with the Village being responsible for wiring, etc leading up to that point. The Village shall be responsible for all maintenance and upkeep of the main parking lot which serves as parking for evening operational hours of the tennis center. The Contractor shall only be responsible for the costs of lighting as billed from Florida, Power and Light.
 - Maintain all interior walls within the pro shop including drywall, plaster, painting, ceiling, baseboards, flooring, windows and doors; and all fixtures installed such as shelving, cabinets, desks, appliances (refrigerator/microwave), etc). Contractor shall be responsible for the racquetball walls including sealing, plastering, painting and/or any and all needed repairs. The same interior responsibilities shall apply to the storage room between the racquetball courts.
 - The Village shall grant use of the newly installed 6' x 8' shed between courts 7 and 8, as well as the on-court trash receptacles, tables, umbrellas and tennis office safe. The Contractor agrees to maintain all at acceptable levels, and repair/replace as may be necessary. For clarification purposes, the Contractor may not utilize on-site Village vehicles to assist the Contractor in the performance of daily operational and/or maintenance

tasks.

- b. Should the Village note maintenance needs and present such need(s) to the Contractor in writing, the Contractor agrees to remedy the noted deficiency within a reasonable timeframe which shall not exceed thirty days; unless it is considered a safety issue which shall require immediate remedy by the Contractor.
- c. Contractor is encouraged to evaluate the facility and plan/initiate improvements to enhance it's aesthetics and usage. All such improvement shall require the advance approval of the Village Manager and/or Village Council.
- d. Should the Village initiate improvements to the facility, including major capital projects, the Contractor agrees to work with the Village to accommodate such improvements; and the Village, Village Manager and/or employees and/or agents shall have no liability to the Contractor regarding profits or losses during the construction/improvement period.
- e. The contractor shall be required to obtain any an all permits and/or licenses as may be required by law.
- f. The Contractor and the Village have agreed that this agreement is based upon acceptance of terms and conditions; and Contractor's offerings as negotiated pursuant to the conditions as stipulation in the RFP for the management and operations of the Coral Reef Park Tennis Center. The Contractor shall be responsible for the complete management and operations of the tennis center, including implementation of a court rental reservation and collection system, which shall be documented daily and presented to the Village monthly with submittal of the compensation offered. All other revenue producing activity and/or programming shall be planned and coordinated by the Contractor, and shall also be documented daily and also presented to the Village monthly.

3. **Monetary Considerations/Billings/Audits:** The Contractor agrees to remit monetary considerations to the Village pursuant to those enumerated herein and on the attached 'B' as offered by the Proposer/Contractor in RFP #2011-PR-002 as negotiated, and as approved by the Village Council via Resolution No. _____; and may not be increased or in any way revised during the term of this agreement unless with the express written approval of both parties. No cost-of-living, consumer price index or the like shall be applied in an attempt to increase costs upon the start of a new contract year or any other time.

Specifically, the Contractor shall remit the following to the Village on a monthly basis throughout the term of the Agreement: \$1500 as the monthly base rent, and an additional \$1000 to be deposited by the Village into a Special Maintenance Account as described below. On an annual basis throughout the term of this Agreement, the Contractor shall remit to the Village a sum equal to twenty percent (20%) of the annual gross revenue/sales exceeding \$150,000 for the previous 12-month calendar year; and an additional ten percent (10%) of the annual gross revenue/sales exceeding \$150,000 for the previous 12-month calendar year, to be deposited by the Village into a Special Maintenance Account as described below.

The Contractor shall remit monthly payments within fifteen (15) days following the preceding/billable month, to the Village and delivered to the address as described in Paragraph 15 of

this Agreement.; and annual payments shall be remitted within thirty (30) days following the preceding 12-calendar month year. The Contractor, Subcontractors, suppliers and/or laborers/employees are prohibited from placing a lien on Village property, and the Contractor agrees to ensure this through contractual/procurement methods as legally allowable within the State of Florida.

The Contractor agrees to procure an annual independent audit performed by a certified auditing firm or other certified public accounting firm as selected by the Contractor, and the Contractor shall make all records available to order to effectuate a full and accurate report. It is understood that the reporting of all revenues and expenditures shall be identified individually/daily and not merely grouped as a lump sum or gross by category. Any and all documents obtained by the Village shall be held in strict confidence excluding those accessible via public record laws. This required audit shall be completed and submit to the Village no later than sixty (60) days following the end of each year of this agreement.

Special Maintenance Account. The Contractor agrees to remit the below described amount to the Village, which shall be deposited into a Special Maintenance Account entitled 'Coral Reef Park Tennis Center Special Maintenance Account'; and shall be carried-over year-to-year throughout the contract term, including authorized extensions. The Contractor may request withdrawals from said Special Maintenance Account, for expenditures conforming to designated items and as approved by the Village Manager. The Contract and Village agrees that upon termination of this Agreement, any and all remaining funds shall be retained by the Village.

Required monetary remittance by Contractor to Village:

- Over and above the monthly base rent payment of \$1500, Contractor shall remit a monthly contribution to the Coral Reef Park Tennis Center Special Maintenance Account in the amount of \$1000.
- Over and above the required yearly payment of 20% of the annual gross revenues exceeding \$150,000, the Contractor shall also remit annually, an additional 10% of the annual gross revenues exceeding \$150,000 as a contribution to the Coral Park Tennis Center Special Maintenance Account.

Requested Contractor withdraws from the Coral Reef Park Special Maintenance Account may only be done so for the following maintenance needs/expenditures and with authorization for the Village Manager, who's consent shall not be unreasonably withheld:

- Major repairs such as the structural replacement or rebuilding of racquetball walls and/or courts (cosmetic repairs shall not qualify); structural repair and/or replacement of tennis courts; and other major structural work as authorized by the Village Manager
- Replacement of large spans of fencing (on-going fencing repairs shall not qualify)
- Resurfacing/Repainting of tennis and/or racquetball courts
- Replacement of court lighting towers and/or brackets (fixtures/lamps shall not qualify)
- Major electrical replacements exceeding \$2500
- Any single repair and/or replacement or improvement which exceeds \$10,000 in cost

- Other major work as authorized by the Village Manager

4. **Additional Services.** Contractor shall provide additional services to the Village as determined by the Village Manager or his designee and that are mutually agreeable by both parties.

5. **Term/Renewal.**

a. **Term.** This Agreement shall become effective upon execution by both parties; specifically October 1, 2011; and shall continue through September 30, 2014, for a period of three years, unless earlier terminated the provisions of this Agreement.

b. **Renewal.** The Village shall have the option to renew this Agreement upon the same terms and conditions for up to three (3) additional one (1) year extensions (the "Option"). The Option may be exercised at the sole discretion of the Village Manager. Such extension shall be effective upon written notice from the Village Manager to the Contractor no later than 30 days prior to the date of termination of the Term or any renewal term. The Village may also opt to offer a second series of three (3) one-year extensions, as may be mutually agreed upon by both parties, and exercised at the sole discretion of the Village Manager.

5. **Termination.**

a. **Without Cause.** The Village Manager may terminate this agreement at any time, with or without cause or reasons deemed to be in the best interest of the Village by giving the Contractor 30 calendar days' prior written notice. If the Village Manager discovers a problem with the Contractor's services, the Village Manager shall immediately provide notice to the Contractor and list all deficiencies in the notice. The Contractor shall be provided seven (7) calendar days to correct the deficiencies or problems listed in the notice. If the Contractor does not correct the problem to the satisfaction of the Village Manager within the seven (7) calendar days, the Village Manager may elect to immediately terminate the Agreement. The Village Manager shall make the final decision on behalf of the Village as to the Contractor's compliance with the terms of the contract, quality of services, and termination. The Village and/or Village Manager shall have no liability to the Contractor for future profits or losses in the event of termination. The rights and remedies of the Village Manager provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

b. **For Cause.** This agreement may be terminated by either party upon five calendar day written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that Contractor abandons this agreement or causes it to be terminated by the Village, the Contractor shall indemnify the Village against any loss pertaining to this termination. In the event that the Contractor is terminated by the Village for cause and it is subsequently determined by a court of competent jurisdiction that the termination for convenience under section 5.c of this agreement and the provision of section 5.c shall apply.

c. **For Convenience.** This agreement may be terminated by the Village for convenience upon 14 days' written notice to the Contractor. In the event of termination, the Contractor shall incur no

further obligations in connection with this work and shall, to the extent possible, terminate any outstanding obligations.

6. **Designated Representative.** The Contractor shall appoint, in writing, at the time of the execution of this Agreement, a representative that shall be the sole and exclusive contact with the Village Manager, or his designee.

7. **Insurance.**

a. The Contractor shall furnish to the Village certificates of insurance evidencing the insurance coverages specified by this Section at the request of the Village Manager and required under the RFP. The required certificates of insurance shall name the type of policy provided and shall list the Village as an additional insured, refer specifically to this Agreement, and state that such insurance is as required by this Agreement.

b. The Contractor shall name the Village, and its respective officers, agents, servants and employees, as an additional insured on the Comprehensive General Liability Policy. This insurance policy shall state, after the above-referenced additional named insured that "this coverage is primary to all of the coverage the additional insured may have." Proof of insurance shall be provided at the time of the signing of this Agreement and incorporated herein as exists there forth in full.

c. Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the Village's Risk Manager prior to the commencement of this Agreement. The required insurance coverage is not to cease and is to remain in full force throughout the Term of this Agreement. All policies must be endorsed to provide Village with at least thirty (30) calendar days' notice of cancellation and/or restriction. If any of the insurance coverage will expire prior to the termination of this Agreement, copies of renewal policies shall be furnished at least sixty (60) calendar days' prior to the date of their expiration.

d. Any insurance required of Contractor pursuant to this Agreement must also be required by any sub-contractor of Contractor in the same limits and with all requirements as provided herein, including naming the Village as an additional insured, if any work is subcontracted unless such subcontractor is covered by the protection afforded by the Contractor and provided proof of such coverage is provided to Village. The Contractor and any sub-contractor of Contractor shall maintain such policies during the term of this Agreement.

e. Financial Ratings must not be less than "A-VI." Insurance shall be in force until the obligations required to be fulfilled under the terms of the Contract are satisfied. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, the Contractor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension there under is in effect.

f. Contractor shall name the Village (and others) as an additional insured on each of the policies required herein, with the exception of the Contractor's Worker's Compensation policy.

g. Throughout the term of this Agreement, the Contractor agrees to maintain in force at their own expense insurance as follows:

Comprehensive General Liability insurance to cover liability for bodily injury and property damage. Exposures to be covered are premises, operations, completed operations, and contractual liability. Coverage must be written on an occurrence basis, with the following limits of liability

- A. Bodily Injury/Property Damage
 - 1. Each Occurrence \$1,000,000
 - 2. Annual Aggregate \$1,000,000
- B. Personal Injury
 - 1. Annual Aggregate \$1,000,000

Worker's Compensation Insurance shall be maintained during the life of this contract to comply with Florida statutory limits for all employees. The following limits must be maintained:

- A. Worker's Compensation Statutory
- B. Employer's Liability
 - \$100,000 each accident
 - \$500,000 Disease-policy limit
 - \$100,000 Disease-employee

If Contractor claims to be exempt from this requirement, Contractor shall provide Village proof of such exemption along with a written request for Village to exempt Contractor, written on Contractor letterhead.

Comprehensive Auto Liability – coverage shall include owned, hired and non-owned vehicles.

- A. Bodily Injury and Property Damage combined single limit
 - 1. Each Occurrence \$1,000,000
 - 2. Annual Aggregate \$1,000,000

8. **Damage/Restoration/Conditions.**

- a. In the event of any damage to Village or assigned property by the Contractor or its agents, employees, volunteers or participants, the Contractor shall be responsible for replacing or restoring to its condition prior to the use by Contractor, as determined by the Village Manager.
- b. Village does not expressly or impliedly warrant the condition of any facility. The Contractor waives the right to a claim for any damages Contractor its agents, employees, volunteers, guests or invitees from any use of Village or assigned property.
- c. Village shall not be liable for any loss, damage or injury of any kind or character, including vandalism and theft, to any person or property (i) caused by any defect in the Contractor's services; (ii) caused by or arising from any act or omission of Contractor, or of any of its agents, employees, volunteers, guests or invitees; (iii) arising from any accident which may occur while Contractor is in control of services; or (iv) arising from any other cause.
- d. The Contractor shall deliver the assigned property to the Village in the same condition as it is received.

9. **Liability.** The Contractor hereby assumes all financial, administrative and legal responsibility in connection with, related to, or arising out of the providing management, operational and programming services on the designated properties known as the Coral Reef Park Tennis Center. Nothing in this Agreement will be construed to affect in any way the Village's rights, privileges, and immunities, including the monetary limitations of liability set forth in Section 768.28 of the Florida Statutes. The provisions of this Section will survive the termination or expiration of this Agreement.

10. **Indemnification.** The Contractor does hereby agree to defend, indemnify and hold the Village, its Council, Village Manager, agents, employees, attorneys, successors and assigns harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the Contractor, its agents, employees, volunteers, guests and invitees in connection with this Agreement. The provisions of this Section shall expressly survive any expiration or termination of this Agreement.

11. **Assignment.** The Contractor shall not assign, transfer, or otherwise dispose of this Agreement, or any portion thereof, or be subcontracted under this agreement unless Contractor obtains prior written consent from the Village. Approved Subcontractor shall be subject to each provision of this contract and Contractor shall be responsible and indemnify the Village for all Subcontractor' acts, errors or omissions.

The Contractor shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Contractor from the Village under this contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Contractor to the Village.

12. **Non-Discrimination.** In the providing designated services, Contractor, its employees, agents, volunteers, and any parties under the direction or control of Contractor may not discriminate against any person on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap or sexual orientation by refusing to furnish to such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. In the performance of this Agreement, Contractor, its employees, agents, volunteers, and any parties under the control or direction of Contractor may not discriminate against any employee or applicant for employment on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap, or sexual orientation.

13. **Records/Village's Right to Inspect.**

a. Village has the right at all reasonable times to conduct whatever inspections of the facilities the Village deems reasonably necessary to determine if Contractor is complying with the terms and conditions of this Agreement. Except for emergency situations, Village inspections will not hinder or interfere with the normal operation of the Contractor's services.

b. All records, books, documents, papers and financial information (the "Records") that result from Contractor's services to the Village under this Agreement shall be available to the Village upon request. The Village shall have the right to retain copies of the documents at the Village's discretion and expense.

14. **Third Parties.** Neither the Contractor nor Village intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third-party shall be entitled to assert a claim against either of them based upon this Agreement.

15. **Notices.** All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

To Contractor:

Bruce M. Boiko, President
Friends of Miami Tennis, Inc.
PO Box 560067
Miami, Florida 33256-0067
Telephone: 305-415-9517
Fax: 305-347-7772
Email: BBoiko@shutts.com

To Village:

Ron E. Williams, Village Manager
Village of Palmetto Bay
9705 E. Hibiscus Street
Palmetto Bay, Florida 33157
Telephone: 305-259-1234
Fax: 305-259-1290

With a copy to:

Village Attorneys
Attention: Eve A. Boutsis, Esquire
18001 Old Cutler Road, Suite 533
Phone: (305) 235-9344
Facsimile: (305) 235-9372

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

16. **Supervision.** All Contractor activities relating to described services must be supervised at all times.

17. **Entire Agreement/Modification/Amendment.**

a. This Agreement sets forth the entire agreement between Village and Contractor with respect to the subject matter of this Agreement. This agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

b. No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed with the same formality as this document.

18. **Severability.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the agreement between the parties.

19. **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the Laws of the State of Florida applicable to contracts made and to be performed entirely in the State. The parties agree that venue for and legal action instituted in connection with this Agreement shall be in Miami-Dade County Florida.

20. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. **Independent Contractor/Proposer.** Nothing herein contained shall be deemed in any way to constitute Village or Contractor a partner of the other in its business or otherwise, or a joint venturer or a member of a joint enterprise with the other. For all intents and purposes hereunder, Contractor shall be considered an independent Contractor and not an employee or agent of the Village. The Contractor is an independent contractor under this agreement and any project agreements and nothing in this agreement shall create any association, partnership, or joint venture between the parties, or any employer-employee relationship. Personal services provided by the consultant shall be by employees of the consultant and subject to supervision by the consultant, and not as officers, employees, or agents of the village, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies, and other similar administrative procedures applicable to services rendered under this agreement or any project agreements shall be those of the Contractor.

22. **Attorney's Fees.** In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, the fees and expenses of any paralegals, law clerks and legal assistants and costs for services rendered in connection with any enforcement of this Agreement, including appellate proceedings and post judgment proceedings. Neither party shall be responsible for pre-judgment interest.

23. **Miscellaneous.**

a. It is further expressly understood and agreed that no real or personal property is leased to Contractor and that Contractor shall comply with each and all of the undertakings, provision, agreements, covenants, stipulations and conditions contained herein.

b. This Agreement may be signed in two or more counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original.

c. All terms, conditions, covenants and obligations of Village and Contractor hereunder shall survive the termination or expiration of this Agreement as necessary and appropriate for such parties to fulfill their obligations that accrued during the Term of this Agreement.

d. Contractor and its agents, employees or volunteers shall not be permitted to consume or otherwise possess any alcoholic beverages, tobacco products or other such products as determined by the Village, during scheduled services and/or upon described properties.

e. In the event a court must interpret any word or provision of this contract, the word or provision shall not be construed against either party by reason of drafting or negotiating this contract.

24. **Force Majeure:**

The performance of any act by the Village or Contractor hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any cause beyond the reasonable control of such party, provided however, the Village shall have the right to provide substitute service from third parties or Village forces and in such event the Village shall withhold payment due Contractor for such period of time. If the condition of force majeure exceeds a period of 14 days the Village may, at its option and discretion, cancel or renegotiate this Agreement.

25. **Waiver Of Jury Trial:**

The Village and the Contractor knowingly, irrevocably voluntarily and intentionally waive any right either may have to a trial by jury in State or Federal Court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract Documents or the performance of the Work there under.

26. **Eligibility.** All agents, employees and subcontractor of the Contractor retained to perform services pursuant to this bid shall comply with all laws of the United States concerning work eligibility and comply with the Shannon Melendi Act, as adopted by the Village.

27. **Contingency Fee and Code of Ethics.** Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and Contractor has not, and will not, pay a fee the amount of which is contingent upon the Village awarding this contract to Contractor. Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this contract in violation of any of the provisions of the Miami-Dade County or the Village of Palmetto Bay conflict of interest and code of ethics ordinances. A violation of this paragraph will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Contractor.

28. **Warranty Of Authority.** The signatories to this contract warrant that they are duly authorized by action of their respective Village commission, board of directors or other authority to execute this contract and to bind the parties to the promises, terms, conditions and warranties contained in this agreement.

29. **Taxes.** During the period of this agreement, Contractor shall pay any and all taxes of whatever nature lawfully levied upon or assessed that arise out of the operations of the Contractor in connection with this agreement.

30. **RFP.** Contractor agrees to comply with any provisions of the RFP which are not in conflict with this Agreement, and to comply with and honor any written representations, clarifications and exceptions made by Contractor/Proposer during the RFP process.

31. **Compliance with Law.** Contractor shall comply with all applicable laws in the performance of its services hereunder, and represents that it possesses all required licenses and certifications to perform the services.

32. **Shannon Melendi Act.** The Contractor shall comply with the "Shannon Melendi Act of Miami-Dade County", which is incorporated by reference for the purpose of conducting background investigations for all coaches, managers, officials, umpires, members, employees, and/or volunteers or participants ("Volunteers") associated with the operation of programs and/or activities for the Contractor. Required background investigations shall be completed in accordance with the Program Policy.

33. **Sovereign Immunity And Attorney's Fees.** The Village Manager does not waive sovereign immunity for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

34. **Counterparts.** This agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

35. **Non-Waiver.** Any waiver or any breach of covenants herein contained to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the Village from declaring a forfeiture for any succeeding breach, either of the same condition or covenants or otherwise.

36. **Public Entities Crime Statement.** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime 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, F.S. for category two for a period of 36 months from the date of being placed on the convicted vendor list. Contractor affirms compliance with this requirement for the duration of the underlying agreement. If at any time during the contract period, Contractor is convicted of a public entity crime, the Contractor's contract shall immediately terminate.

IN WITNESS WHEREOF the parties hereto have executed this Agreement this ____ day of _____, 2011.

Village:

ATTEST:

Village of Palmetto Bay, a Florida municipal corporation

By: _____
Meighan J. Alexander, Village Clerk

By: _____
Ron E. Williams, Village Manager

Approved as to form and legality for the use and benefit of the Village of Palmetto Bay only

Friends of Miami Tennis, Inc.:

Village Attorney

By: _____
Bruce M. Boiko, President

[END OF DOCUMENT]

**Appendix D: Coral Reef Park Approved Fees and Charges
(as requested by Friends of Miami Tennis, Inc)**

Court fees

Day \$3.00 per hour/ per person

Night \$4.00 per hour/ per person

Adult league day- \$6.00 per person for match play (usually 2 hrs)

Adult league night- \$8.00 per person for match play (usually 2 hrs)

USTA Jr. Team Tennis day- matches \$3.00 per junior for match play

USTA Jr. Team Tennis night- matches \$4.00 per junior for match play.

<u>Pro shop Merchandise</u>		Minimum	Maximum
10 and Under Tennis equipment			
Foam balls	1/2 doz	\$18.00	\$21.60
Red balls (3)	x3	\$4.00	\$4.80
Orange balls (3)	x3	\$4.00	\$4.80
Green Dot		5.00	\$6.00
18ft mini net		\$109.00	\$130.80
Kid Racquet	19"/21/23	\$24.00	\$28.80
Adult hats/visors		\$25.00	\$30.00
Grips		\$10.00	\$12.00
Can balls		\$3.00	\$3.50
Stringing	your strings	\$12.00	\$14.40
	our strings	\$35.00	\$42.00
Dampeners		\$5.00	\$6.00
Wristbands		\$10.00	\$12.00
Racquet balls		\$5.00	\$6.00