

INDEPENDENT CONTRACTOR AGREEMENT FOR TENNIS PROFESSIONAL

THIS AGREEMENT ("Agreement"), dated this ____ day of ____ 2021, is entered into by and between:

CITY OF COOPER CITY, a municipal corporation organized and existing under the laws of the State of Florida and whose address is 9090 SW 50th Place, Cooper City, Florida 33328 ("CITY"),

and

BILL CLARK TENNIS ACADEMY, LLC, a Florida Limited Liability Company, with its principal place of business at 3501 Bark Way, Cooper City, Florida 33026, (hereinafter "CONTRACTOR").

WHEREAS, CITY desires to hire an independent contractor to provide tennis instruction and related services to the public through a comprehensive tennis program; and,

WHEREAS, CITY has determined that one portion of its tennis program can best be provided by selecting and hiring a tennis professional as an independent contractor to coordinate CITY's tennis services, including lessons, clinics and demonstrations for the citizens of the City of Cooper City and the general public; and,

WHEREAS, CITY has verified CONTRACTOR'S qualifications, experience and capability to perform fully the contract requirements and has determined that CONTRACTOR is a person who has the necessary expertise, skill and capabilities to provide the required services; and,

WHEREAS, CITY and CONTRACTOR desire to enter into this written agreement whereby the duties and obligations each to the other are set forth herein below.

WITNESSETH

IN CONSIDERATION of the mutual covenants and conditions herein expressed and the faithful performance of all such covenants and conditions the parties agree as follows:

Section 1. **TERM**

The term of this Agreement shall be for a one (1) year period, commencing on December 1, 2021 and terminating on November 30, 2022, subject to prior termination as provided in Section 10 of this Agreement. This Agreement may be renewed for two successive periods of one (1) year, each upon CONTRACTOR's written notice of at least thirty (30) days prior to the end of the term and by mutual agreement of CITY and CONTRACTOR. The City Manager may act for CITY pursuant to this renewal provision.

Section 2. **DUTIES OF CONTRACTOR**

2.01 **Development and Implementation of Tennis Program**: CONTRACTOR shall formulate, implement, direct, manage and control a complete and full service tennis program for persons of all ages and skill levels within the constraints of available facilities to serve the needs of CITY. The duties of CONTRACTOR pertaining to the tennis program are as follows:

- (1) Organize and supervise group and private tennis lessons and instruction.
- (2) Promote a Men's, Women's and Junior Tennis Program by a variety of methods, including but not limited to, establishing a series of ongoing lessons, practice sessions, matches, tournaments, league play and / or clinics geared specifically for Junior Tennis or Men's and Women's Tennis.
- (3) Along with the compensation more specifically described in Section 3.03 below, CONTRACTOR shall submit to CITY a monthly roster or program registration list which shall include information such as the names of program attendees and whether such attendees are residents of the City of Cooper City or non-residents, and any other information reasonably required by CITY.
- (4) Provide instruction in the fundamentals of tennis including but not limited to the rules of competitive tennis.
- (5) Use CONTRACTOR's best efforts to promote the tennis program and facilities to residents of the CITY. The CONTRACTOR shall endeavor to heighten public interest in and awareness of the sport.
- (6) Select, hire and employ at CONTRACTOR's sole expense, all coaches, instructors, assistants, and staff necessary to CONTRACTOR'S performance of its duties and obligations under the terms of this Agreement. All teaching staff shall be over the age of eighteen (18).
- (7) Manage, control and supervise all coaches, instructors, assistants and staff under CONTRACTOR'S employ.
- (8) Be responsible for the payment and maintenance of all insurance taxes and other incidents of employment for those persons hired by CONTRACTOR to assist in the fulfillment of CONTRACTOR's obligations under this agreement.
- (9) Provide assistance, expertise and technical advice required by the Recreation Department.

- (10) Assist CITY by providing to the Recreation Department information on all changes in tennis rules and/ or regulations which affect the tennis industry and consequently might affect the operation of public tennis programs and facilities.
- (11) Lend CONTRACTOR's name and professional reputation to the promotion of tennis in the City of Cooper City. CONTRACTOR agrees not to be named tennis professional for any other municipality or public or private entity in Broward County during the term of this agreement, without City's written approval.
- (12) Maintain records and accounts of all transactions that result from doing business pursuant to this Agreement for a period of two (2) years. Such records shall include employee and staff information, daily attendance and enrollment records, as well as financial records. Such records shall be kept so as to satisfy standard bookkeeping requirements. Such records shall be made available to CITY for inspection, review and auditing upon ten (10) calendar days written notice from CITY.
- (13) Maintain all necessary licenses and permits as required by law.
- (14) CONTRACTOR acknowledges and agrees that all coaches, staff, volunteers, and agents of CONTRACTOR shall comply with the Level II background screening requirements more particularly described in §435.04, Florida Statutes. No person(s) other than those who have successfully passed all aspects of the Florida Department of Law Enforcement Level II background screening process will be permitted to act on behalf of or in any official capacity with CONTRACTOR. CITY shall not be responsible for the costs associated with the Level II background screening required herein.
- (15) CONTRACTOR shall supervise and be responsible and legally liable for the safety and conduct of all participants at any event or activity conducted by CONTRACTOR and his agent's, volunteers, or employees engaged in the performance of CONTRACTOR's duties under this Agreement. CONTRACTOR acknowledges that some of the students to be instructed will be minor children and in this regard, CONTRACTOR will be fully responsible for each child while the child is in CONTRACTOR'S care, custody and control. CONTRACTOR shall not leave children unsupervised or unattended during time of scheduled activity.
- (16) Be legally liable for the safety of all individuals while participating in any event supervised by CONTRACTOR or any employees of CONTRACTOR while acknowledging the overriding right of CITY to expel from municipal property any person conducting themselves in violation of CITY facility/park rules, regulations or ordinances.
- (17) Not permit any signs or advertising at any CITY facility unless specifically approved, in writing, by the Director of the Recreation Department or his/her designee.
- (18) Abide by all applicable federal, state and local regulations, ordinances and / or laws with special attention to those related to health and safety of participants in athletic events and Recreation Department rules and regulations.
- (19) Perform all tasks which are reasonably necessary to be done in order to

accomplish the work and objectives as otherwise provided for under this Agreement.

- (20) CONTRACTOR shall provide its own equipment and materials for the conduct of the activities under this Agreement.
- (21) CITY's Recreation Department will provide CONTRACTOR with reasonable advanced notice of requested clinics, demonstrations, sponsored events or other related services.
- (22) Coordinate activities and events for Tennis members. This shall include, but not be limited to establishment of leagues, round robins, socials, tournaments and junior activities.
- (23) Provide professional expertise on the maintenance of CITY'S tennis facilities. This shall include, but not be limited to, the maintenance and repair of hard courts, as well as any resurfacing of hard courts.
- (24) Provide other tennis related services to the CITY, as required. From time to time additional services may be required. The Director of Recreation, or his/her designee, shall be responsible for requesting additional services, as required.

2.02 **Lessons.**

- (1) As part of the development and implementation of a complete tennis program CONTRACTOR shall provide, at CONTRACTOR'S sole direction, conduct and control, the following types of lessons:
 - a. Individual lessons (weekly).
 - b. Group lessons and clinics (weekly).
- (2) CITY Sponsored Clinics: If requested by Director of Recreation or his/her designee, CONTRACTOR, as part of the services under this Agreement, shall each year organize and supervise a maximum of four (4) CITY sponsored promotional tennis clinics. The scheduling of clinics shall be subject to the approval of the Director of Recreation or his/her designee; however, that approval shall not be unreasonably withheld.
- (3) All class sizes, dates, and times must be approved by the Director of Recreation or his/her designee prior to CONTRACTOR commencing any teaching activities under this Agreement.

2.03 **CONTRACTOR'S Duty to Inspect and Make Safe.**

- (1) CONTRACTOR shall conduct a thorough examination and inspection of the premises and equipment, used in the furtherance of the duties set forth in this Agreement, to identify any usage condition or defect prior to the commencement of any of its duties, operations and services under this Agreement.

CONTRACTOR shall have the continuing duty to ensure that all patent defects or conditions on the premises and equipment provided are remedied and the premises and equipment made safe prior to commencing duties, operations or services each day during the term of this Agreement. CONTRACTOR assumes full legal liability and responsibility for all patent defects or conditions on the subject premises once it commences its daily duties, operations or services.

- (2) If in the course of its use and/or operations, CONTRACTOR or any agent, representative, employee or volunteer of CONTRACTOR becomes aware or should become aware of any dangerous condition in or on the premises or equipment, CONTRACTOR or its agent, representative, employee shall immediately notify the CITY authorized designee of such dangerous condition or immediately correct the dangerous condition, or cease operations so as not to endanger persons or property in the vicinity of the premises or equipment.

2.04 **Exclusive Agreement.**

CONTRACTOR and CITY acknowledge that the CONTRACTOR will have the exclusive right to teach tennis lessons and clinics on courts owned and operated by CITY. Any exception to this will only be by mutual agreement of CONTRACTOR and CITY's Director of Recreation.

Section 3. FEES AND PAYMENT FOR SERVICES

3.01 All fees for tennis lessons, clinics and tournaments provided pursuant to this Agreement shall be paid by participants directly to CONTRACTOR in advance. All fees for lessons, clinics and tournaments will be approved by the Director of Recreation Department.

3.02 **During the term of this Agreement,**

CITY shall receive monthly:

- (1) Three thousand six hundred dollars and zero cents (\$3,600.00) per month as a facility use fee ("Facility Use Fee"), to be paid by the 15th of each month.
- (2) All Guest fees.
- (3) All Court fees.
- (4) All Light fees.

CONTRACTOR shall retain:

- (1) Revenues generated by private lessons.
- (2) Revenues generated by programs and special events.
- (3) Revenues generated by retail sales and repairs as provided in Section 5.02.

3.03 **Late Charge:** CONTRACTOR shall pay to CITY a ten percent (10%) late fee if monthly payment is not paid to the CITY by the 15th of each month.

3.04 As required by Section 2.01(3) above, CONTRACTOR shall submit a monthly roster or registration list to CITY in conjunction with the monthly payment due.

Section 4. ADVERTISING AND PROMOTION

4.01 CONTRACTOR may utilize advertising in promoting tennis program at the assigned CITY facility. CONTRACTOR may specifically use the name of facilities provided that when so doing the facility should be identified as a City of Cooper City Recreation facility. The cost of all advertised promotions or programs promulgated by CONTRACTOR shall be met by CONTRACTOR. The Director of Recreation or his/her designees reserve the right to approve advertising text and form in advance of publication.

4.02 CITY also reserves the right to advertise and promote the tennis program, CITY facilities and services of CONTRACTOR. CITY shall be allowed to use CONTRACTOR's name and appropriate likeness in any such advertising or promotion without additional compensation to CONTRACTOR. The cost of advertising for Promotion promulgated by CITY shall be met by CITY.

Section 5.

5.01 CITY's Recreation Department shall provide the following tennis facilities subject to availability:

- a. Cooper City Pool and Tennis Center.
- b. Other facilities: Usage of tennis facilities at other parks will be by written agreement with the Director of Recreation Department or his/her designee on a case by case basis. All court usage for demonstrations, tournaments and special events shall be subject to prior written approval by the Director of the Recreation Department or his/her designee.

5.02 Tennis Center Pro Shop/ Office:

- (1) CITY shall own the Tennis Center Pro Shop/Office.
- (2) CONTRACTOR shall be responsible for assisting in developing procedures for the operation of the pro shop, which includes, but is not limited to, carrying out the services required by this Agreement, the sale of merchandise, establishing inventory controls and establishing procedures for financial accounting of operation. For the sale of merchandise, CONTRACTOR will receive revenues generated by retail sales.

- (3) CONTRACTOR shall retain all revenues acquired for stringing Tennis rackets, and repairing grips.
 - (4) CONTRACTOR shall be responsible for collecting, paying and reporting all taxes related to the retail sales to the appropriate taxing authorities.(5) CITY shall retain all revenue generated for food and beverage sales at the Tennis Center.
- 5.03 All other supplies and materials shall be furnished and stored by CONTRACTOR at CONTRACTOR'S expense.
- 5.04 CONTRACTOR shall exercise due diligence to maintain and preserve all property belonging to CITY.

Section 6. INSURANCE

6.01 CONTRACTOR shall secure and maintain, at its own expense, and keep on effect during the full term of this Agreement, a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

(1) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Jones Act. Employers Liability Insurance shall be provided with a minimum of one hundred thousand and xx/100 dollars (\$100,000.00) per accident. CONTRACTOR agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

(2) Comprehensive General Liability (occurrence form) with the following minimum limits of liability with no restrictive endorsements: \$300,000.00 Combined Single Limit, per occurrence, Bodily Injury and Property Damage Coverage shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

- a. Premises and Operations.
- b. Independent Contractors.
- c. Products and Completed Operations Liability.
- d. Broad Form Property Damage.
- e. Owner's or Contractor's Protective Liability.
- f. Participant Injury.

(3) Participating Accident Coverage, per injury with the following limits:

- a. Accidental Death and Dismemberment \$3,000 per injury
- b. Excess medical \$3,000 per injury.

6.02 UPON CONTRACT EXECUTION, CONTRACTOR SHALL SUBMIT TO CITY

COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE CITY OF COOPER CITY IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS OF CONTRACTOR UNDER THE AGREEMENT.

Insurance companies selected must be acceptable to CITY. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar day's written notice has been given to CITY by certified mail.

- 6.03 These insurance requirements shall not relieve or limit the liability of CONTRACTOR CITY does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect CONTRACTOR'S interests or liabilities but are merely minimum requirements established by CITY.
- 6.04 The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.
- 6.05 The CONTRACTOR shall require each of its sub-contractors of any tier to maintain the insurance required herein (except as respects limits of coverage for employers and public liability insurance which may not be less than One million (\$1,000,000)Dollars for each category), and the CONTRACTOR shall provide verification thereof to CITY upon request of the CITY.
- 6.06 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.
- 6.07 CONTRACTOR shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against CITY for payment or assessments in any form on any policy of insurance.
- 6.08 The clauses "Other Insurance Provisions" and "Insured Duties in the event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which CITY is named as an additional named insured shall not apply to CITY. CITY shall provide written notice of occurrence within fifteen (15) working days of CITY'S actual notice of such an event.
- 6.09 The CONTRACTOR shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described

and the same has been approved. CITY reserves the right to require any additional insurance coverage which may be deemed necessary and applicable to CONTRACTOR's performance of this Agreement.

- 6.10 Violation of the terms of this Section and its subparts shall constitute a breach of the Agreement and CITY, at its sole discretion, may cancel the agreement and all rights, title and interest of the CONTRACTOR shall thereupon cease and terminate.

Section 7. INDEMNIFICATION

- 7.01 CONTRACTOR agrees to indemnify, save, defend and hold CITY, its officers, agents and employees, harmless from any and all claims, damages, liability, losses, causes of action of any nature whatsoever, which may arise out of, in connection with, or because of the services of CONTRACTOR specifically including improper or inadequate supervision, coaching or instruction and/or the services, activities or operations of CONTRACTOR under this Agreement or the breach of this Agreement by the CONTRACTOR.
- 7.02 CONTRACTOR shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnification, including but not limited to, attorney's fees and costs to defend all claims or suits, in the name of CITY when applicable, and shall pay all costs and judgments which may issue thereon.
- 7.03 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR under this indemnification agreement.
- 7.04 Such indemnification shall not be limited to the amount of comprehensive general liability insurance which CONTRACTOR is required to obtain under this Agreement. Nothing contained herein is intended nor shall it be construed to waive CITY's rights and immunities under the common law or §768.28, Florida Statutes, as may be amended from time to time.

Section 8. ACCIDENT PREVENTION

CONTRACTOR shall exercise reasonable care and precaution at all times for the protection of persons and property on the premises provided under this Agreement. Safety provisions of all applicable laws and ordinances shall be strictly observed. CITY reserves the right to expel any person from municipal property who is causing a disturbance, is conducting themselves in violation of CITY rules, regulations, ordinances or whose conduct or activity presents a safety risk or public nuisance. Neither CITY nor any of its officers, agents or employees shall be liable to CONTRACTOR for any damages that may be sustained by CONTRACTOR through exercise by CITY of such right.

Section 9. CERTIFICATION AND TRAINING

- 9.01 This Agreement is specifically conditioned on CONTRACTOR having valid certification as a tennis instructor or coach by United States Professional Tennis Association (USPTA) and current certification in CPR, First Aid, and AED training, and all copies must be on file with City.
- 9.02 CONTRACTOR represents to CITY that it has the requisite experience and education to provide tennis instruction to persons of various ages and skill levels.

Section 10. TERMINATION

- 10.01 In the event the CONTRACTOR shall default in or violate any of the terms, obligations, restrictions or conditions of this Agreement, the CITY shall give the CONTRACTOR written notice by certified mail of the default and that such default shall be cured within thirty (30) calendar days thereof. In the event the CONTRACTOR has failed to correct the condition(s) of the default or the default is not remedied to the satisfaction and approval of the CITY, the CITY shall have all legal remedies available to it including, but not limited to, immediate termination of this Agreement.
- 10.02 In addition to all other remedies available to CITY, this Agreement may be terminated by CITY for convenience upon seven (7) days written notice to CONTRACTOR. In the event that the CITY terminates this agreement for convenience, CONTRACTOR shall be permitted to complete any scheduled tennis lessons for up to two (2) weeks from the effective date of the termination. CONTRACTOR shall not schedule any additional tennis lessons upon receipt of a notice of termination for convenience by the CITY.

Section 11. COMPLIANCE WITH THE LAW

- 11.01 CONTRACTOR shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, City of Cooper City and of any other public authority which may be applicable to the operations of CONTRACTOR pursuant to the terms of this Agreement.
- 11.02 CONTRACTOR shall comply with the Florida Public Records Act as follows:
 - a. Keep and maintain public records in the Contractor's possession or control in connection with the Contractor's performance under this Agreement that ordinarily and necessarily would be required by the City in order to perform the service.
 - b. Upon request by the City's records custodian, provide the City with a copy of 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, Florida Statutes, or as otherwise provided by law.

- 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 this Agreement, and following completion of this Agreement until the records are transferred to the City.
- d. Upon completion of this Agreement or in the event of termination of this Agreement by either party, any and all public records relating to this Agreement in the possession of the Contractor shall be delivered by the Contractor to the City, at no cost to the City, within seven (7) days. All records stored electronically by the Contractor shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered to City upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public record disclosure requirements.
- e. The Contractor's failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City.
- f. Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City. Any compensation due to the Contractor shall be withheld until all documents are received as provided herein.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS JENNA MONTOYA at 954-434-4300, PRR@CooperCityFL.org OR BY MAIL: Cooper City, City Clerk's Office, 9090 SW 50th Place, Cooper City, FL 33328

Section 12. INDEPENDENT CONTRACTOR STATUS

12.01 CONTRACTOR and its employees, volunteers, and agents shall be and remain independent contractors and not agents or employees of CITY with respect to all of the acts or services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking or venture between the parties hereto.

12.02 CONTRACTOR does not accrue and is not entitled to any CITY employee benefits, including Worker's Compensation, by virtue of this Agreement.

Section 13. CHOICE OF LAW

The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida.

Section 14. VENUE

Any claim, objection or dispute arising out of the terms of this agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida. The parties hereby waive any right to trial by jury concerning any litigation between the parties which, in any way, arises out of this Agreement.

Section 15. SEVERABILITY

Should any part, term or provision of this Agreement be by the courts decided to be illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

Section 16. NON-DISCRIMINATION

No person, on the grounds of race, color, national origin, sex shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said materials or offering of services by CONTRACTOR.

Section 17. CONSTRUCTION OF AGREEMENT

The terms and conditions herein are to be construed with their common meaning to effectuate the intent of this Agreement. All words used in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words in any gender shall extend to and include all genders.

Section 18. ENTIRE AGREEMENT, NO ORAL MODIFICATION, NO WAIVER

This Agreement represents the entire and integrated agreement between CITY and CONTRACTOR, and supersedes all prior negotiations, representations or agreements, either written or verbal. This Agreement may only be amended by written instruments signed by both CITY, through its Commission (except when the City Manager is expressly authorized to act for CITY hereunder), and CONTRACTOR and may include other services only if directly related to the intent and scope of this Agreement. The failure of a party to insist on strict performance of any of the terms of this Agreement shall not be construed as a waiver or relinquishment for the future of any term, condition or election but the same shall remain in full force and effect.