

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 20, 2016 [X] Consent [] Regular
[] Ordinance [] Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: the following original executed Tee Time Advertising and Sales Agreement:


Distinct Software Solutions, LLC, for the period October 17, 2016, through October 16, 2017 for 15% of each golf round sold.

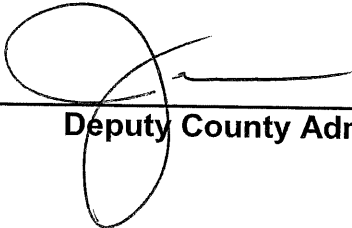
Summary: In accordance with County PPM CW-O-051, all delegated contracts/agreements/grants must be submitted by the initiating department as a Receive and File agenda item. This Tee Time Advertising and Sales Agreement has been fully executed on behalf of the Board of County Commissioners (Board) by the Director/Assistant Director of Parks and Recreation in accordance with Resolution 2013-1607, and is now being submitted to the Board to receive and file. This Agreement helps to sell tee times at Okeeheelee Golf Course, Park Ridge Golf Course and Southwinds Golf Course at non-peak times that would otherwise not be sold. County net revenues generated from this agreement are estimated at \$20,498. Countywide (AH)

Background and Justification: A resolution providing authority to execute Tee Time Advertising and Sales Agreements (Resolution 2013-1607) was adopted by the Board to assist the Parks and Recreation Department to contract with third party vendors that have the ability to sell unused tee times. The Board granted the Director/Assistant Director of Parks and Recreation the authority to execute Tee Time Advertising and Sales Agreements not to exceed \$50,000, with agreements valued at more than \$50,000, but not more than \$100,000 requiring the County Administrator's approval, and agreements over \$100,000 requiring Board approval.

The Agreement attached has been executed on behalf of the Board by the County's Director/Assistant Director of Parks and Recreation in accordance with the authority delegated by the Board, and is now being submitted to the Board to receive and file.

Attachment: Tee Time Advertising and Sales Agreement

Recommended by:  Date _____
Department Director

Approved by:  Date 12-15-16
Deputy County Administrator

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-1-</u>	<u>-1-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(20,000)</u>	<u>-(500)-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>*(19,999)</u>	<u>-(499)-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

ADDITIONAL FTE

POSITIONS (Cumulative) 0

Is Item Included in Current Budget? Yes X No _____

Budget Account No.: Fund 1384 Department 580 Unit multiple
Revenue Source 4723 /Object 3401 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

	Actual FY 2016
PBC Rounds	476


Distinct Software Solutions, LLC	Actual FY 2016
PBC Revenue	\$14,214.67
DSS, LLC Revenue	\$2,132.20

*FY2017 & 2018, estimated fiscal impact based on prior year actuals.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:


 OFMB #1
 11/28

Don J. Jacobson 12/12/16
Contract Development and Control

B. Legal Sufficiency:

Anne Wagoner 12-12-16
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment

TEE TIME ADVERTISING AND SALES AGREEMENT FOR PALM BEACH COUNTY PARKS & RECREATION DEPARTMENT

THIS TEE TIME ADVERTISING AND SALES AGREEMENT, hereinafter referred to as the "Agreement," is made and entered into on OCTOBER 17, 2016, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as "COUNTY," and Distinct Software Solutions, LLC., an Independent Contractor, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, COUNTY, by and through its Parks and Recreation Department, hereinafter referred to as the "Department," provides public golf courses for its residents and visitors to Palm Beach County; and

WHEREAS, the Department maximizes the use of County golf facilities and their revenue generating potential to provide quality facilities and offset the operating costs of these facilities; and

WHEREAS, the Department wishes to generate additional advertising exposure and sales by utilizing the services of tee time advertising and sales organizations to promote and sell tee times for County golf facilities; and

WHEREAS, it is the intent of the Department to contract with any interested and responsible organization that meets the established minimum qualifications for the provision of tee time advertising and sales services hereinafter referred to as "Services"; and

WHEREAS, said Services will be conducted by CONTRACTOR and governed by the Department pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, COUNTY and CONTRACTOR hereby agrees as follows:

1. **Term:** This Agreement is effective October 17, 2016, and will terminate October 16, 2017, and is not subject to extension or renewal.
2. **Payments To Contractor:**
 - a. The total amount payable by COUNTY under this Agreement for the Services to be performed hereunder is an amount not to exceed one dollar (\$ 1.00).
 - b. The CONTRACTOR will bill the COUNTY on a monthly basis, or as otherwise provided, for tee time advertising and sales services in accordance with EXHIBIT A, Scope of Work/Services and EXHIBIT C, Price Pages.
 - c. The COUNTY, through the Department, will process payment to CONTRACTOR on a monthly basis following receipt of CONTRACTOR's invoice.
 - d. Though CONTRACTOR's invoice will be considered the basis for payment, the actual amount paid will be determined by the COUNTY. In the event of a discrepancy between the amount invoiced and the

amount paid, the decision of the COUNTY is final. CONTRACTOR may request to review any supporting documentation utilized to determine the amount paid.

- e. In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "final invoice" on the CONTRACTOR's final/last billing to the COUNTY. This shall constitute CONTRACTOR's certification that all services have been properly performed and all charges and costs have been invoiced to the COUNTY. Any other charges not properly included on this final invoice are waived by the CONTRACTOR.

3. **Independent Contractor Relationship:** The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR's relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

4. **Taxes:** It is acknowledged and agreed that the service to be provided by CONTRACTOR is a professional service and that the COUNTY is neither paying Social Security benefits nor withholding taxes from CONTRACTOR's compensation for said service. CONTRACTOR assumes sole responsibility for the payment of any and all federal, state, and local taxes as now exist or may hereafter come into being as such taxes may be applicable to the payments made by COUNTY to CONTRACTOR in exchange for the services to be performed hereunder.

Additionally, CONTRACTOR is not eligible to benefit from the COUNTY's Tax Exempt Status. As such, CONTRACTOR is not exempt from the payment of sales taxes to suppliers for any materials as may be used in the performance of CONTRACTOR's obligations under this Agreement.

5. **Termination:** The COUNTY may terminate this Agreement at any time upon written notice to the CONTRACTOR and CONTRACTOR may terminate this Agreement by providing thirty (30) business days advance written notice to the COUNTY. Such notice shall be delivered to the Department's authorized representative.
6. **Subcontracting:** CONTRACTOR may not, without the advance written consent of the Department, subcontract or assign any rights, responsibilities or obligations under this Agreement.
7. **Performance:**

- a. CONTRACTOR shall:

1. Perform the services set forth herein in accordance with Exhibit "A, Scope of Services, and all Department policies and procedures governing the advertising and sale of COUNTY tee times, in a competent, professional, safe, and responsible manner with full regard for the customer service

standards and reputation of the COUNTY;

2. Provide and maintain any necessary software and software interfaces to perform the services set forth herein;
3. Ensure the security of COUNTY's golf operations, customer, financial, and shared data, and prevent the unauthorized electronic intrusion or access to COUNTY point of sale and reservations systems as a result of CONTRACTOR's operations; and
4. Adhere to applicable federal, state and local laws and regulations, including Palm Beach County Code, Chapter 21, as may be amended, pertaining to Parks and Recreation.

b. COUNTY shall:

1. Provide the CONTRACTOR with access to its tee times in accordance with established policies and procedures; and
2. Collect green and cart fees and distribute applicable commissions to the CONTRACTOR, as more particularly described in Exhibit "C", Price Pages.

8. **Exhibits:** CONTRACTOR's Scope of Service is included as Exhibit "A" to this Agreement. Any and all other applicable Exhibits hereto are attached and incorporated herein.

If additional provisions or requirements such as the provision of promotional materials, software, and/or marketing and promotional services, are provided, such provisions and/or requirements may be attached hereto as an Exhibit.

9. **Department Representative:** The Department's authorized representative for this Agreement is:

Name: Bethany King Phone Number: (561) -966-6627

10. **Insurance Requirements:** It is the responsibility of CONTRACTOR to provide proof of the required insurance coverage's specified in Exhibit "B" to this Agreement.

Such proof of insurance must be provided to the Department's authorized representative prior to the execution of this Agreement.

11. **Indemnification:** CONTRACTOR shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONTRACTOR.

12. **Notices:** All notices required in this Agreement are to be hand delivered or sent by certified mail, return receipt requested.

If sent to COUNTY, such notices are to be addressed:

Palm Beach County Parks and Recreation Department
Attn: Paul Connell, Director of Special Facilities
2700 6th Avenue South

Lake Worth, Florida 33461

If sent to CONTRACTOR, such notices are to be addressed:

Ted Crossley,
9111 Jollyville Rd St 108
Austin, TX 78759

13. **Remedies:** This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.

14. **No Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or CONTRACTOR.

15. **Availability of Funds:** COUNTY's performance and obligation to pay under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

16. **Arrears:** CONTRACTOR shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

17. **Public Entity Crimes:** As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

18. **Criminal History Records Check:** If CONTRACTOR's employees or subcontractors are required under this Agreement to enter a "critical facility," as identified in Resolution R-2003-1274, the CONTRACTOR shall comply with the provisions of Chapter 2, Article IX of the Palm Beach County Code ("Criminal History Records Check" section). The CONTRACTOR acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONTRACTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with this section of the Palm Beach County Code.

19. **Severability:** If any term or provision of this Agreement, or the application thereof to any person or

circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

20. **Access and Audits:** The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONTRACTOR place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the CONTRACTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

21. **Entirety of Contractual Agreement:** COUNTY and CONTRACTOR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
22. **Nondiscrimination:** The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

CONTRACTOR has submitted to COUNTY a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the CONTRACTOR does not have a written non-discrimination policy or one that conforms to the COUNTY's policy, it has acknowledged through a signed statement provided to COUNTY that CONTRACTOR will conform to the COUNTY's non-discrimination policy as provided in R-2014-1421, as amended.

23. **Regulation; Licensing Requirements:** CONTRACTOR shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONTRACTOR is presumed to be familiar with all federal, state, and local laws, ordinances, codes and regulations that may in any way affect the services offered.
24. **Personnel:** The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY. All services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

The CONTRACTOR warrants that all services will be performed by skilled and competent personnel to the highest professional standards in the fields and all of CONTRACTOR's personnel while on COUNTY premises will comply with all COUNTY requirements governing conduct, safety and security.

25. **Successors and Assigns:** The COUNTY and CONTRACTOR each binds itself and its partners, successor, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the COUNTY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other.
26. **Conflict of Interest:** The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The CONTRACTOR further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONTRACTOR shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONTRACTOR'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONTRACTOR. The COUNTY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the COUNTY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONTRACTOR under the terms of this Contract.

27. **Disclosure and Ownership of Documents:** The CONTRACTOR shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2-440, as amended.

28. **Public Records:** Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the CONTRACTOR: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the CONTRACTOR shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time the CONTRACTOR is specifically required to:
- a. Keep and maintain public records required by the County to perform services as provided under this Contract.
 - b. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The CONTRACTOR further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as in may be amended or replaced from time to time.
 - c. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the CONTRACTOR does not transfer the records to the public agency.
 - d. Upon completion of the Contract the CONTRACTOR shall transfer, at no cost to the County, all public records in possession of the CONTRACTOR unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the CONTRACTOR transfers all public records to the County upon completion of the Contract, the CONTRACTOR shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically by the CONTRACTOR must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the CONTRACTOR to comply with the requirements of this article shall be a material breach of this Contract. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. CONTRACTOR acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:**

PAC

By: _____

E. L. Lee

Director / Assistant Director

Palm Beach County Parks and Recreation Department

If the Agreement Is Valued at More than \$50,000.00:

County Administrator

WITNESS

Britney Pragliola 9-28-16

Signature Date

BRITNEY PRAGLIOLA

Print

CONTRACTOR -

By: _____ 9/28/16
Signature Date

ALI MURDOCH

Print

CEO

Title

**APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

Assistant County Attorney

Anne Delgante

EXHIBIT "A"

Scope of Service

The Department operates four public golf courses and a driving range located in Central and Southern Palm Beach County. The golf courses included in this contract are Okeeheelee Golf Course and Park Ridge Golf Courses in Central County and Southwinds Golf Course in South County. The 3 golf courses host over 178,000 rounds of golf per year. Okeeheelee Golf Course has been operating since 1995. Park Ridge Golf Course has been operating since 2007, and Southwinds Golf Course has been owned by Palm Beach County since 1987.

A. CONTRACTOR'S Responsibility

CONTRACTOR shall:

1. Promote and market Okeeheelee, Park Ridge and Southwinds golf courses and golf course tee time inventory on the Golf18 Network website.
2. Provide and host an information page for Okeeheelee, Park Ridge and Southwinds golf courses which will include a photograph and description of the facilities on the Golf 18 Network website.
3. Market Okeeheelee, Park Ridge and Southwinds golf courses on a regular basis to its local and national customers in various media outlets.
4. Work closely with the respective golf course manager to fill vacant tee times at the golf course facility.
5. Have a representative that will be available to meet with golf course management staff to resolve issues related to the scope of work and CONTRACTOR's reservations.
6. Comply with Payment Card Industry Security Standards for the protection of customer data, use systems, tools, and security and take reasonable steps to ensure COUNTY data is not accessed, redistributed, duplicated, or modified.

B. Reservations:

Golfers that book tee times directly with the COUNTY, via telephone, in person, or on the COUNTY's website are the priority for COUNTY's golf operations. CONTRACTOR's access to COUNTY tee times is secondary and is only intended to augment the normal COUNTY tee time sales. Golf course managers will work closely with the CONTRACTOR to manage the available tee times on the CONTRACTOR's website.

C. No Shows:

CONTRACTOR shall use its best efforts to prevent no shows, and shall implement a no show policy that prevents habitual no shows at COUNTY golf facilities. CONTRACTOR shall charge its customers that no show at COUNTY golf courses in full and shall pay the COUNTY the applicable fee for the no shows on a monthly basis.

D. Commission Distribution:

1. CONTRACTOR shall provide the golf course with a summary of each booking which will include the names of the golfers, their contact info (including phone number and e-mail address) and the day and time they played golf. The summary will ensure that there are no discrepancies between the CONTRACTOR's and the golf courses records.
 - COUNTY shall allow the CONTRACTOR to collect a commission in advance on each round of golf when reserved by a customer on-line.
 - CONTRACTOR shall provide a summary of the commissions for CONTRACTOR's customer reservations where the golfer identified themselves as CONTRACTOR's customer and paid the applicable rate for golf.
 - CONTRACTOR will not be paid a commission for rain checks. Any commissions paid by the customer to the CONTRACTOR shall be refunded to them and their fee will be paid in full at the golf course.
 - Under no circumstances will the rate charged or advertised to the CONTRACTOR's customers be lower than the advertised standard rate to COUNTY customers.
 - For large groups and special events, with Department approval, the golf course manager may provide additional incentives such as range balls and food and beverage packages to CONTRACTORS's customers, and/or the Department may authorize additional discounts to target times and dates that are going unsold.
 - If a golfer referred by the CONTRACTOR arrives at the golf course and has a COUNTY Frequent Player Card or discount coupon, the customer will be charged the applicable Frequent Player Card or coupon rate and the CONTRACTOR will not be paid a commission on the customer's round of golf. In these cases, golfers will be required to pay in full at the course and refund shall be provided by the CONTRACTOR.
 - Customer Service is a top priority for Palm Beach County. CONTRACTOR shall utilize its best efforts to resolve customer complaints in a timely fashion even if it means refunding customer fees.

E. COUNTY'S Responsibility:

COUNTY will review each tee time booking submitted by the CONTRACTOR and will ensure golfer tee times are being paid at the golf courses.

CONTRACTOR:

SIGNATURE 

NAME (TYPE OR PRINT) ALI MURGESLI

TITLE (TYPE OR PRINT) CEO.

EXHIBIT "B"

Insurance Requirements

CONTRACTOR will maintain in full force and effect, on a primary basis and at its sole expense, at all times during the life of this Agreement, insurance coverage's and limits (including endorsements) as described herein. Failure to maintain the required insurance will be considered default of this Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the Agreement. CONTRACTOR agrees to provide the COUNTY with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverage's.

Palm Beach County Parks & Recreation Department Representative to Initial as applicable:

☐

No Insurance Required: Based on scope of services, CONTRACTOR shall not be required to provide insurance.

☒

Commercial General Liability: CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.

☒

Auto Liability: CONTRACTOR shall maintain Business Auto Liability at a limit of liability not less than **\$500,000** Each Occurrence for all owned, non-owned, and hired automobiles. In the event CONTRACTOR owns no automobiles, the Business Auto Liability requirement shall be amended allowing CONTRACTOR to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form.

☒

Workers' Compensation Insurance & Employer's Liability: CONTRACTOR shall maintain Workers' Compensation & Employer's Liability in accordance with Florida Statute Chapter 440.

☐

Professional Liability: CONTRACTOR shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of CONTRACTOR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONTRACTOR shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims – made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, not renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, CONTRACTOR shall purchase a SERP with a minimum reporting period not less than three (3) years.

EXHIBIT "B"

Insurance Requirements



Additional Insured Clause: Except as to Business Auto, Workers' Compensation and Employer's Liability (and Professional Liability, when applicable) the Certificate(s) of Insurance shall clearly confirm that coverage required by this Agreement has been endorsed to include COUNTY as Additional Insured. As such, said Certificate(s) shall specifically include: "Palm Beach County, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents."



Waiver of Subrogation: CONTRACTOR hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.



Certificates of Insurance: Prior to execution of the Agreement, the CONTRACTOR shall deliver to the COUNTY Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. In addition, the CONTRACTOR shall provide this evidence to the COUNTY prior to the expiration date of any such insurance required herein. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation of coverage. Certificates of Insurance are to be sent to:

Palm Beach County Board of County Commissioners
C/O Parks and Recreation Department
Attn: Eric Garber
2700 Sixth Avenue South
Lake Worth, Florida 33461



Umbrella or Excess Liability: If necessary, CONTRACTOR may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.



Right to Revise or Reject: COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Agreement. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

EXHIBIT "C"
PRICE PAGES

The following pricing is submitted as the all inclusive pricing to provide the Parks and Recreation Department with golf course tee time sales services in accordance with the Scope of Work/Services set forth in this Agreement.

The CONTRACTOR shall fill-in amount and provide a description, if applicable, for one or more of the following compensation methods OR an alternative compensation method it is offering to the COUNTY for providing golf course tee time sales service for the term of this Agreement.

A.	COMMISSION: (A commission for each round of golf sold to the CONTRACTOR's customers where the customer pays the commission to the CONTRACTOR and the balance to the golf course for its round of golf.) Fill-in the commission percentage.
	<u>15</u> % of monthly sales revenue from CONTRACTOR's tee time bookings at Park Ridge Golf Course.
	<u>15</u> % of monthly sales revenue from CONTRACTOR's tee time bookings at Okeeheelee Golf Course.
	<u>15</u> % of monthly sales revenue from CONTRACTOR's tee time bookings at Southwinds Golf Course.
B.	DISCOUNT: (The sale of discounted rounds of golf to the CONTRACTOR for resale to its customers at a marked up rate.) Fill-in discount percentage.
	<u>N/A</u> % of standard rates for a round of golf.
C.	TRADE: (The provision of trade rounds of golf to the CONTRACTOR to be sold to its customers in return for their sales services.) Fill-in the numbers.
	<u>N/A</u> rounds of golf to be traded per day per participating facility, OR
	<u>N/A</u> trade rounds for ____ booked rounds. (Max 2 rounds per week)

XHIBIT "C"
PRICE PAGES

D.	OTHER:
	N/A

The CONTRACTOR certifies by signature below the following:

- a. This pricing is current, accurate, complete, and is presented as the Total Pricing, including 'out-of-pocket' expenses (if any), for the performance of this Agreement in accordance with the Requirements/Scope of Work/Services of this Agreement.
- b. The Price Page is current, accurate, complete, and is presented to the COUNTY for the performance of this Agreement in accordance with all the requirements as stated in this Agreement.
- c. The Price Page is submitted without prior understanding, agreement, or connection with any corporation, firm, or person submitting an Agreement for the same materials, services, and supplies and is, in all respects, fair and without collusion or fraud.
- d. The financial stability to fully perform the terms and conditions as specified herein.

NAME (PRINT): Ali MURDOCH

TITLE: CEO.

COMPANY: Distinct Software Solutions

ADDRESS: 9111 Jollyville Rd, Ste 108, Austin, TX 78759

TELEPHONE NO. 512-236-0060

SIGNATURE:

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Wortham Insurance & Risk Mgmt. 221 West 6th Street, Suite1400 Austin, TX 78701 512 453-0031		CONTACT NAME: PHONE (A/C, No, Ext): 512 453-0031 FAX (A/C, No): 512 453-0041 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A : Sentinel Insurance Company Ltd. 11000 INSURER B : Trumbull Insurance Company 27120 INSURER C : INSURER D : INSURER E : INSURER F :	
INSURED Distinct Software Solutions, LLC dba CourseTrends 9111 Jollyville Rd #108 Austin, TX 78759			

COVERAGES				CERTIFICATE NUMBER:		REVISION NUMBER:			
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.									
INSR LTR	TYPE OF INSURANCE		ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY				65SBATQ3723SC	04/15/2016	04/15/2017	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
	<input type="checkbox"/>	CLAIMS-MADE	<input checked="" type="checkbox"/>	OCCUR				MED EXP (Any one person)	\$10,000
								PERSONAL & ADV INJURY	\$1,000,000
								GENERAL AGGREGATE	\$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:							PRODUCTS - COMP/OP AGG	\$2,000,000
	<input type="checkbox"/>	POLICY	<input type="checkbox"/>	PRO-JECT				<input type="checkbox"/>	LOC
A	AUTOMOBILE LIABILITY				65SBATQ3723SC	04/15/2016	04/15/2017	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input type="checkbox"/>	ANY AUTO	<input type="checkbox"/>	SCHEDULED AUTOS				BODILY INJURY (Per person)	\$
	<input type="checkbox"/>	ALL OWNED AUTOS	<input type="checkbox"/>	NON-OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/>	HIRED AUTOS	<input checked="" type="checkbox"/>					PROPERTY DAMAGE (Per accident)	\$
									\$
									\$
									\$
	UMBRELLA LIAB							EACH OCCURRENCE	\$
	EXCESS LIAB							AGGREGATE	\$
	DED			RETENTION \$					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				65WBCAP0602	04/15/2016	04/15/2017	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	<input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		Y/N					E.L. EACH ACCIDENT	\$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below		<input checked="" type="checkbox"/> Y	N/A				E.L. DISEASE - EA EMPLOYEE	\$1,000,000
								E.L. DISEASE - POLICY LIMIT	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The General Liability policy includes a blanket additional insured endorsement that provides additional insured status to the certificate holder when there is a written contract between the named insured and the certificate holder requiring additional insured status.

Certificate Holder Continued: Palm Beach County Board of County Commissioners a Political Subdivision of the State of Florida, it's Officers, Employees and Agents.

CERTIFICATE HOLDER	CANCELLATION
PBC Parks & Recreation 2700 6th Avenue South Lake Worth, FL 33461	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE John L. Wortham + Son L.P.