

**RESOLUTION NO. 2021- 2839**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT WITH GM SPORTS TENNIS, LLC FOR THE TOWN'S YOUTH TENNIS PROGRAM; FINDING THAT THE SERVICES ARE EXEMPT FROM COMPETITIVE PROCUREMENT PURSUANT TO SECTION 3-13(2) OF THE TOWN CODE; AUTHORIZING EXPENDITURE OF FUNDS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Surfside ("Town") Parks and Recreation Department has historically contracted with coaches and instructors for the Town's Youth Tennis Program (the "Services"); and

**WHEREAS**, GM Sports Tennis, LLC. ("GM Sports") has agreed to perform the Services necessary to operate the Town's Youth Tennis Program pursuant to the contractual services agreement attached hereto as Exhibit "A," (the "Agreement"); and

**WHEREAS**, Section 3-13(2) of the Town Code of Ordinances (the "Code") provides that contracts for professional services are exempt from the competitive bidding procedures of the Town Code; and

**WHEREAS**, the Town Commission finds that the proposed services under the Agreement are exempt from competitive bidding pursuant to Section 3-13(2) of the Town Code; and

**WHEREAS**, the Town Commission desires to approve the Agreement with GM Sports in substantially the forms attached hereto as Exhibit "A," and authorize the expenditure of funds for the Services; and

**WHEREAS**, the Town Commission finds that this Resolution is in the best interest and welfare of the residents of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

**Section 2. Approval and Authorization of Agreement.** The Town Commission hereby approves the Agreement with GM Sports, in substantially the form attached hereto as Exhibit "A." Pursuant to Section 3-13(2) of the Town's Code, the Town Commission finds that the Services provided under the Agreement are exempt from competitive bidding.

**Section 3. Implementation.** The Town Commission hereby authorizes the Town Manager to execute the Agreement with GM Sports in substantially the form attached hereto as Exhibit "A," together with such non-substantive changes as may be approved by the Town Manager, subject to approval by the Town Attorney as to form and legality, and to take any action which is reasonably necessary to implement the purposes of this Resolution.

**Section 4. Authorization to Expend Funds.** The Town Manager is authorized to expend funds in accordance with the Agreement attached hereto as Exhibits "A."


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

PASSED AND ADOPTED this 14<sup>th</sup> day of December, 2021.

Motion By: Commissioner Velasquez  
Second By: Commissioner Kesl

**FINAL VOTE ON ADOPTION:**

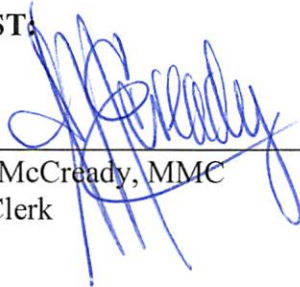
Commissioner Charles Kesl	<u>Yes</u>
Commissioner Eliana R. Salzhauer	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Yes</u>
Vice Mayor Tina Paul	<u>Yes</u>
Mayor Charles W. Burkett	<u>Yes</u>



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Charles W. Burkett, Mayor

**ATTEST:**



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Sandra McCreedy, MMC  
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



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Weiss Serota Helfman Cole & Bierman, P.L.  
Town Attorney

**TOWN OF SURFSIDE  
CONTRACTUAL SERVICES AGREEMENT  
FOR YOUTH TENNIS PROGRAM**

This Contractual Services Agreement (“Agreement”) is entered into and made effective this \_\_\_\_ day of \_\_\_\_\_, 2021, as of between the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation (the “Town”) and **GM SPORTS TENNIS, LLC**. (“Contractor”), a Florida Limited Liability Company.

**WITNESSETH:**

**WHEREAS**, the Town desires to obtain specialized services or instruction for the public; and

**WHEREAS**, the Town Manager is authorized to secure such services from a qualified independent contractor; and

**WHEREAS**, the Town finds that Contractor possesses the necessary qualifications and ability to provide the services or instruction required by the Town.

**NOW THEREFORE**, in consideration of the mutual covenants, promises and conditions contained herein, and other good and valuable consideration, the parties hereto do covenant and agree as follows:

**1. Services:**

The Town hereby retains the services of Contractor to provide services as set forth below. The Contractor shall obtain all required memberships and/or certifications for such services and shall be required to provide proof prior to execution of this Agreement. Any employees, agents, subcontractors, or representative of the Contractor who will be asked to provide services to the Town on the Contractor’s behalf must provide proof of applicable certification/registration by the appropriate agency or affiliation and is subject to approval by the Town Manager.

At the request of the Town Manager or Town Manager’s Designee, the Contractor shall provide services necessary to operate the **Town’s Youth Tennis Program** (the “Services”). The Contractor shall maintain the following memberships and certifications while performing the Services for the Town: **Membership in the United States Professional Tennis Registry (USPTR)**.

Contractor and any employees, agents, subcontractors, or representatives of Contractor must meet all requirements as set forth herein including, and not limited to, successful completion of a background check which may include, (if applicable for services to be provided,) criminal background check, drug screening, credit check, reference check, past employment verification and proof of education; and written approval by the Town Manager or his designee prior to beginning work with the Town.

**2. TERM:**

The Term of this Agreement shall commence upon the **January 1, 2022**, and shall continue through **September 30, 2022**, unless sooner cancelled. The Town may renew this Agreement by giving Contractor thirty (30) days written notice prior to the expiration of the term.

### **3. FEE/HOURS OF SERVICE:**

Contractor shall receive no other (than listed below) compensation or benefits from the Town. Contractor shall pay all of its own expenses incurred in performing the contract services except that the Town shall reimburse Contractor for expenses pre-approved in writing by the Town Manager.

The Town shall pay the Contractor an hourly base fee of **\$60.00 per class in an amount not to exceed \$45,720.00 for fiscal year 2021** for Contractor's Services. Contractor shall submit an invoice twice monthly to the appropriate Department as determined by the service provided. Contractor shall be responsible for the payment of all taxes and withholdings in connection with earnings. Town will report fees earned by Contractor to the Internal Revenue Service on IRS Form 1099.

### **4. TERMINATION:**

Either party may termination this Agreement without cause upon seven (7) days written notice to the other party.

The following shall constitute default by Contractor and give the Town the right to terminate this Agreement for cause:

- A. Poor attendance, which shall mean two (2) or more unexcused absences; or
- B. Failing to perform the services required under this Agreement or failing to timely begin classes and other services herein.

Upon default by Contractor, the Town may terminate this Agreement immediately by providing written notice of such default. Contractor shall be paid for those services actually performed and approved by the Town Manager, or his designee, up to the time of termination.

### **5. INDEPENDENT CONTRACTOR STATUS:**

It is expressly intended, understood and agreed that Contractor is acting solely as an independent contractor and in no respect an agent, servant, or employee of the Town. Accordingly, Contractor shall not attain or be entitled to any rights or benefits of the Town, nor any rights generally afforded classified or unclassified employees. Contractor's employees shall not be deemed an employee of, the Town. Contractor shall be responsible for the payment of all taxes and withholdings in connection with earnings. Town will report fees earned by Contractor to the Internal Revenue Service on IRS Form 1099.

Contractor shall be solely responsible for any injuries suffered by Contractor's employees. It is clear that Town will not provide workers' compensation insurance for Contractor or its employees.

Nothing contained in the Agreement shall be construed so as to create a partnership or joint venture and neither party hereto shall be liable for the debts or obligations of the others. No employee or agent of Contractor shall be deemed to be an employee or agent of Town. Contractor shall be responsible for compliance with all applicable, local, state and federal laws and regulations in the

performance of any services to the Town. Should any question arise as to the interpretation or as to the nature of the services to be provided by Contractor the opinion of the Contractor shall establish for all purposes the nature of the work. Contractor shall have no power to obligate Town in any manner whatsoever. Town shall not be liable for any acts of the Contractor in the performance of this Agreement.

#### **6. RECORDS:**

Contractor further agrees that all records, books, documents, papers and financial information (“Records”) that result from Contractor providing services to Town under this agreement shall be the property of the Town. Upon termination or cancellation of this agreement, any and all such Records shall be delivered to the Town by Contractor within ten (10) days. Contractor shall maintain records, books, documents, papers and financial information pertaining to work performed under this agreement during the term of this agreement and for a period of three (3) years following termination of this agreement. The Town Manager or his designee shall have access to and the right to examine and audit any Records involving Contractor’s services related to this agreement. The restrictions and obligations of this section of the Agreement shall survive any expiration, termination, or cancellation of this Agreement and shall continue to bind the Contractor, his heirs, successors and assigns.

#### **7. INSURANCE/INDEMNIFICATION:**

Contractor shall carry General Liability insurance of at least **\$1,000,000 per occurrence**. The Town shall be named as an additional insured on any such insurance policy and the policy shall state that it is not subject to cancellation or reduction in coverage without written notice to the Town at least 30 days prior to the effective date of cancellation or reduction in coverage. Contractor shall provide Town with a copy of the policy prior to the commencement of any instructional services by either Contractor or instructors hired by Contractor.

Contractor agrees to indemnify, defend and hold Town and its officers, directors, officials, employees and agents harmless from and against all fines, penalties, costs and expenses (including but not limited to attorney’s fees), suits, actions, damages, judgments, claims, demands, liabilities, losses and causes of action which may be asserted against or suffered or incurred by Town arising out of incident to or in connection with the furnishing of the contract services by Contractor or any activities by Contractor under this agreement or otherwise based upon the negligence, intentional tort, omissions of, or the breach of this agreement by Contractor.

The provisions of this section shall survive termination of this Agreement.

#### **8. COUNTERPARTS:**

This Agreement may be executed in town or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same agreement. A facsimile signature on a counterpart shall be acceptable and binding.

#### **9. ASSIGNMENT:**

The services of Contractor are personal in nature. Accordingly, Contractor shall not assign his/her rights to this Agreement without the prior written consent of the Town Manager. Contractor may assign this Agreement to a corporation wholly owned by the Contractor, or to any entity in which the Contractor is a majority shareholder.

**10. BACKGROUND CHECK:**

Contractor agrees that based upon the type of services to be provided, the Agreement is conditioned upon successful completion of a criminal background check, including any or all of the following; drug screening, credit check, reference check, past employment verification, and proof of education.

Contractor shall be responsible for maintaining current background checks on all employees involved in the performance of the Agreement. Background checks must be performed prior to the performance of any work by the employee under this Agreement. Written verification of all background checks must be provided to the Town Manager prior to the performance of any work by the employee under this Agreement. Contractor acknowledges that in the performance of the services contemplated in this Agreement, Contractor's employees may have contact with children. Accordingly, no employees shall be assigned to work for the Town under this Agreement whose background check reveals behavior which would prohibit such contact. Documentation of required certification and insurance must be provided to the Town prior to commencement of any instructional services by either Contractor or instructors hired by the Contractor.

**11. PUBLIC RECORDS:**

Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. The Town shall have the right to immediately terminate this Agreement for the refusal by Contractor to comply with Chapter 119, Florida Statutes. Contractor shall retain all records associated with this Agreement for a period of three (3) years from the date of termination or expiration.

During the term of this Agreement and for three (3) years from the date of termination or expiration, Contractor shall allow Town representatives access during reasonable business hours to Contractor's records related to this Agreement for the purposes of inspection or audit of such records. If upon audit of such records, the Town determines Contractor was paid for services not performed, upon receipt of written demand by the Town, Contractor shall remit such payment to the Town.

**12. NOTICES:**

All notices and communications to the Town or Contractor shall be in writing and shall be deemed to have been properly given if transmitted by registered or certified mail or hand delivery or private delivery service. All notices and communications shall be effective upon receipt. Notices shall be addressed as follows:

Town:	Town of Surfside, Florida 9293 Harding Avenue Surfside, Florida 33154 ATTN: Town Manager Telephone: (305) 861-4863 Facsimile: (305) 861-1302
Contractor:	GM Sports Tennis, LLC 8900 Collins Avenue, Apt. 404 Surfside, Florida 33154

### **13. MISCELLANEOUS:**

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, between the parties to this Agreement. This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties and their respective legal representatives, successors and assigns. Contractor may not assign its rights or obligations hereunder without the prior written consent to Town. No waiver by the parties of any default or breach of any term, condition, or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein. This Agreement shall be deemed to have been mutually drafted by the parties. Therefore, neither this Agreement nor any section hereof or amendment hereto shall be construed against any party due to the fact that the Agreement or any section hereof or amendment hereto may have been primarily drafted by said party. If any provision of this Agreement, or the applications of such provision to any person or circumstance, shall be held invalid the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. Should any litigation be commenced between the parties thereto, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to its costs and a reasonable sum for attorney's fees in such litigation and any appeal thereof or in bankruptcy proceedings. Venue in any litigation shall lie exclusively in Miami-Dade County, Florida. THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THIS AGREEMENT.



