

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

Meeting Date: December 6, 2022 **Consent** **Regular**
 Ordinance **Public Hearing**

Department: **Facilities Development & Operations**

I. EXECUTIVE BRIEF

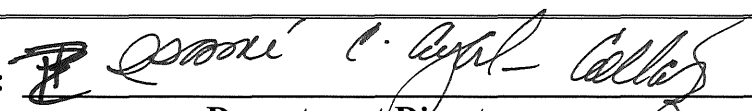
Motion and Title: Staff recommends motion to receive and file: exercise of the first option to extend Concessionaire Lease Agreement with Rick Macci Academy, Inc. d/b/a Rick Macci Tennis Academy for the continued operation of a tennis, racquetball and pro shop concession at Burt Aaronson South County Regional Park, extending the term from January 15, 2023 through January 14, 2025 at an annual rent of \$27,540.00 (\$2,295.00 monthly).

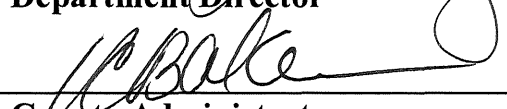
Summary: On January 15, 2019, the Board of County Commissioners (Board) approved the Concessionaire Lease Agreement (R2019-0156), which was amended on September 14, 2021 by the First Amendment (R2021-1373) (collectively, Agreement) with Rick Macci Academy, Inc. d/b/a Rick Macci Tennis Academy (Macci) for the operation of a tennis, racquetball and pro shop concession at Burt Aaronson South County Regional Park. The current term expires on January 14, 2023 with three (3) 2-year renewal options. Macci provided the County with a notice of its intent to exercise the first option to extend the Agreement through January 14, 2025. Effective January, 15, 2023 and pursuant to the terms of the Agreement, the annual rent shall increase by 2% to \$27,540.00 (i.e. \$2,295.00/month). All other terms and conditions of the Agreement shall remain in full force and effect. Parks and Recreation (Parks) will continue to have administrative responsibilities for this Agreement. **(Property & Real Estate Management) District 5 (HJF)**

Background and Justification: On January 15, 2019, the Board approved the Concessionaire Lease Agreement with Macci for a term of twenty (20) years with no option to extend. The Lease Agreement included the provision that Macci would invest \$2,581,000.00 in capital improvements at the facility. Due to the impact of COVID-19 on its business, Macci requested a shorter term, and reduction of the required capital improvements in exchange for an increase in the rental rate. Staff recognized that Macci’s business and operations had been severely impacted by COVID-19 restrictions and acknowledged that \$315,000.00 of actual improvements have been made. The Parks and Recreation Department (Parks) supported Macci’s request. On September 14, 2021, the First Amendment was approved to modify the original term to expire on January 14, 2023; provide for three (3) extension options, each for a period of two (2) years; increase the annual rent from \$18,360.00 (\$1,530.00 monthly) to \$27,000.00 (\$2,250.00 monthly) retroactively from January 15, 2021 through January 14, 2023; modify the requirement for a minimum capital investment; and update various standard County provisions. Parks manages this Agreement and is satisfied with Rick Macci Academy’s performance. No changes in ownership occurred and Richard Macci continues to have 100% ownership interest.

Attachments:

- 1. Location Map
- 2. First Option to Extend Letter
- 3. Budget Availability Statement
- 4. Disclosure of Beneficial Interests

Recommended By:  **Department Director** 11/03/22 **Date**

Approved By:  **County Administrator** 11/02/22 **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(\$19,661)</u>	<u>(\$28,010)</u>	<u>(\$8,115)</u>	<u>(\$-0-)</u>	<u>(\$-0-)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>(\$19,661)</u></u>	<u><u>(\$28,010)</u></u>	<u><u>(\$8,115)</u></u>	<u><u>(\$-0-)</u></u>	<u><u>(\$-0-)</u></u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No N/A

Does this item include the use of federal funds? Yes _____ No N/A

Budget Account No: Fund 0001 Dept 580 Unit 5111 RSRC 4726
 SUB OBJ: 007

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

Effective January 15, 2023, the annual rent will be \$27,540.00 (\$2,295.00/monthly) and will increase annually by two (2%) percent.

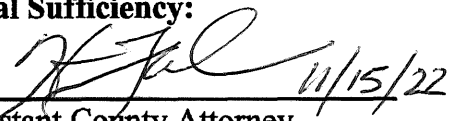
Fixed Asset Number N/A


C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

 OFMB JA 11/7 ESW 11/7 11/7 11-7	 Contract Development and Control 11/15/22
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B. Legal Sufficiency:

 Assistant County Attorney 11/15/22

C. Other Department Review:

 Department Director

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



00-41-47-11-01-007-0010

LOCATION MAP



Attachment #2
First Option to Extend Letter (2 pages)

SCOTT E. SIMOWITZ, ESQ.
12830 BIG BEAR BLUFF
BOYNTON BEACH, FLORIDA 33473
954-295-5711

August 17, 2022

VIA FED EX TO EACH ADDRESS BELOW

Parks & Recreation Department
Attn: Director, Special Facilities Division
John Prince Park
2700 Sixth Avenue South
Lake Worth, Florida 33461

And

Palm Beach County
Property and Real Estate Management Division
Attn: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605

And

Palm Beach County Attorney's Office
Attn: Real Estate Attorney
301 North Olive Avenue
Suite 601
West Palm Beach, Florida 33401

Re: Concessionaire Lease Agreement and First Amendment to Concessionaire Lease Agreement by and between Palm Beach County, a political subdivision of the State of Florida ("County") and Rick Macci Academy, Inc. d/b/a Rick Macci Tennis Academy, a Florida Corporation ("Concessionaire") dated January 15, 2019, and September 14, 2021 respectively

Dear Sir and/or Madame:

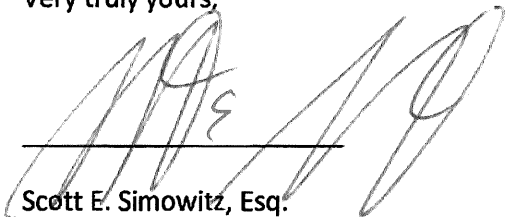
Please be advised that the undersigned represents Concessionaire in reference to the above captioned matter.

This letter shall serve as formal notice pursuant to Section 1.05, entitled Option To Extend, of the Concessionaire Lease Agreement, as same is amended by Paragraph 3 of the First Amendment to Concessionaire Lease Agreement that Concessionaire does hereby elect to exercise its rights under the aforementioned sections/paragraphs and documents to extend the term of the Concessionaire Lease Agreement, as same is amended by the First Amendment to Concessionaire Lease Agreement and does hereby extend same under the aforementioned option. This extension shall be the first of three two-year extensions granted under and pursuant to the Concessionaire Lease Agreement, as same is amended by the First Amendment to Concessionaire Lease Agreement.

Accordingly, the term of the Concessionaire Lease Agreement, as same is amended by the First Amendment to Concessionaire Lease Agreement is hereby extended for an additional two years commencing from the initial termination date of January 14, 2023, as set forth in Section 1.04 entitled Length of Term and Commencement Date of the Concessionaire Lease Agreement, as same is amended by Paragraph 2 of the First Amendment to Concessionaire Lease Agreement.

Feel free to contact the undersigned should you have any questions or if you wish to discuss same further.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. E. Simowitz', is written over a horizontal line. The signature is stylized and cursive.

Scott E. Simowitz, Esq.

c.c: Rick Macci Academy, Inc. d/b/a Rick Macci Tennis Academy; Kirk Brooks via e mail only (KBrooks@pbcgov.org).

BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 9/2/22

REQUESTED BY: Della M. Lowery
Real Estate Specialist/PREM

PHONE: 233-0239
FAX: 233-0210

PROJECT TITLE: South County Regional Park – Tennis Center Option 1 of 3

PROJECT NO.:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$19,661)	(\$28,010)	(\$8,115)	(\$-0-)	(\$-0-)
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$19,661)</u>	<u>(\$28,010)</u>	<u>(\$8,115)</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: 0004 DEPT: 580 UNIT: 5111 ^{RSRC} ~~OBJ:~~ 4726 SUB OBJ: 007

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
- _____ _____ _____

Department: Parks & Recreation Department

BAS APPROVED BY: Hurid Bonnell

DATE: 9/7/22

ENCUMBRANCE NUMBER: _____

The information below justifies the figures listed on the attached BAS for South County Regional Park – Tennis Center, Macci Agreement as amended, Option 1 of 3, pursuant to the First Amendment, commencing 01/15/23 the annual rent shall adjust by 2% annually.

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>(\$19,661)</u>	<u>(\$28,010)</u>	<u>(\$8,115)</u>	<u>(\$-0-)</u>	<u>(\$-0-)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(\$19,661)</u>	<u>(\$28,010)</u>	<u>(\$8,115)</u>	<u>(\$-0-)</u>	<u>(\$-0-)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

FY2023:

- Pursuant to *Section 2.01* of the Agreement, any fractional of month will be calculated on the basis of a 30 day month and paid on a per diem basis; *Section 2.02* of the *First Amendment*, commencing 01/15/23 the annual rent increases two percent (2%) annually; the current annual rent is \$27,000.00.
-
- $\$27,000.00 \times 102\% = \$27,540.00 \text{ annual} \div 12 = \$2,295.00 \text{ per month} \div 30 = \76.50
-
- 01/15/23 – 01/31/23 = 17 days x \$76.50 = \$1,300.50
- 02/01/23 – 09/30/23 = 8 months x \$2,295.00 = \$18,360.00
-
- $\$1,300.50 + \$18,360.00 = \$19,660.50$

FY2023 TOTAL = \$19,660.50

FY2024

- 10/01/23 – 12/31/23 = 3 months x \$2,295.00 = \$6,885.00
- 01/01/24 – 01/14/24 = 14 days x \$76.50 = \$1,071.00
-
- $\$27,540.00 \times 102\% = \$28,090.80 \text{ annual} \div 12 = \$2,340.90 \text{ per month} \div 30 = \78.03
-
- 01/15/24 – 01/31/24 = 17 days x \$78.03 = \$1,326.51
- 02/01/24 – 09/30/24 = 8 months x \$2,340.90 = \$18,727.20
-
- $\$6,885.00 + \$1,071.00 + \$1,326.51 + \$18,727.20 = \$28,009.71$

FY2024 TOTAL = \$28,009.71

FY2025

- 10/01/24 – 12/31/24 = 3 months x \$2,340.90 = \$7,022.70
- 01/01/25 – 01/14/25 = 14 days x \$78.03 = \$1,092.42
-
- $\$7,022.70 + \$1,092.42 = \$8,115.12$

FY2025 TOTAL = \$8,115.12

Attachment #4
Disclosure of Beneficial Interest (3 pages)

EXHIBIT "E"
TO THE CONCESSIONAIRE LEASE 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 RICHARD MACCI, 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 RICK MACCI ACADEMY, 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 "Premises").

2. Affiant's address is: 19608 ESTUARY DR.
BOCA RATON, FL 33498

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 Lease Agreement for the Premises.

FURTHER AFFIANT SAYETH NAUGHT.

[Signature], Affiant
Print Affiant Name: RICK MACCI

The foregoing instrument was sworn to, subscribed and acknowledged before me this 26th day of NOVEMBER, 2018, by RICHARD MACCI who is personally known to me or who has produced _____ as identification and who did take an oath.

[Signature]
Notary Public

EDWARD MARINO
(Print Notary Name)

NOTARY PUBLIC
State of Florida at Large

My Commission Expires: 08/27/2020



EXHIBIT "A"

PREMISES

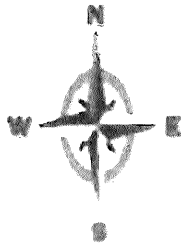
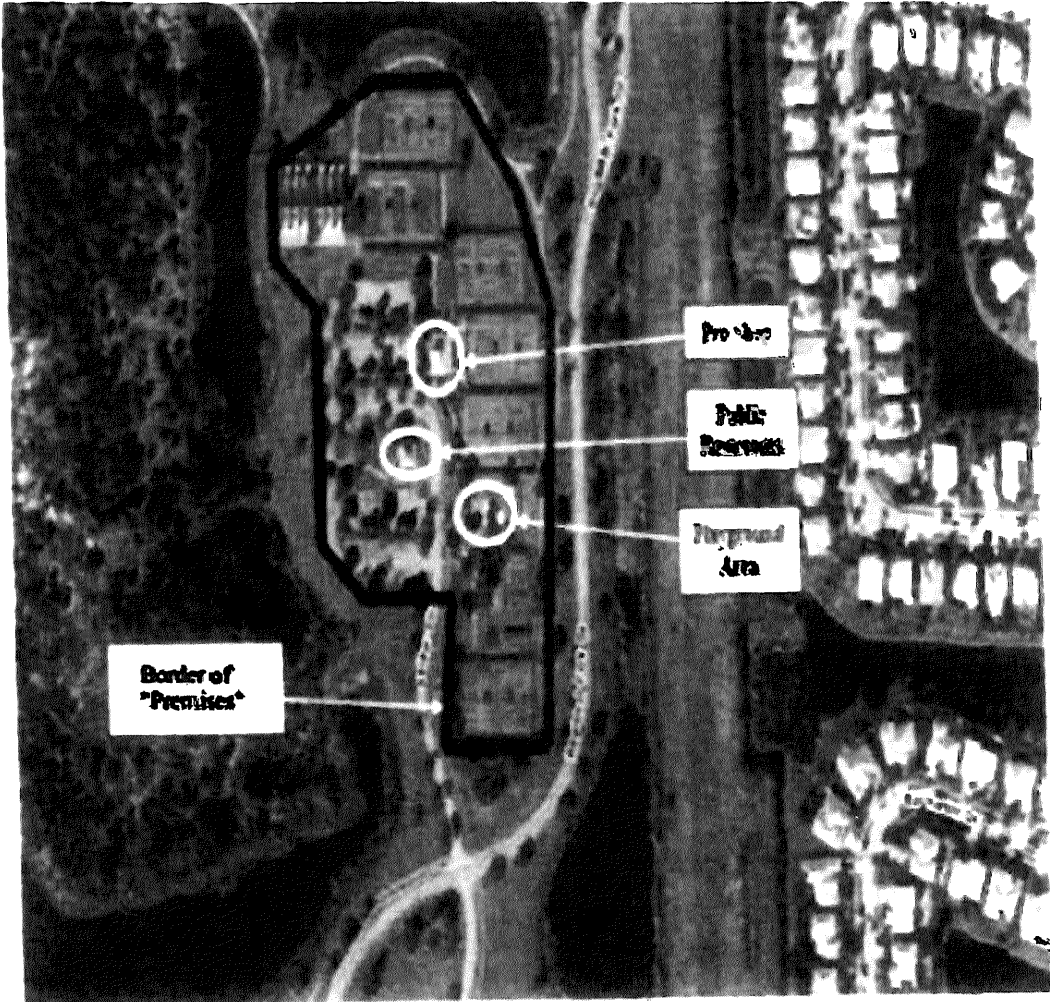


EXHIBIT "B"

**SCHEDULE TO BENEFICIAL
INTERESTS**

Concessionaire is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. Concessionaire must identify individual interest holders. If, by way of example, Concessionaire is wholly or partially owned by another entity, such as a corporation, Concessionaire must identify such other entity, its address and percentage interest, as well as such information for the individual interest holders of such other entity.

NAME	ADDRESS	PERCENTAGE OF INTEREST
Richard Macci	19606 ESTOWN DR	CORPORATION FC 100%

Attachment #5
Summary of Certificates (1 pages)

Summary of Certificates

This report displays detailed certificate information for selected insured. Items in red are deficient

Insured: Rick Macci Tennis Academy

Contract or Permit: R-2021-1373

Insurance Policy		Required	Provided	Waived
Expiration Date:	3/21/2023			
General Liability:	Each Occurance	\$1,000,000	\$1,000,000	
	Damage to Property	\$100,000	\$100,000	
	Medical Expense	\$5,000	\$5,000	
	Personal & Adv Injury	\$1,000,000	\$1,000,000	
	Fire Damage	\$100,000	\$100,000	
	General Aggregate	\$2,000,000	\$2,000,000	
	Products	\$2,000,000	\$2,000,000	
Auto Liability:	Combined Single Limit			YES
	Bodily Injury (per person)			Yes
	Bodily Injury (per accident)			Yes
	Property Damage			Yes
Workers Compensation:	E.L. Each Accident			YES
	E.L. Disease-EA Empl			YES
	E.L. Disease-Policy Limit			YES
Watercraft Liability:				N/A
Liquor Liability:				N/A
Other:	Excess Liability			

Notifications: No Auto letter & Statement of Exemption of Workers' comp on file

Confirmed By:  Kirk Brooks

Date Confirmed: 2-Sep-22