

RESOLUTION NO. 2022- 2928

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(7)(D) 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") in an amount not to exceed \$45,000; and

WHEREAS, Section 3-13(7)(d) of the Town Code of Ordinances (the "Code") provides that contracts for recreational and sports providers, as approved by the Town Manager when deemed in the Town's best interests, for the benefit of the citizens of Surfside and the general public at any town sanctioned activity, 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(7)(d) 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. The above-stated recitals are true and correct and are incorporated herein by this reference.

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(7)(d) 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 an amount not to exceed \$45,000 for the Services.

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

PASSED AND ADOPTED this 12th day of October, 2022.

Motion By: Commissioner Landsman
Second By: Vice Mayor Rose

FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Absent</u>
Commissioner Nelly Velasquez	<u>Absent</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>



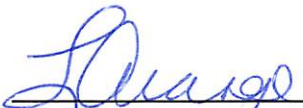
Shlomo Danzinger, Mayor

ATTEST:



Sandra McCready, MMC
Town Clerk

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



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 October, 2022, 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 **October 1, 2022**, and shall continue through **September 30, 2023**, 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 \$45,000.00 for fiscal year 2022-2023** 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.

Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Sandra McCready, MMC
Mailing address: 9293 Harding Avenue
Surfside, FL 33154
Telephone number: 305-861-4863
Email: smccready@townofsurfsidefl.gov

7. INSURANCE:

Contractor shall, at its sole cost and expense, during the period of the Services being conducted under this Agreement, procure and maintain the following minimum insurance coverages to protect the Town and Contractor against all loss, claims, damage and liabilities caused by Contractor, its employees and agents, as indicated below:

Comprehensive General Liability ("CGL") insurance, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability, and Two Million Dollars (\$2,000,000) aggregate.

Abuse and Molestation Coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence.

Worker's Compensation for all employees, as required by law, and which policy must include Employer's Liability with minimum limits of \$1,000,000.00.

Business Automobile Liability which shall include coverage for all business owned and business hired vehicles for minimum limits of not less than One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) per accident for bodily injury and One Million Dollars (\$1,000,000) per accident for property damage.

Insurance required of Contractor shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Town. Such insurance shall not diminish Contractor's indemnification and obligations hereunder. The insurance policy (ies) shall be issued by companies authorized to do business under the laws of the State of Florida and acceptable to the Town with a minimum A.M. Best rating of A-Excellent. Before any Services under this Agreement are performed, and at any time upon request, Contractor shall furnish to the Town certificates of insurance evidencing the minimum required coverage and shall be appropriately endorsed for contractual liability, with the Town named as additional insured. All policies shall contain a waiver of subrogation endorsement. All policies and certificates shall be in forms and issued by insurance companies acceptable to the Town. All insurance policies and certificates of insurance shall provide that the policies may not be canceled or altered without thirty (30) days prior written notice to the Town. The Town reserves the right from time to time to change the insurance coverage and limits of liability required to be maintained by Contractor hereunder. Contractor shall also require and ensure that each of its subcontractors, if any, providing Services hereunder (if any) procures and maintains, until the completion of the services, insurance of the types and to the limits specified herein. ANY EXCEPTIONS TO THE INSURANCE REQUIREMENTS IN THIS SECTION MUST BE APPROVED IN WRITING BY THE TOWN.

8. RELEASE, HOLD HARMLESS AND INDEMNIFICATION:

- a. Contractor releases the Town, its commissioners, officers, employees, agents, contractors, and volunteers from any and all costs damages, and expenses, including any attorney's fees arising from any claims, damages, and liabilities by Contractor and any third parties arising from, related to, and connected with the Services provided pursuant to this Agreement and Contractor's use of the Town's facilities.
- b. Contractor shall defend, indemnify, and hold harmless the Town, its officers, agents, and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, including legal fees and costs, arising out of or, related to, or in any way connected with the Services provided pursuant to this Agreement and Contractor's use of Town facilities in conducting Soccer Programs. For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor, including but not limited to the Contractor's officers, officials, employees, representatives, agents, contractors officers, subcontractors and their officers, and all those others providing the Services, against any and all liability, loss, cost, damages, expenses, claims or actions of whatever type or nature, including but not limited to attorney and expert fees and suit costs, for trials and appeals, that the Town may pay, sustain, or incur arising wholly or in part due to any negligent or deliberate act, error or omission of Contractor in the execution, performance or non-performance or failure to adequately perform the Services and Contractor's obligation pursuant to this Agreement. The provisions of this section shall survive termination of this Agreement.

9. SOVEREIGN IMMUNITY:

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Town's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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

15. 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.

16. E-VERIFY AFFIDAVIT:

In accordance with Section 448.095, Florida Statutes, the Town requires all contractors doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering


into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

TOWN OF SURFSIDE

GM SPORTS TENNIS, LLC

By: 
Andrew Hyatt
Town Manager

By: _____

Name: _____

Title: _____

Attest:

Entity: _____

By: _____
Sandra McCready, MMC
Town Clerk

Approved as to form and legal sufficiency:

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

Addresses for Notice:

Andrew Hyatt
Town of Surfside
Attn: Town Manager
9293 Harding Avenue
Surfside, FL 33154
305-861-4863 (telephone)
305-993-5097 (facsimile)
ahyatt@townofsurfsidefl.gov (email)

Addresses for Notice:

_____ (telephone)
_____ (facsimile)
_____ (email)

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Lillian Arango, Esq.
Town of Surfside Attorney
2800 Ponce de Leon Boulevard, Suite 1200
Coral Gables, FL 33134
larango@wsh-law.com (email)

With a copy to:

_____ (telephone)
_____ (facsimile)
_____ (email)

E-VERIFY AFFIDAVIT

In accordance with Executive Order 11-116, and Section 448.095 of the Florida Statutes, the Town requires all contractors doing business with the Town to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The Town will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Witness #2 Print Name: _____

Title: _____

Entity Name: _____

ACKNOWLEDGMENT

State of Florida
County of _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this day of _____, 20____, by _____ (name of person) as _____ (type of authority) for _____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

_____ Personally known to me; or
_____ Produced identification (Type of Identification: _____)
_____ Did take an oath; or
_____ Did not take an oath