

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

**Meeting Date:**      **October 17, 2017**      ☒ **Consent**      ☐ **Regular**  
    ☐ **Ordinance**      ☐ **Public Hearing**

**Department:** Facilities Development & Operations

## **I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to approve:** a First Amendment to Concessionaire Service Agreement (R2014-1635) dated October 21, 2014, with Tennis Insights, Inc. (Tennis Insights) for the continued management and operation of the concession building at the Tennis and Racquetball Center in Burt Aaronson South County Park at an annual rate of \$17,828.29/year (\$1,485.69/month).

**Summary:** Tennis Insights has managed and operated the Tennis and Racquetball Center (Center) at Burt Aaronson South County Regional Park under this current Concessionaire Service Agreement (CSA) since October 2014. If during the initial term of the CSA, Tennis Insights has not expended \$150,000.00 in improvements to the Licensed Area, the Board has the discretionary authority to terminate the CSA. Tennis Insights has not spent \$150,000.00. Notwithstanding, Staff believes it to be in the County's best interest to extend the CSA for a period of one (1) year so that Staff can pursue options for the continued management and operation of the Center. The First Amendment will extend the term of the CSA for a period of one (1) year (November 1, 2017, through October 31, 2018) and add various standard County provisions. The rent will be increased by two percent (2%) from \$17,478.72/year (\$1,456.56/monthly) to \$17,828.29/year (\$1,485.69/monthly). All other terms and conditions of the Agreement shall remain in full force and effect. Parks will continue to have administrative responsibility for this Agreement. **(PREM) District 5 (HJF)**

**Background and Justification:** In 2014, a Request for Proposals (RFP) was issued to manage and operate the concession building at the Tennis and Racquetball Center in Burt Aaronson South County Park. On October 21, 2014, the Board awarded the CSA to Tennis Insights. The CSA requires that Tennis Insights provide evidence of expenditures of a minimum of \$150,000.00 in improvements to the Licensed Area during this initial TERM, which Tennis Insights has not expended. As such, the County has the right to terminate the CSA. Rather than terminate the CSA, Parks has agreed to allow Tennis Insights to remain on site for an additional year so that a new RFP can be prepared. This First Amendment will extend the term of the CSA for one (1) year until October 31, 2018, updates the non-discrimination, public entity crimes and Inspector General provisions, adds the County's heading, condemnation and public records provisions and increases the annual rent by two percent (2%) on November 1, 2017, to \$17,828.29/year (\$1,485.69/monthly). Tennis Insights provided the Disclosure of Beneficial Interests listed as Attachment #4 in 2014 and has recently informed the Staff that no changes have occurred as Peter Davis, President, continues to hold a 100% beneficial interest in Tennis Insights, Inc.

**Attachments:**

1. Location Map
2. First Amendment to Concessionaire Service Agreement
3. Budget Availability Statement
4. Disclosure of Beneficial Interests

Recommended By: Robert Anthony Wolf 9/30/17  
Department Director Date

Approved By: [Signature] 10/11/17  
County Administrator Date



## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$-0-</u>	<u>(\$16,343)</u>	<u>(\$1,486)</u>	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes X No \_\_\_\_\_

Budget Account No: Fund 0001 Dept 580 Unit 5111-07 Object 4726  
Program \_\_\_\_\_

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

On November 1, 2017, the annual rent increases two percent (2%) to \$17,828.29/year (\$1,485.69/monthly).

Fixed Asset Number \_\_\_\_\_

### C. Departmental Fiscal Review: \_\_\_\_\_

## III. REVIEW COMMENTS

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

[Signature] 10/3/17  
OFMB AR 10/3 10/3  
[Signature] 10/6/17  
Contract Development and Control  
10/6/17

### B. Legal Sufficiency:

[Signature] 10/10/17  
Assistant County Attorney

### C. Other Department Review:

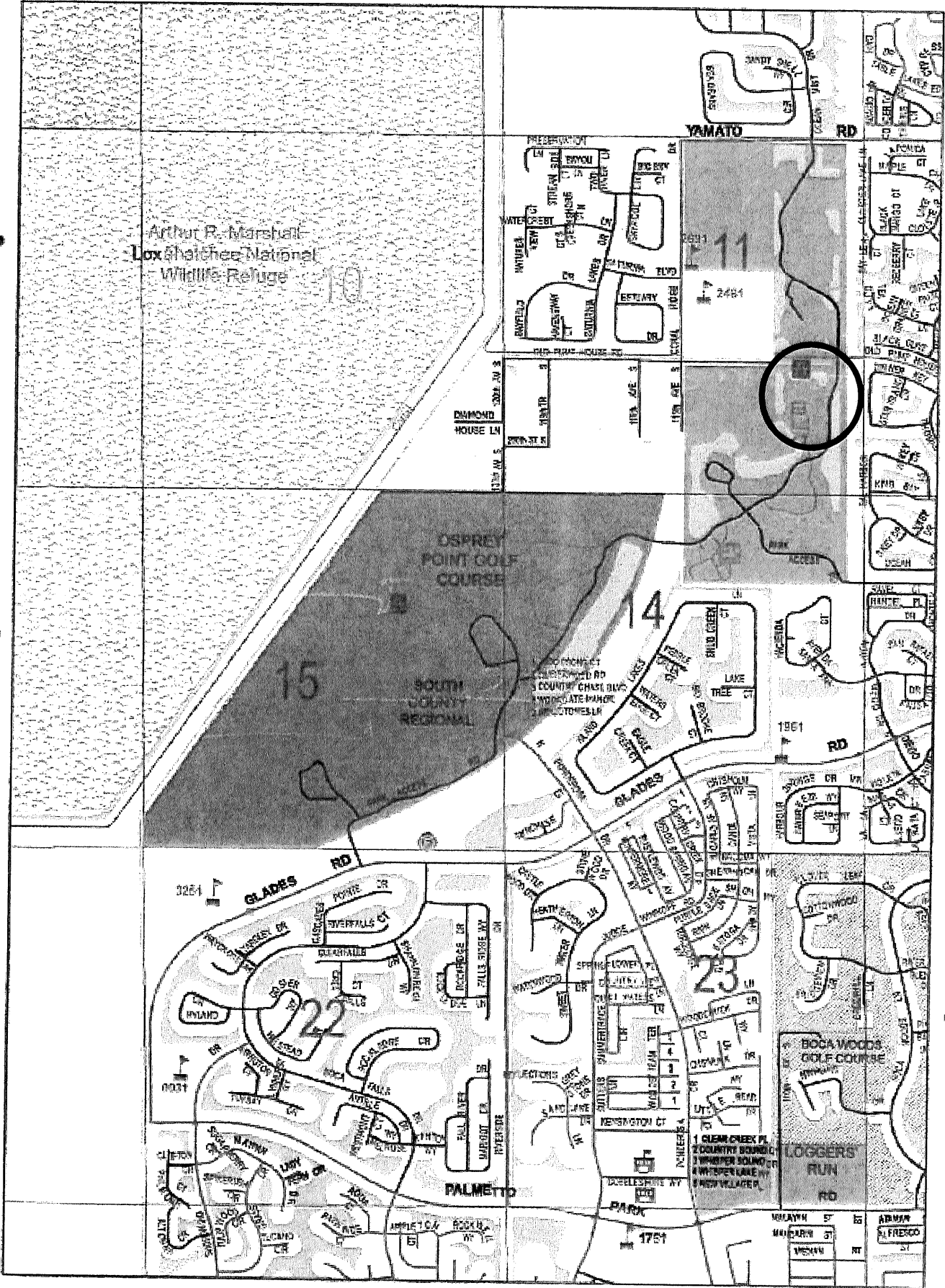
[Signature]  
Department Director

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

TWP  
47

TWP  
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TWP  
47



RNG 41

See pg 127

RNG 41

Page 119

LOCATION MAP



**Attachment #2**

**First Amendment to Concessionaire Service Agreement (2 @ 6 pages each)**



## **FIRST AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT**

**THIS FIRST AMENDMENT TO CONCESSIONAIRE SERVICE AGREEMENT (R2014-1635)** (the “First Amendment”) is made and entered into \_\_\_\_\_, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners (“County”) and **TENNIS INSIGHTS, INC.**, a Florida corporation (“Concessionaire”).

### **W I T N E S S E T H:**

**WHEREAS**, County and Concessionaire entered into that certain Concessionaire Service Agreement dated October 21 2014 (R2014-1635) (the “Agreement”); and

**WHEREAS**, the Rental Commencement Date was established as November 1, 2014, pursuant to Section 1.04 of the Agreement; and

**WHEREAS**, Concessionaire has not expended a minimum of \$150,000 for capital improvements or betterments to the Licensed Area pursuant to Article XV of the Agreement and rather than terminate this Agreement pursuant to said Article, County desires to extend the Term for a period of one (1) year in order to pursue a different approach regarding the operation and management of this tennis center site; and

**WHEREAS**, County wishes to amend the Agreement to incorporate certain language required by County; and

**WHEREAS**, the parties hereto desire to amend the Agreement in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Agreement, as amended.
2. The parties agree that the Term of the Agreement shall be renewed for one year commencing on November 1, 2017, extending the Term through October 31, 2018. Annual Rent shall be adjusted as provided for in Section 2.02 of the Agreement.

3. Section 4.02, Operation of Business, of the Agreement is modified to change the Mission Statement's web address to:

<http://discover.pbcgov.org/administration/Pages/Mission.aspx> and  
<http://discover.pbcgov.org/parks/General/About-Us.aspx>

4. Section 4.05, Non-Discrimination, of the Agreement is hereby deleted in its entirety and replaced with the following:

**Section 4.05 Non-Discrimination**

Concessionaire shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution R-2014-1421, as may be amended, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, gender identity or expression, familial status, disability, or genetic information, with respect to any activity occurring in the Licensed Area, or conducted pursuant to this Agreement. Concessionaire warrants that its service in the Licensed Area shall be open to and benefit all visitors to the Park.

It is the responsibility of the Concessionaire to maintain a written or non-written non-discrimination policy to conform with the County's policy as set forth in Resolution R-2014-1421, as may be amended, throughout the term of the Agreement. Failure to meet this requirement shall be considered default of the Agreement.

5. Section 18.18, Public Entity Crimes, of the Agreement is hereby deleted in its entirety and replaced with the following:

**Section 18.18 Public Entity Crimes**

As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Agreement or performing any work in furtherance hereof, Concessionaire 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 thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

6. Section 18.20, Palm Beach County Office of the Inspector General, of the Agreement is hereby deleted in its entirety and replaced with the following:

**Section 18.20 Palm Beach County Office of the Inspector General Audit Requirements**

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 is authorized with the power to review past, present and proposed County contracts,

transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a 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.

7. Article XVIII, Miscellaneous, of the Agreement is hereby modified to add the following:

**Section 18.23 Headings**

The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement, and are not to be considered in interpreting this Agreement.

**Section 18.24 Condemnation.**

If the Licensed Area, or any part thereof, or any improvements thereto, shall be taken, appropriated or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, County shall be entitled to the entire award therefor, including, without limitation, any award relating to both Concessionaire's leasehold estate and County's reversionary interest in the fee simple estate, without deduction, claim or setoff for any present or future estate of Concessionaire. Concessionaire hereby assigns and relinquishes to County all right, title and interest in such award and shall execute all documents required to evidence such result. Notwithstanding the foregoing, Concessionaire shall be entitled to pursue in such condemnation proceeding such award as may be allowed for moving expenses, business damages, and value of any crops. In the event of a total taking of the Licensed Area, the rent shall be prorated to, and this Lease shall terminate upon, the date title vests in the condemning authority. Notwithstanding such termination, Concessionaire shall remain liable for all matters arising under this lease prior to such termination. In the event of a partial taking, Rent shall be reduced on a prorata basis. In the event of a temporary taking, Rent shall be abated on a pro rata basis for the period of time Concessionaire is unable to use the portion of the Licensed Area temporarily taken. After such period, Rent shall be restored to the Rent which would have been then due without regard to such taking. County shall have no obligation to restore the Licensed Area improvements or otherwise perform any work upon same as a result of any such taking.

**Section 18.25 Public Records**

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Concessionaire: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Concessionaire shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time the Concessionaire is specifically required to:

- A. Keep and maintain public records required by the County to perform services as provided under this Agreement.
- 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 Concessionaire 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 it 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 Agreement term and following completion of the Agreement, if the Concessionaire does not transfer the records to the public agency.
- D. Upon completion of the Agreement the Concessionaire shall transfer, at no cost to the County, all public records in possession of the Concessionaire 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 Concessionaire transfers all public records to the County upon completion of the Agreement, the Concessionaire shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Agreement, the Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically by the Concessionaire 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 Concessionaire to comply with the requirements of this article shall be a material breach of this Agreement. 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. Concessionaire 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 CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, 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](mailto:RECORDSREQUEST@pbcgov.org) OR BY TELEPHONE AT 561-355-6680.



8. Except as set forth herein, all of the terms and conditions of the Lease, as amended, remain unmodified and in full force and effect.

9. This First Amendment is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

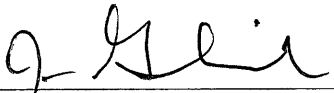
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IN WITNESS WHEREOF, the parties have executed this First Amendment on the date set forth above.

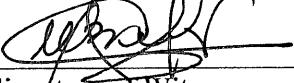
Signed in the presence of:

**CONCESSIONAIRE:**

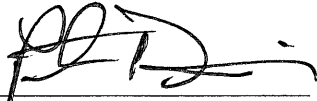
TENNIS INSIGHTS, INC., a Florida corporation

  
Signature of Witness

JOSEPH GLOBISCH  
Print Name of Witness

  
Signature of Witness

BEATRIZ CARDENAS  
Print Name of Witness

By:   
Peter Davis, President

(SEAL)



**ATTEST:**  
SHARON R. BOCK  
CLERK & COMPTROLLER

**COUNTY:**  
PALM BEACH COUNTY, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Paulette Burdick, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
County Attorney

By:   
Department Director





Below is information on the justification for the figures on the attached BAS for the Burt Aaronson South County Regional Park Tennis Amend 1 with Tennis Insights, Inc., for one (1) year term period, from 11/1/2017 to 10/31/2018:

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	(\$16,343)	(\$1,486)	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>-0-</u>	<u>(\$16,343)</u>	<u>(\$1,486)</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

**FY18:**

- The current CSA with Tennis Insights expires 10/31/2017.
- As the term expires on 10/31/17, \$1,456.56 in rent has already been budgeted for 10/01/17 - 10/31/17.
- The above figures are based upon the CSA with Tennis Insights effective 11/1/2017.
- On 11/1/2017, the \$17,478.72.00 Annual Rent increases 2% to \$17,828.29 (\$1,485.69 per month).
- 11/1/2017 – 9/30/2018 = 11 months.
- \$1,485.69 per month x 11 months = \$16,342.59

**FY18 TOTAL = \$16,343**

**FY19:**

- 10/1/2018 – 10/31/2018 = 1 month.
- \$1,485.69 per month x 1 month = \$1,485.69

**FY19 TOTAL = \$1,486**

**FY20:**

- n/a

**FY21:**

- n/a

**FY19:**

- n/a

## BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 08/01/17

REQUESTED BY: Della M. Lowery  
Property Specialist/PREM

PHONE: 233-0239  
FAX: 233-0210

PROJECT TITLE: Burt Aaronson South County Regional Park  
Tennis Concession 1<sup>st</sup> Amend

PROJECT NO.: 2017-5.018

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	(\$16,343)	(\$1,486)	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$-0-</u>	<u>(\$16,343)</u>	<u>(\$1,486)</u>	<u>\$-0-</u>	<u>\$-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

**\*\* By signing this BAS your department agrees to these staff costs and your account will be charged upon receipt of this BAS by FD&O. Unless there is a change in the scope of work, no additional staff charges will be billed.**

### BUDGET ACCOUNT NUMBER

FUND: 0001 DEPT: 580 UNIT: 5111-07 OBJ: 4726 SUB OBJ: -

IS ITEM INCLUDED IN CURRENT BUDGET: YES \_\_\_\_\_ NO \_\_\_\_\_

### IDENTIFY FUNDING SOURCE FOR EACH ACCOUNT: (check all that apply)

☐ Ad Valorem (source/type: \_\_\_\_\_)  
☐ Non-Ad Valorem (source/type: \_\_\_\_\_)  
☐ Grant (source/type: \_\_\_\_\_)  
☐ Park Improvement Fund (source/type: \_\_\_\_\_)  
☒ General Fund ☐ Operating Budget ☐ Federal/Davis Bacon  
☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_

SUBJECT TO IG FEE? ☐ YES ☐ NO

Department: Parks & Recreation Department

BAS APPROVED BY: 

DATE: 8/1/17

ENCUMBRANCE NUMBER: \_\_\_\_\_





**EXHIBIT "D"**  
**TO THE CONCESSIONAIRE SERVICE AGREEMENT**

**CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS**

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY  
DESIGNATED REPRESENTATIVE

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared Peter Davis  
\_\_\_\_\_, hereinafter referred to as "Affiant", who being by me first  
duly sworn, under oath, deposes and states as follows:

1. Affiant is the President (position - i.e. president,  
partner, trustee) of Tennis Insights, Inc (name and type of entity - i.e.  
ABC Corporation, XYZ Limited Partnership), (the "Concessionaire") which entity is providing  
concession services on the real property legally described on or depicted in the attached Exhibit  
"A" (the "Licensed Area").

2. Affiant's address is: 6723 Via Regina  
Boca Raton FL 33433

3. Attached hereto, and made a part hereof, as Exhibit "B" is a complete listing of  
the names and addresses of every person or entity having a five percent (5%) or greater  
beneficial interest in the concessionaire and the percentage interest of each such person or  
entity.

4. Affiant further states that Affiant is familiar with the nature of an oath and with  
the penalties provided by the laws of the State of Florida for falsely swearing to statements  
under oath.

5. Under penalty of perjury, Affiant declares that Affiant has examined this  
Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete, and  
will be relied upon by Palm Beach County relating to its entering into a Concessionaire Service  
Agreement for the Licensed Area.

FURTHER AFFIANT SAYETH NAUGHT.

[Signature], Affiant  
Print Affiant Name: Peter Davis

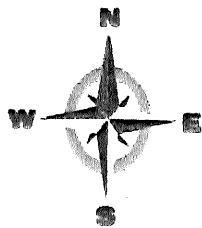
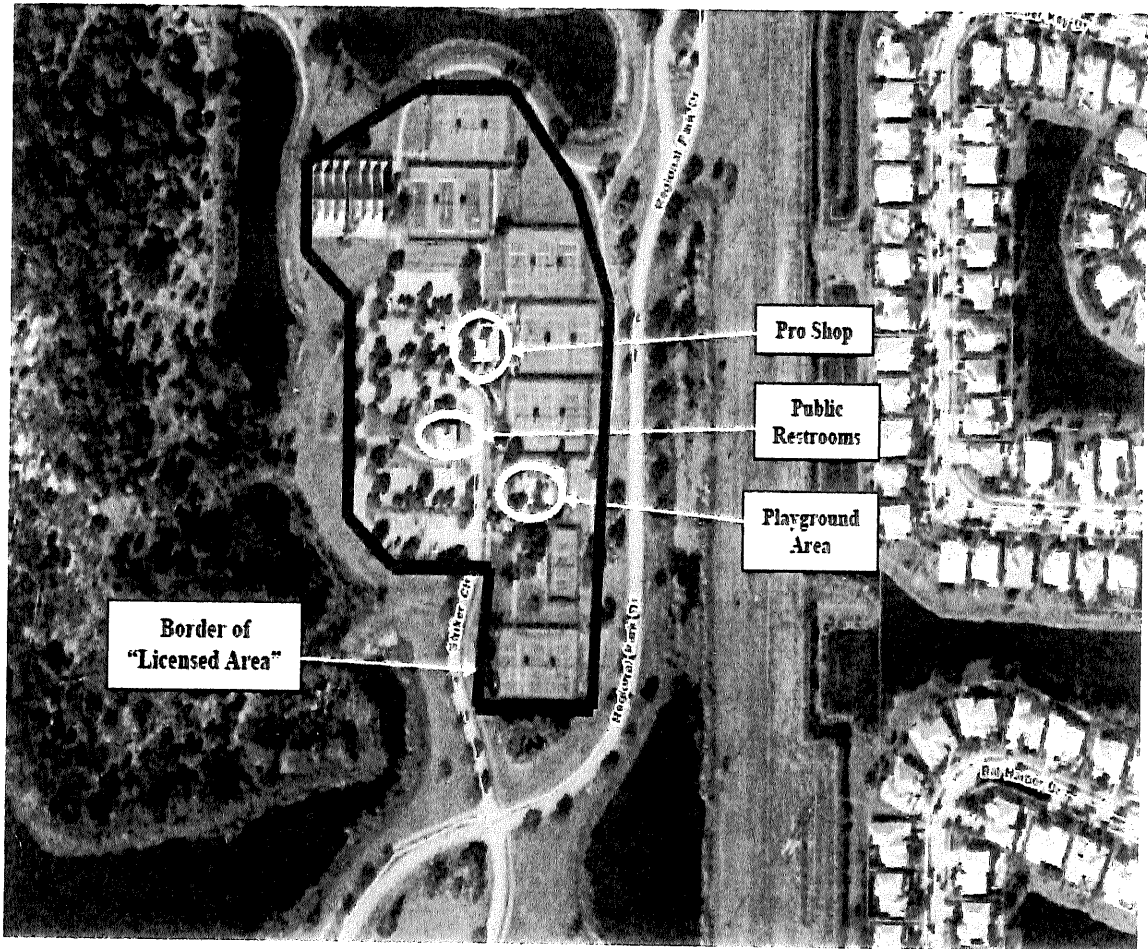
The foregoing instrument was sworn to, subscribed and acknowledged before me this 15  
day of September, 2014, by Peter DAVIS  
[Florida Drivers Lic] [ ] who is personally known to me or [ ☒ ] who has produced  
as identification and who did take an oath.

[Signature]  
Notary Public

(Print Notary Name) ANGELA STEINBERG  
NOTARY PUBLIC  
State of Florida at Large  
My Commission Expires May 15, 2015  
#EE 060676  
Bonded thru  
Notary Public Underwriters  
PUBLIC, STATE OF FLORIDA

**EXHIBIT "A"**

**"Licensed Area"**



## SCHEDULE TO BENEFICIAL INTERESTS

NAME	ADDRESS	PERCENTAGE OF INTEREST
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