

RESOLUTION NO. 15-1273

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AUTHORIZING THE TOWN MANAGER TO APPROVE PARK PROGRAM SERVICES, SUMMER CAMP AND AFTER SCHOOL PROGRAMS CONTRACTS WITH THE YMCA OF GREATER MIAMI, INC. AND PEAR PROGRAMS, LLC AND THE TOWN OF MIAMI LAKES; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE CONTRACTS; AUTHORIZING THE TOWN MANAGER TO EXECUTE CONTRACTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on August 25, 2014, the Town of Miami Lakes (“the Town”) issued Invitation to Negotiate number 2014-82 (“ITN 2014-82”) for Park Program Services, Summer Camp & After School; and

WHEREAS, the Town Manager has determined that YMCA of Greater Miami, Inc. (“YMCA”) and PEAR Programs, LLC (“PEAR”) are the two firms most qualified to provide park programming services; and

WHEREAS, the Town Manager recommends award of Contract 2014-82 to the YMCA and PEAR; and

WHEREAS, the YMCA will be responsible for providing park program services at Royal Oaks Park; and

WHEREAS, PEAR will be responsible for providing park program services at the Park East Youth Center; and

WHEREAS, the Town may enter into contracts with other specialty program providers to supplement the two main providers; and

WHEREAS, the Town Council approves of the Town Manager’s recommendations and authorizes the Town Manager to enter into contracts with YMCA and PEAR, for award of Contract 2014-82, for Park Program Services, Summer Camp & After School Programs, and to enter into contracts with specialty program providers provided there is no additional cost to the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Approval of the Contract. The Council approves the award of award of ITN 2014-82 to YMCA of Greater Miami, Inc. and PEAR Programs, LLC for Park Program Services, Summer Camp & After School Programs, and authorizes the Town Manager to award contracts to specialty program providers provided there is no additional cost to the Town, as stated in the recitals above, in substantially the form attached hereto as Exhibit "A," together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney.

Section 3. Authorization of Town Officials. The Town Manager and/or his designee and the Town Attorney are authorized to take all steps necessary to implement the terms and conditions of Contract 2014-82 with YMCA of Greater Miami, Inc. and PEAR Programs, LLC for Park Program Services, Summer Camp & After School Programs, and the specialty program providers.

Section 4. Execution of the Contract. The Town Manager is authorized to execute Contract 2014-82 with YMCA of Greater Miami, Inc. and PEAR Programs, LLC for Park Program Services, Summer Camp & After School Programs and the specialty program providers on behalf of the Town, and to execute any required agreements and/or documents to implement the terms and conditions of the contracts, subject to approval as to form and legality by the Town Attorney.

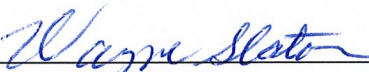
Section 5. Effective Date. This Resolution shall be effective immediately upon adoption.

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Passed and adopted this 13th day of January, 2015.

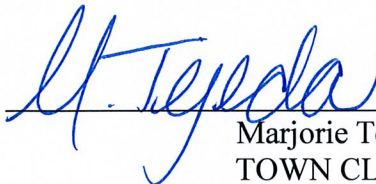
The foregoing resolution was offered by Councilman Rodriguez who moved its adoption. The motion was seconded by Councilman Mestre and upon being put to a vote, the vote was as follows:

Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Manny Cid	<u>yes</u>
Councilmember Tim Daubert	<u>yes</u>
Councilmember Tony Lama	<u>yes</u>
Councilmember Ceasar Mestre	<u>yes</u>
Councilmember Frank Mingo	<u>yes</u>
Councilmember Nelson Rodriguez	<u>yes</u>



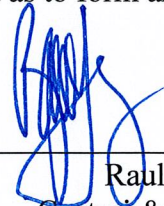
Wayne Slaton
MAYOR

Attest:



Marjorie Tejada
TOWN CLERK

Approved as to form and legal sufficiency:



Raul Gastesi, Jr.
Gastesi & Associates, P.A.
TOWN ATTORNEY

EXHIBIT "A"

THIS AGREEMENT ("Agreement") is entered into this [day] day of [month], 2014 by and between the Town of Miami Lakes, a Florida municipal corporation ("Town") and [name of company] ("Contractor"), [type of company] located at [address].

WHEREAS, the issued a solicitation ITN 2014-82 for the provision of park program services ("Programs") and the Contractor tendered response ("Response"), in response thereto, and was selected as one of the most qualified for the provision of said Services. The ITN and the Response are expressly incorporated into and made a part of this Agreement as if set forth in full; and

WHEREAS, through action of the Town Council, as applicable, have selected the Contractor in accordance Town's Procurement Ordinance, to provide the Programs as described herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto do hereby agree as follows:

A. General Conditions

1. Definitions.

The following terms used in this Agreement will have the following meanings:

Agreement means this document, as may be amended from time to time, the Invitation To Negotiation and the Response submitted by the Contractor, all change orders, directive, payments, and other such documents issued under or relating to the Agreement.

Change Order means a written document ordering a change in the Agreement price or Agreement time or a material change in the Work.

Contractor means the person, firm, entity, or corporation with whom the Town has contracted and who will be responsible for the Services and performance under this Agreement.

Cure means the action taken by the Contractor promptly, after receipt of written notice from the Town of a breach of the Agreement Documents, which must be performed at no cost to the Town, to repair, replace, correct, or remedy all material, equipment, or other elements of the Work or the Agreement Documents affected by such breach, or to otherwise make good and eliminate such breach.

Cure Period means the period of time in which the Contractor is required to remedy deficiencies in the Work or compliance with the Agreement after receipt of a written Notice to Cure from the Town identifying the deficiencies and the time to Cure.

Days mean calendar days.

Facility or Facilities mean(s) the areas of the Town's Parks, including open space areas, structures, or other amenities of the Parks where the Services Programs will be provided.

Program Manager means the individual appointed by the Town Manager to manage this Agreement.

Town means the Town Council of the Town of Miami Lakes or the Town Manager, as applicable.

Town Commission means the legislative body of the Town of Miami Lakes.

Town Manager means the duly appointed chief administrative officer of the Town of Miami Lakes or his designee.

Work or Services mean all necessary and inferable labor, material, equipment, and services, whether or not specifically stated, required by the Agreement to provide the Programs.

2. Term.

This Agreement will be effective upon execution by both parties and will continue for a term of three (3) year from the date of execution by the Town. The Town has the right, at its sole option, to renew the Agreement for two (2) additional one (1) year periods, or any portion thereof. In the event the Town exercises such right, all terms and conditions, and requirements of the Agreement, including all costs, will remain the same as specified in the Agreement and apply during the renewal period(s). No Work is to commence until a written authorization is issued by the Program Manager.

3. Notices

Whenever either party desires to give written notice to the other relating to the Agreement, such must be addressed to the party for whom it is intended at the place specified below; and the place for giving the notice will remain until it is changed by written notice in compliance with the provisions of this Article. Notice will be deemed given on the date received or within 3 days of mailing, if mailed through the United States Postal Service. Notice will be deemed given on the date sent via e-mail or facsimile. Notice will be deemed given via courier/delivery service upon the initial delivery date by the courier/delivery service. For the present, the parties designate the following as the respective places for giving of notice:

For Town:

Mr. Alex Rey
Town Manager
Town of Miami Lakes
6601 Main Street
Miami Lakes, Florida 33014

Mr. Gary Fabrikant
Procurement Manager
Town of Miami Lakes
6601 Main Street
Miami Lakes, Florida 33014

For Contractor:

(To Be Determined)

During the performance of the Program the Contractor must maintain continuing communications with designated Town representative (s). The Contractor must keep the Town fully informed as to the progress of the Work under the Agreement.

4. Indemnification

The Contractor must indemnify and hold harmless the Town, its officers, agents and employees from and against all liability, claims, damages, losses and expenses, including reasonable attorney's fees and costs at both trial and appellate levels arising out of or resulting from the performance of the Work under this Agreement, caused by negligence, recklessness, intentional misconduct, or any act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor will in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

The Contractor agrees and recognizes that the Town will not be held liable or responsible for any claims which may result from any actions or omissions of the Contractor in which the Town participated either through review or concurrence of the Contractor's actions. In reviewing, approving or rejecting any submissions by the Contractor or other acts of the Contractor, the Town in no way assumes or shares any responsibility or liability of the Contractor or Subcontractor, under this Agreement. The Contractor will defend the Town or provide for such defense at its own expense, at the Town's option.

All travel, transportation, and offsite events provided by the Contractor as part of the Program(s) are

covered under the indemnification provision.

For Programs at Royal Oaks Park the Miami-Dade County Public School System (MDCPS), its officers, agents and employees shall also be covered by this Indemnification provision. This provision will apply to any site the Programs are expanded to where the Town has an agreement with MDCPS concerning the use of the applicate sites.

This indemnification obligation shall survive the expiration or termination of this Agreement.

The Town has provided specific consideration for the indemnification of \$10.00 from the sums due to the Contractor under this Agreement.

5. Insurance

Without limiting any of the other obligations or liabilities of Contractor, the Contractor shall secure and maintain throughout the duration of this Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated B as to management and "Class V" as to strength or better as rated by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, The insurance carrier shall have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include a minimum of:

- a. Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by the State of Florida's Statutory Workers' Compensation Law" and all applicable Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000.00 each accident and a waiver of subrogation.
- b. Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$500,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.
- c. Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$500,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a primary and non-contributory basis and with a coverage form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

- d. Excess Liability Insurance:** Contractor shall provide Certificates of Insurance demonstrating that the Contractor has excess liability insurance in an amount not less than \$1,000,000.
- e.** Physical and Sexual Abuse Coverage must be provided either as an endorsement to the Commercial General Liability Insurance or as a stand alone policy in an amount not less than \$1,000,000 per occurrence.
- f. Certificate of Insurance:** Contractor shall provide the Town with Certificates of Insurance for all required policies within fifteen (15) days of notification of a conditional award by the Town. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled, restricted, or a material change is made. Acceptance of the Certificate(s) is subject to approval of the Town Manager or designee.
- g. Additional Insured** - The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Agreement. Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Contractor's insurance. . For Programs at Royal Oaks Park and Miami Lakes Optimist Park the Miami-Dade County Public School System shall also be named as an additional insured. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

6. Rules And Regulations

The Contractor will comply with all laws and regulations applicable to provision of the Programs specified in the Agreement. The Contractor must be familiar with and comply with all federal, state and local laws that affect the Services, including, but not limited to, those applicable to the Department of Children and Families' (DCF), Department of Health (DOH) and OSHA. The Contractor must comply with all of the Town's park rules and regulations.

7. Protection of Property, Utilities, and the Public

The Contractor must protect public and private property from damage or loss arising in connection with the providing the Programs and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.

The Contractor is completely responsible for, and must replace and make good all loss, injury, or damage to any property (including landscaping, park amenities, or structure)s of the Town or private property, and of any land adjoining the locations where Programs are being provided, which may be caused by Contractor.

8. Labor Materials, Equipment and Supplies

Contractor must provide and provide for all labor, materials equipment, supplies, consumables,

transportation, snacks, and other incidental items necessary to provide the Programs.

9. Authority of Town's Program Manager

The Town Manager hereby authorizes the Program Manager to determine, all questions of any nature whatsoever arising out of, under or in connection with, or in any way relating to the providing of the Programs in accordance with the Agreement. The Program Manager has the authority to act on behalf of the Town to the extent provided by the Agreement, unless otherwise modified in writing by the Town.

All interpretations and recommendations of the Program Manager will be consistent with the intent of the Agreement Documents. All interpretations of the Agreement Documents will be issued by the Town's Procurement Manager, which will be binding upon the Contractor.

10. Subcontractors

The Contractor has been authorized to utilize the Subcontractors identified in the Agreement. The use of any other Subcontractors or the replacement of any approved Subcontractors requires the prior written approval of the Program Manager.

11. Taxes

Contractor must pay all applicable sales, consumer, use and other taxes required by law. Contractor is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

12. Change Orders

The Town reserves the right to order changes which may result in additions to or reductions in the Agreement and which are within the general scope of the Agreement and all such changes will be authorized only by a Change Order approved in advance, and issued in accordance with provisions of the Town and the Agreement.

Any changes to the Agreement must be contained in a written document, executed by the both parties. However, under circumstances determined necessary by Town, Change Orders may be issued unilaterally by Town.

13. Force Majeure

The Town and Contractor will be excused from the performance of their respective obligations under the Agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, , act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of equipment, or service from a public utility needed for their performance, provided that:

- a. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;
- b. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- c. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
- d. The non performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance will not be excused under this Article for a period in excess of two (2) months, provided that in extenuating circumstances, the Town may excuse performance for a longer term.

The following circumstances shall not constitute Force Majeure:

- a. Economic hardship.
- b. Inclement weather except as permitted by Florida law

14. Removal of Unsatisfactory Personnel

The Town may make written request to the Contractor for the prompt removal and replacement of any personnel employed or retained by the Contractor, or any Subcontractor engaged by the Contractor to provide and perform services or Work pursuant to the requirements of the Agreement. The Contractor must respond to the Town within five (5) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. The Town will make the final determination as to the removal of unsatisfactory personnel from the Work. The Contractor agrees that the removal of any of such individual(s) does not require the termination or demotion of said individual(s).

15. Maintenance, Cleaning Up, Town's Right To Clean-Up

The Town will provide routine janitorial maintenance for the Facilities. The Contractor is responsible for cleaning-up any materials, supplies, debris, or other similar items resulting from the Programs. Should the Contractor fail to perform such clean-up the Town has the right to perform the clean-up work and deduct the cost from any sums due the Contractor.

16. Storage Space

Storage space at the site where the Programs are to be provided is limited. Contractor may need to arrange alternate space for its equipment, materials, and supplies. The space to be provided to the Contractor will be determined by the Town's Program Manager.

17. Utility Service

The Town will provide the existing utility service to the Facilities for use in providing the Programs.

18. Claims

Any claim must be made by written notice by Contractor to the Town's Procurement Manager within five (5) business days of the commencement of the event giving rise to the claim and stating the general nature and cause of the claim. Thereafter, within ten (10) days of the termination of the event giving rise to the claim, written notice of the extent of the claim with supporting information and documentation must be provided unless the Town's Procurement Manager allows additional time for submission. The written notice must be accompanied by Contractor's written notarized statement that any adjustment(s) claimed is the entire adjustment to which the Contractor has reason to believe it is entitled as a result of the occurrence of said event. All claims and disputes will be determined in accordance with the Agreement. It is expressly and specifically agreed that any and all claims for changes to the Agreement will be waived if not submitted in strict accordance with the requirements of this Article.

The Agreement time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of Contractor if a claim is made as provided in this Article. Such delays include, but are not be limited to, Force Majeure, acts or neglect by any separate contractor employed by Town, fires, floods, labor disputes beyond the control of the Contractor,

epidemics, abnormal weather conditions (if applicable), or acts of God.

Contractor will not be entitled to any compensation of any kind from the Town for direct, indirect, consequential, impact or other costs, expenses or damages from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable.

Failure of Contractor to comply with this Article as to any particular event of claim will be deemed conclusively to constitute a waiver of any and all claims resulting from that particular event.

19. Disputes And Mediation

Contractor understands and agrees that all disputes between it and the Town upon an alleged violation of the terms of this Agreement by the Town will be submitted for resolution in the following manner.

Initial effort(s) should be made by the Contractor to resolve any issues with the Town's Program Manager.

Should the initial efforts at resolution not end in a mutual resolution then the Contractor notify in writing the Procurement Manager identified in Article 3, Notices, of the claim or dispute

The Contractor must submit its dispute in writing, with all supporting documentation, to the Procurement Manager, as identified in Article 3, Notices. Upon receipt of said notification the Procurement Manager will review the issues relative to the claim or dispute and issue a written finding.

Should the Contractor and the Procurement Manager fail to resolve the claim or dispute the Contractor must submit their dispute in writing within five (5) calendar days of the written finding being issued by the Procurement Manager to the Town Manager. Failure to submit such appeal in the stated timeframe of the written finding will constitute acceptance of the finding by the Contractor. Upon receipt of said notification the Town Manager will review the issues relative to the claim or dispute and issue a written finding.

Appeal to the Town Manager for resolution, is required prior to Contractor being entitled to seek judicial relief in connection therewith. Should the Contractor be entitled to compensation hereunder, the Town Manager's decision may be subject to approval by the Town Council. Contractor is not entitled to seek judicial relief unless:

- (i) it has first received Town Manager's written decision, approved by the Town Council if applicable, or
- (ii) a period of sixty (60) days has expired after submitting to the Town Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of (90) days has expired where Town Manager's decision is subject to Town Council for approval; or
- (iii) Town has waived compliance with the procedure set forth in this Article by written instrument(s) signed by the Town Manager.

In the event the determination of a dispute under this Article is unacceptable to either party, the party objecting to the determination must notify the other party in writing within fourteen (14) calendar days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any adjustment(s) claimed is the entire adjustment(s) to which the objecting party has reason to believe it is entitled to as a result of the determination. Within sixty (60) calendar days after completion of the Program(s) or expiration of the Agreement, the parties will participate in mediation to address all objections to any determinations hereunder and to

attempt to prevent litigation. A certified Mediator, who the parties find mutually acceptable, will conduct any mediation proceedings in Miami-Dade County, State of Florida. The costs of a certified Mediator will be shared on a 50/50 basis. Should claim or dispute not be resolved in mediation, the parties retain all their legal rights and remedies provided under State law. A party objecting to a determination specifically waives all of its rights provided hereunder, including its rights and remedies under State law, if said party fails to comply in strict accordance with the requirements of this Article.

20. Continuing the Program(s)

Contractor must continue to provide the Programs during all disputes or disagreements with Town. Programs will not be delayed or postponed pending resolution of any disputes or disagreements.

21. Stop Work Order

The Town may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Programs due to any conflict or potential conflict with other Town events or operational requirements, storm related events or other similar circumstances. The Town, where possible will make every effort to provide at minimum of forty-eight (48) hours advance notice or move the Program, if possible, to an alternative site.

22. Fraud and Misrepresentation

The Town may terminate this Agreement with any person, individual, corporation, entity, or affiliate that attempts to meet its contractual obligations with the Town through fraud, misrepresentation, conflicts of interest, or material misstatement. Such person, individual, corporation, entity, or affiliate shall be responsible for all direct or indirect costs associated with termination or cancellation.

23. Set-Offs, Withholding, and Deductions

The Town may set-off, deduct or withhold from any payment due the Contractor, such sums as may be specifically allowed in the Agreement or by applicable law including, without limitation, the following:

- Any amount of any claim by a third party;
- Any unpaid legally enforceable debt owed by the Contractor to the Town.

The Town will notify the Contractor in writing of any such withholdings.

24. Contractor Default

An event of default means a breach of the Agreement by the Contractor. Where an Event of Default ("Default") occur under the Agreement, the Town may, at its sole discretion, notify the Contractor, specifying the basis for such Default, and advising the Contractor that such Default must be cured within a time frame specified by the Town or the Agreement with the Town may be terminated. The Town is under no obligation to issue such notification. The Town may grant an extension to the cure period if the Town deems it appropriate and in the best interest of the Town, without waiver of any of the Town's rights hereunder.

Where a Default is not cured within the time specified to cure the Default, the Town Manager in addition to all remedies available by law, may immediately, upon written notice to Contractor, terminate this Agreement. Contractor understands and agrees that termination of this Agreement under this Article will not release Contractor from any obligation accruing prior to the effective date of termination.

Where the Town erroneously terminates the Agreement for default, the termination will be converted to a Termination for Convenience, and the Contractor will have no further recourse of any nature for

wrongful termination.

25. Termination For Convenience

In addition to cancellation or termination as otherwise provided for in the Agreement, the Town may at any time, in its sole discretion, with or without cause, terminate the Agreement by written notice to the Contractor. Such Written Notice will state the date upon which Contractor shall cease all Work under the Agreement.

In the event that the Town exercises its right to terminate the Agreement pursuant to the Agreement Documents, the Town will pay the Contractor for the Services provided under the Agreement until the date of Termination. In no event, will any payments under this Paragraph exceed the maximum cost set forth in the Agreement and the amount due hereunder may be offset by payments made to the Contractor or any claims made against the Contractor. Contractor will not be entitled to lost profits, overhead or consequential damages as a result of a Termination for Convenience.

26. Town May Avail Itself of All Remedies

The Town may avail itself of each and every remedy stated in the Agreement or existing at law or in equity. The exercise or the beginning of the exercise, of one remedy will not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy.

27. Compliance With Applicable Laws

The Contractor must comply with the most recent editions and requirements of all applicable laws, rule, regulations, codes, and ordinances of the Federal government, the State of Florida, Miami-Dade County, and the Town.

28. Nondiscrimination, Equal Employment Opportunity, and Americans With Disabilities Act

Contractor must not unlawfully discriminate against any person, must provide equal opportunities for employment, and comply with all applicable provisions of the Americans with Disabilities Act in its performance of the Work under the Agreement. Contractor must comply with all applicable federal, State of Florida, Miami-Dade County, and Town rules regulations, laws, and ordinance as applicable.

29. Independent Contractor

The Contractor is engaged as an independent business and agrees to perform Work as an independent contractor. In accordance with the status of an independent contractor, the Contractor covenants and agrees that the Contractor will conduct business in a manner consistent with that status, that the Contractor will not claim to be an officer or employee of the Town for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: worker's compensation coverage; unemployment insurance benefits; social security coverage; retirement membership, or credit.

30. Third Party Beneficiaries

Neither Contractor nor Town 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 will be entitled to assert a claim against either of them based upon this Agreement.

31. Assignment or Sale of Agreement

The performance of this Agreement will not be transferred pledged, sold, merged, delegated or assigned, in whole or in part, by the Contractor without the prior written consent of the Town. It is understood that a sale of ownership, the majority of the stock, or partnership shares of the

Contractor, a merger or bulk sale, an assignment for the benefit of creditors will each be deemed transactions that would constitute an assignment or sale hereunder. The Town may request any information it deems necessary to review any request for assignment or sale of the Agreement.

Any such actions identified above taken without the prior written consent of the Town approval will be cause for the Town to terminate this Agreement for default and the Contractor will have no recourse from such termination.

Nothing herein will either restrict the right of the Contractor to assign monies due to, or to become due or be construed to hinder, prevent or affect any assignment by the Contractor for the benefit of its creditors, made pursuant to applicable law.

32. Materiality and Waiver of Breach

Town and Contractor agree that each requirement, duty, and obligation set forth in the Agreement is substantial and important to the formation of the Agreement and, therefore, is a material term hereof. The Town's failure to enforce any provision of the Agreement will not be deemed a waiver of such provision or modification of the Agreement. A waiver of any breach of a provision of the Agreement will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of the Agreement.

33. Defense of Claims

Should any claim be made or any legal action brought in any way relating to the Work under the Agreement, the Contractor must diligently render to the Town any and all assistance which the Town may require of the Contractor.

34. Funds Availability

Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days' notice.

35. Access to and Review of Records

Town has the right to inspect and copy, at Town's expense, the books and records and accounts of Contractor which relate in any way to the Agreement. The Contractor agrees to maintain an accounting system that provides for accounting records that are supported with adequate documentation and adequate procedures for determining allowable costs.

The Contractor must comply with the applicable provisions of Chapter 119, Florida Statutes and Town has the right to immediately terminate this Agreement for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor must retain all records associated with this Agreement for a period of five (5) years from the date of termination.

36. Time in Which To Bring Action Against the Town

In the event the Contractor may be deemed to have a cause of action against the Town, no action will lie or be maintained by the Contractor against the Town upon any claim arising out of or based upon the Agreement by reason of any act or omission or requirement of the Town or its agents, unless such action must be commenced within six (6) months after the date of issuance of a final payment under the Agreement, or if the Agreement is terminated under the provisions of the Agreement unless such action is commenced within six (6) months after the date of such termination by the Town.

37. Agreement Extension

The Town reserves the right to exercise its option to extend the Agreement for up to ninety (90) calendar days beyond the original Agreement period, inclusive of any Options to Renew exercised by the Town. In such event, the Town will notify the Contractor in writing of such extensions.

38. Applicable Law and Venue Of Litigation

This Agreement is enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions the sole venue shall be Miami-Dade County, Florida.

39. Non-Exclusive Agreement

It is the intent of the Town to enter into an Agreement with A successful Bidder(s) that will satisfy its needs as described herein. However, the Town reserves the right, as deemed in its best interest, to perform, or cause to be performed, the Work and Services, or any portion thereof, as it sees fit, including but not limited to: award of other contracts, use of another contractor, or perform the Work with its own employees.

40. Severability

In the event any provision of the Agreement is determined by a Court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision will be excised from this Agreement, and the remainder of the Agreement will continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision will materially and adversely affect the rights of either party, such party may elect, at its option, to terminate the Agreement in its entirety. An election to terminate the Agreement based upon this provision must be made within seven (7) calendar days after the finding by the court becomes final.

41. Agreement Documents Contains All Terms

The Agreement and all documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of the Agreement will be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

42. Entire Agreement

The Agreement, as they may be amended from time to time, represent the entire and integrated Agreement between the Town and the Contractor and supersede all prior negotiations, representations or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed in accordance with the requirements of this Agreement. Waiver by either party of a breach of any provision of the Agreement will not be deemed to be a waiver of any other breach of any provision of the Agreement.

B. Special Terms and Conditions

43. COMPENSATION

Contractor shall pay to the Town a user fee in the amount of \$_____ per month or the Contractor shall pay ___% of the registration fees collected for use of the facility.

(Article will be added based on the final selection)

44. Invoicing

Contractor shall provide the Town with an invoice once per for the Work performed in the prior month. At a minimum the invoice must contain the following information:

- Name and address of the Contractor
- Purchase Order number
- Agreement number
- Date of invoice
- Invoice number (Invoice numbers cannot be repeated)
- Name and Type of Program,
- List of participants.
- Timeframe covered by the invoice
- Total Value of invoice
- Total value of the invoice

Failure to include the above information will delay payment. Payments will not be made based on statements of accounts.

The Town will take action to pay, reject or make partial payment on an invoice in accordance with the Florida Local Government Prompt Payment Act. No payments will be due or payable for Work not performed or materials not furnished or where the Work has not been accepted by the Town. If there is a dispute with regard to an invoice, the Town will pay the amount not in dispute and reject the remainder that is in dispute.

45. Deletion or Modification of Services

The Town may during the term of the Agreement make modifications to the Services being provided. If the Contractor and the Town agree on modifications or revisions to any Services such changes must be made through the execution of a change order executed by both parties.

46. Use of Property

Town grants to the Contractor non-exclusive access for the limited use of the Facilities in "as-is" condition for providing the Programs. Use of the Facilities for any other activity(ies) is subject to the prior written approval of the Program Manager. Such approval will be at the sole discretion of the Program Manager.

47. Program Conflicts

Program Manager, in his sole discretion, may change or cancel any activity due to inclement weather, special events, conflicting schedules, Program events or Services, for unforeseen circumstances or emergencies including, but not limited to, maintenance of the Property, or for any reason that is in the best interest of the Town.

48 Maintenance of the Facilities

The Town will provide routine maintenance, utilities, and solid waste for the Facilities. Maintenance above and beyond what is normally provided for use of the Facilities will be provided by the Contractor, subject to the prior written approval of the Program Manager.

49. Management of Staff and Program Participants

Contractor agrees to monitor and control all Program participants, including, but not limited to Contractor's staff, instructors, volunteers, guests and invitees while at the Facilities and during any

activities organized by the Contractor at the Facilities.

Contractor must comply, at its own cost, with Section 409.175, Florida Statutes, and the Town's Administrative Order 07-01, requiring the Contractor to conduct background investigations for all instructors, employees, or volunteers prior to the Licensees use of the Property under this Agreement.

These investigations must meet the requirements for the Level 2 background and screening requirements as set forth in Section 435.04, Florida Statutes.

Contractor must not allow any instructor, employee, or volunteer who does not meet the above stated requirements to provide any Service under this Agreement.

An affidavit indicating all staff and volunteers associated with the operation of Programs, classes and/or activities under a Program(s) for the Contractor have passed a Level 2 background check must be received no later than fourteen (14) days prior to the start of the particular program, class, and/or activities. A new Affidavit is required on an annual basis.

Contractor's Program(s) must include safety guidelines as well as guidelines and standards for the conduct of Contractor staff and volunteers in interfacing with the general public and Town officials in a courteous and professional manner. Contractor must at all times have a competent supervisor on site who is be responsible for management and supervision, of the Program(s). Such guidelines and standards may be subject to the review and approval of the Town.

Contractor shall ensure that all volunteers, and staff obtain ID's issued by the Town prior to start of the Program(s) and have their ID's visible at all times while on the Town Facilities.

50. Alteration and Improvement to the Facilities

Contractor must not make any permanent or temporary alterations, improvements or additions to the Facilities, including, but not limited to, Park areas, as well as signs signs and banners, without the prior written consent of the Program Manager. Any alteration, improvement or addition to the Facilities approved by the Program Manager must be designed, constructed with appropriate permitting, installed, and maintained in a good, safe and workmanlike manner, and will be provided solely at the Contractor's expense.

Unless otherwise agreed in writing by the Town, any alteration, improvement or addition to the Facilities made by Contractor shall be removed by Contractor at the expiration date or earlier termination date of the Agreement. If the Town desires to retain any alteration, Town will notify Contractor in writing of its intent prior to the termination date of this Agreement.

51. Town Right to Observe and Inspect

Town has the right, but not the obligation, at any time, to have one or more of its representatives present during the Program(s) to observe the Contractor's Program(s), use of the Facilities, and make any inspections the Town deems necessary. The purpose of such observations and inspections are to ensure the Contractor's compliance with the terms and conditions of this Agreement.

52. Marketing

The Contractor must work with the Program Manager to develop marketing for the Town's website and the public. Any additional marketing and promotional materials costs will be at the sole expense of the Contractor. All marketing and promotional materials are subject to the prior written approval of the Town Manager or designee.

53. Signage

Contractor will not install or place any signs on Town Property without the prior written approval of the

Program Manager.

54. Liability Release and Waiver Requirements

The Contractor must require all staff, volunteers, and Program participants of legal age to submit to the Contractor signed liability release and waiver forms drafted or approved by the Town, releasing the Town and the Town's officers, employees, and agents, from any and all liability in connection with such students' participation in Contractor Program(s). The Contractor must require all Contractor's staff, volunteers, and Program participants not of legal age to submit Contractor liability release and waiver forms signed by their parents or legal guardians, drafted or approved by the Town, and releasing the Town and the Town's officers, employees, and agents, from any and all liability in connection with such individual's participation in the Contractor's Program(s). Contractor must retain all such forms on file. The Town may inspect and copy such release and waiver forms at any reasonable time.

55. Monthly Reports

Contractor shall provide the Program Manager with a monthly report, which reflects the number of participants per class per Program, fees collected (if applicable), number of scholarships, number of Miami Lakes' residents and other necessary information determined by the Program Manager. In addition the monthly report will also include a summary of the quality assurance plan and evaluations taken or implemented during the reporting month. The form and format of the report will be subject to the approval of the Program Manager.

56. Transportation of Program Participants

Where the Contractor provides transportation for Program participants, inclusive of trips, transportation from school to the Facilities, etc., the Contractor is solely responsible for all cost associated with such transportation for Programs even if the fees are paid by the Town. All vehicles must be fully insured as required by this Agreement and such vehicles are subject to inspection by Town staff. Vehicles not acceptable to the Town for use under the Agreement must be replaced by the Contractor at no additional cost to the Town.

C Programs

(this Section shall be completed based on the Contractors Proposal).

IN WITNESS WHEREOF, Town and Licensee have executed this Agreement as of the dates set forth above.

Attest:

TOWN OF MIAMI LAKES

By: _____
Marjorie Tejada, Town Clerk

By: _____
Alex Rey, Town Manager

By: _____
Town Attorney

Signed, sealed and witnessed in the presence of:

As to the Contractor:

(Contractor's Name)

By: _____

By: _____
Name: _____
Title: _____

(* In the event that the Contractor is a corporation, Contractor shall be attached the corporate resolution authorizing the officer who signs the Agreement to do so in its behalf.