

RESOLUTION No. 2009-60-1005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN TWO-YEAR AGREEMENT WITH JEFF ELLIS MANAGEMENT, LLC FOR POOL MANAGEMENT SERVICES, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; AUTHORIZING AN EXPENDITURE IN THE AMOUNT OF THREE HUNDRED NINE THOUSAND, SIX HUNDRED FORTY-TWO DOLLARS AND THIRTY-EIGHT CENTS (\$309,642.38); PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, over the last two years the City's pools were managed by Aquatic Management, Inc., and

WHEREAS, City staff has determined that contracting for pool management services will allow a cost savings to the City, and

WHEREAS, Request for Proposals bid document, 08-09-019, was prepared and advertised, three proposals were received, and

WHEREAS, City staff is recommending that the City execute a two-year contract with Jeff Ellis Management LLC. to provide pool management services, and

WHEREAS, funding for this purpose is available in the Parks and Recreation budget,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS.

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes the City Manager and City Clerk to execute and attest, respectively, that certain two-year Agreement with Jeff Ellis Management, LLC, for Pool Management Services, a copy of which is attached hereto as Exhibit A.

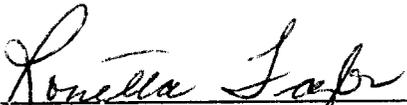
Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to Jeff Ellis Management, LLC; and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON MARCH 11, 2009.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Gilbert
SECOND BY: Councilman Bratton

VOTE: 6-0

Resolution No. 2009-60-1005

Mayor Shirley Gibson	<u>X</u> (Yes)	___ (No)
Vice Mayor Barbara Watson	<u>X</u> (Yes)	___ (No)
Councilman Melvin L. Bratton	<u>X</u> (Yes)	___ (No)
Councilman Aaron Campbell	<u>X</u> (Yes)	___ (No)
Councilman Oliver Gilbert, III	<u>X</u> (Yes)	___ (No)
Councilwoman Sharon Pritchett	___ (Yes)	___ (No) (not present)
Councilman André Williams	<u>X</u> (Yes)	___ (No)

SKD/teh

City of Miami Gardens Agenda Cover Memo

Council Meeting Date:	March 11, 2009		Item Type: <i>(Enter X in box)</i>	Resolution X	Ordinance	Other	
Fiscal Impact: <i>(Enter X in box)</i>	Yes	No	Ordinance Reading: <i>(Enter X in box)</i>	1st Reading		2nd Reading	
	X			Public Hearing: <i>(Enter X in box)</i>	Yes	No	Yes
Funding Source:	General Fund-Parks & Recreation		Advertising Requirement: <i>(Enter X in box)</i>		Yes		No
						X	
Contract/P.O. Required: <i>(Enter X in box)</i>	Yes	No	RFP/RFQ/Bid #:	RFP #08-09-019			
		X					
Sponsor Name	Dr. Danny Crew, City Manager		Department:	Parks and Recreation Department			

Short Title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN TWO-YEAR AGREEMENT WITH JEFF ELLIS MANAGEMENT, LLC FOR POOL MANAGEMENT SERVICES, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; AUTHORIZING AN EXPENDITURE IN THE AMOUNT OF THREE HUNDRED NINE THOUSAND, SIX HUNDRED FORTY-TWO DOLLARS AND THRITY-EIGHT CENTS (\$309,642.38); PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Staff Summary:

The City of Miami Gardens Parks and Recreation Department currently has four swimming pools, three seasonal and one year round. The Department offers swimming lessons and open swimming to the residents at each pool. Following a growing national trend, it has been increasingly difficult over the years to secure qualified, experienced lifeguards and swimming instructors. This problem is further exasperated by the fact that three of the City's pools are only operated on a seasonal basis.

Over the last two years the pools were managed by Aquatic Management, Inc. Continuing to contract for this service will allow a cost savings to the Department, City and residents. Funding for this service is available in the Parks and Recreation Department budget. The cost of the first year's contract is \$309,642.38 versus the City's cost for operations at \$375,000; hence a potential savings of \$65,357.62.

The second year's contract is estimated to be \$336,826.61, which would still provide a potential savings to the City.

A request for proposal was prepared to retain a professional pool management company. A Request for Proposals bid document, 08-09-019, was prepared and advertised. The proposals were opened on January 8, 2009. Three proposals were received. The advertised RFP for the term of this contract to last two years, with the first term slated to begin April 1, 2009. The second year will be negotiated based on quantity of pools to be operated and approved budget amount.

The committee is recommending contracting with Jeff Ellis Management LLC., located in Ocoee, Florida to provide our pool management services. As part of their proposal Jeff Ellis Management LLC is prepared to provide:

- Permanent Aquatics Manager and Supervisor to oversee the operations during all open hours,
- Employment opportunities to qualified locals,
- National safety standards set by the Jeff Ellis & Associates license,
- Trend tracking and monthly operational audits, and
- Increase programming and marketing.

Proposed Action:

It is recommended that the City Council approve the attached resolution authorizing the City Manager to execute a two-year agreement with Jeff Ellis Management LLC; and authorizing the expenditure of \$309,642.38 for the first year of pool management services.

Attachment:

Attachment A - Contract

AGREEMENT FOR SWIMMING POOL MANAGEMENT SERVICES

THIS AGREEMENT is made and entered into this 11TH day of MARCH, 2009, by and between the City of Miami Gardens, a Florida municipal corporation (hereinafter referred to as "City"), and Jeff Ellis Management LLC., authorized to do business in the State of Florida, (hereinafter referred to as "Contractor") and jointly referred to as the Parties.

WITNESSETH:

WHEREAS, on December 1, 2008, the City advertised Bid Document No. 08-09-018; and

WHEREAS, Contractor submitted a Proposal dated January 8, 2009, in response to the City's request; and

WHEREAS, the City and Contractor agree that Contractor will perform the services described in the City's Request for Proposal (hereinafter referred to as "RFP") and Contractor's Proposal submitted in response to the RFP,

NOW THEREFORE, in consideration of the premises and the mutual covenants herein named, the parties hereto agree as follows:

Article 1 Incorporation by Reference.

The following documents are hereby incorporated by reference and made part of this Agreement.

- (i) Specifications and Proposal Documents prepared by the City for Swimming Pool Management and Maintenance Services RFP#08-09-019 (Exhibit 1).
- (ii) Proposal for the City of Miami Gardens prepared by Contractor dated January 8, 2009. (Exhibit 2).

All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. This Agreement
- B. Exhibit 1
- C. Exhibit 2

Article 2 Scope of Work

The scope of services shall consist of a complete City-wide swimming pool management services as outlined in the City's RFP, Section 3 – Scope of Services through Section 6 – Requirements of Contractor (hereinafter referred to as “Services”). Contractor shall perform the work under the general direction of the City and shall furnish all labor, materials, supplies, equipment, supervision and services necessary for and incident to the performance of the work, except as otherwise noted in specifications. By signing this Agreement, Contractor represents that it thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the Work and the conditions under which the Work is to be performed.

Article 3 Qualifications

Contractor and the individual executing this Agreement on behalf of the Contractor warrant to the City that the Contractor is a Florida corporation duly constituted and authorized to do business in the State of Florida, is in good standing and that Contractor possesses all of the required licenses and certificates of competency required by the State of Florida and the County of Miami-Dade to perform the work herein described.

Contractor shall ensure that all lifeguards will hold a minimum qualification of an advance lifeguard certificate from a nationally recognized certification program (such as Red Cross, Ellis or Starfish Aquatics). Contractor shall also ensure that all lifeguards employed by Contractor in relation to this Agreement are at least 18 years of age.

Contractor shall, at its own expense, provide for criminal background checks, including sexual offender checks, of all lifeguards. Copies of all background checks for employees performing services pursuant to this Agreement shall be provided to the City.

Article 4 Compensation

For all Services provided by Contractor, the City shall pay Contractor \$25,117.42, per month. Contractor shall submit monthly invoices for Services to the Parks and Recreation Department (hereinafter referred to as "the Department"). City shall remit payment for all undisputed amounts within thirty (30) days of receipt of an invoice. All invoices shall include a detailed explanation of all fees and charges.

Contractor shall make no charges to the City for supplies, labor, taxes, licenses, permits, overhead or any other expenses or costs unless otherwise noted in the specifications. If the City disputes any charges on the invoices, it may make payment of the uncontested amounts and withhold payment on the contested amounts until all payment issues are resolved. Reimbursable expenses shall be listed individually, with supporting documentation attached.

Article 5 Term

This Agreement shall commence upon the execution by both parties and shall continue for two (2) years, unless terminated sooner as provided for in this Agreement. The Contractor understands and acknowledges that the Services to be performed during the two (2) year term will be governed by this Agreement, and that there is no guarantee of future work being given to the Contractor.

Parties agree and understand that this Agreement shall be renewable after the expiration of the initial two (2) year period based upon satisfactory performance and subject to the availability of funds for succeeding fiscal years with terms and conditions to be agreed upon by City and Contractor.

Article 6 Indemnification

Contractor shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners, principals or subcontractors. Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided. One percent (1%) of the contract amount shall represent the consideration to be provided for this indemnification. Nothing contained herein shall be deemed a waiver of sovereign immunity.

Article 7 Insurance

Contractor shall provide and maintain general liability insurance coverage, for personal injury and property damage in the minimum amount of Two Million (\$2,000,000.00) Dollars, per incident, for personal injury, and Five Hundred Thousand (\$500,000.00) Dollars, per incident, for property damage.

Contractor shall also be required to provide and maintain, during the life of the Agreement, comprehensive automobile liability insurance coverage for bodily injury and property damage in the minimum amount of \$500,000.00 or each occurrence and \$500,000.00 combined single limit.

Such liability policy of insurance shall designate the City as an additional insured and Contractor shall deliver a fully effective certificate to that effect, evidencing no less than thirty (30) day cancellation power.

Contractor shall also provide City with proof that Contractor has workers' compensation insurance in an amount, which satisfies the requirements of Florida Law, for any employee of the Contractor.

Contractor shall not commence work pursuant to this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the City.

Article 8 Termination

The City may, for its convenience and with or without cause, terminate this Agreement by giving Contractor written notice at least thirty (30) days prior to the effective date of the termination. Upon written notice of the City's desire to terminate this Agreement, Contractor shall provide only those services and incur only those expenses specifically approved or directed in writing by the City Manager or his designee.

The City may terminate this Agreement for cause immediately, and without prior notice to Contractor. Should the City terminate this Agreement for cause, the City shall provide notice as soon as possible to Contractor.

Contractor may terminate this Agreement by giving the City written notice at least thirty (30) days prior to the effective date of termination.

In the event of termination or expiration of this Agreement, Contractor and City shall cooperate in good faith in order to effectuate a smooth and harmonious transition from Contractor to the City or to any other person or entity the City may designate, and to maintain during such period of transition that same services provide to the City pursuant to the terms of this Agreement.

Contractor will take all reasonable and necessary actions to transfer all records, etc. and data of the City in its possession in an orderly fashion to either the City or its designee in a hard copy and computer format.

If either party terminates this Agreement, the City shall only pay Contractor for the services provided through the date of termination.

Article 9 Ownership

All aquatic programs, advertising/marketing plans and materials, fee structures, etc. originated or prepared by Contractor pursuant to this Agreement including papers,

charts, computer programs, and other documentation or improvements thereto shall be owned by the City.

Article 10 Modification/Amendment

This writing and exhibits contains the entire Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed in writing with the same formality as this Document. No waiver of any provision of this Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

Article 11 Severability

If any term or provision of this Agreement shall to any extent be held invalid or illegal by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

Article 12 Governing Law

This Agreement shall be construed in accordance with and governing by the laws of the State of Florida, with venue lying in Miami-Dade County, Florida.

Article 13 Waiver

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

No waiver by the City of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by Contractor of the same, or any other provision or the enforcement thereof. The City's consent to or approval of any act by Contractor requiring the City's consent or approval shall not be deemed to render unnecessary the obtaining of the City's consent to or approval of any subsequent consent or approval of Contractor, whether or not similar to the act so consented to or approved.

Article 14 Notices/Authorized Representatives

Jeff Ellis Management LLC
Aquatic Management Contract

Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered mail with postage prepaid return receipt delivery, by registered or certified mail with postage prepaid return receipt requested, or by Federal Express addressed to the parties at the following address:

City:
Danny Crew, City Manager
City of Miami Gardens
1515 NW 167th Street #200
Miami Gardens, FL 33169

Contractor:
Jeff Ellis Management LLC
508 Goldenmoss Loop
Ocoee, FL 34761

With a copy to:
Sonja K. Dickens, Esq.
City Attorney
Arnstein & Lehr LLP
200 East Las Olas Blvd., Suite 1700
Ft. Lauderdale, FL 33301

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions herein.

Article 15 Independent Contractor

Contractor is and shall remain an independent contractor and is not an employee or agent of the City. Services provided by Contractor shall be by employees of Contractor and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the City.

Contractor shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Contractor. The rights granted to Contractor hereunder are nonexclusive, and the City reserves the right to enter into agreements with other persons or firms to perform services including those hereunder.

Article 16 Assignment

Subject to the provisions above, this Agreement shall not be assignable by Contractor.

Article 17 Prohibition Against Contingent Fees

Contractor warrants that it has no employees or retained any Contractor or person, other than a bona fide employee working solely for Contractor, to solicit or

Jeff Ellis Management LLC
Aquatic Management Contract

secure this Agreement, and that it has not paid or agreed to pay any person(s), Contractor, corporation, individual or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

Article 18 Attorneys' Fees

Should any dispute arise hereunder, the prevailing party shall be entitled to recover all costs, expenses and attorney's fees incurred in such dispute, whether or not suit be brought, and such right shall include all of such costs, expenses and attorney's fees through all appeals or other actions.

Article 19 Non-Discrimination

Contractor agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, the Americans with the Disabilities Act of 1990, the Age Discrimination Act of 1975. Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/family status or status with regard to public assistance. Contractor will take affirmative action to insure that all employment practices are free from such discrimination.

Article 20 Conflict of Interest

Contractor agrees to adhere to and be governed by the Miami-Dade County Conflict of Interest Ordinance Section 2-11.1, as amended, which is incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder.

Article 21 Binding Effect

All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

Article 22 Construction

This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Miami-Dade County, Florida.

Article 23 Entire Agreement

No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal

Jeff Ellis Management LLC
Aquatic Management Contract

validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.

Article 24 Captions and Paragraph Headings

Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

Article 25 Joint Preparation

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. It is the parties' further intention that this Agreement be construed liberally to achieve its intent.

Article 26 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

Article 27 Exhibits are Inclusionary

All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

Article 28 Retention of Records

Contractor shall keep its books, records and accounts as may be necessary in order to record complete and correct entries related to this Agreement. Contractor shall allow access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by Contractor in conjunction with this Agreement. Contractor's failure to grant such access shall be grounds for immediate termination of this Agreement by the City.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.

Consultant: Elaine Cinelli

By: JEFF ELLIS MANAGEMENT, LLC
Name: Elaine Cinelli
Title: VP

CITY OF MIAMI GARDENS
By: [Signature]
City Manager

WITNESS:
[Signature]
Corporate Secretary

ATTEST:
[Signature]
City Clerk

Seal:

APPROVED AS TO FORM:
[Signature]
City Attorney