

INDEPENDENT CONTRACTOR AGREEMENT FOR TENNIS PROFESSIONAL

THIS INDEPENDENT CONTRACTOR AGREEMENT ("Agreement") is entered into on Tuesday, June 3, 2021, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125th Street, North Miami, Florida ("City"), and Diana Kussainova ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

RECITALS

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 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 North Miami; and

WHEREAS, City has verified Contractor's qualifications, experience and capability to fully perform the contractor 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 a written agreement whereby the duties and obligations each to the other are set forth;

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - TERM

2.1 The term of this Agreement shall be for a period of one (1) year, commencing on October 11, 2020 and terminating on September 30, 2021. Following the Initial Term, the City shall have the option to renew this Agreement for successive periods of one (1) year, under the same terms and conditions.

2.2 Notwithstanding the provisions of this Article 3, this Agreement may be terminated by the City Manager at any time, with or without cause.

ARTICLE 4 - COMPENSATION

4.1 For tennis classes and lessons, City shall pay the Contractor an amount equal to seventy-five percent (75%) of the amount of the total enrollment fees collected.

4.2 Contractor shall be paid on a weekly basis.

4.2 The City pays Contractors electronically; the Contractor shall be responsible for ensuring an up to date "Direct Deposit Authorization Form" is on file with the City.

ARTICLE 5 – DUTIES OF CONTRACTOR

5.1 The duties of Contractor pertaining to tennis program are as follows:

- (1) Provide instruction in the fundamentals of tennis including but not limited to the rules of competitive tennis.
- (2) 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.
- (3) Provide assistance, expertise and technical advice required by the Recreation Department.
- (4) 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.
- (5) Lend Contractor's name and professional reputation to the promotion of tennis in the City of North Miami.
- (6) 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 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 the City.
- (12) Maintain all necessary licenses and permits as required by law. All coaches and instructors must have on file with City of North Miami FDLE and fingerprint background screening check at Contractor's expense.
- (13) Be legally liable for the safety of all individuals while participating in any event supervised by 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.
- (14) Not permit any signs or advertising at any City facility unless specifically approved in writing by the Director of the Parks and Recreation Department or his/her designee.
- (15) Abide by all applicable federal, state and local regulations, ordinances and/or laws with special attention to those related to the health and safety of participants in athletic events and Parks and Recreation Department rules and regulations.
- (16) Perform all tasks which reasonably necessary to be done in order to accomplish the work and objectives as otherwise provided for under this Agreement.
- (17) City's Parks and Recreation Department will provide Contractor with reasonable advanced notice of requested clinics, demonstrations, sponsored events or other related services.

(18) Provide other tennis related services to the City has required. From time to time, additional services may be required. The Director of Parks and Recreation shall be responsible for requesting additional services, as required.

ARTICLE 6 - LESSONS

6.1 Contractor shall provide the following types of lessons:

- (a) Individual lessons (weekly)
- (b) Group lessons (weekly)
- (c) Participation in tennis clinics and tournaments

6.2 Contractor's Duty to Inspect and Make Safe. 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 liability and responsibility for all patent defects or conditions on the subject premises once it commences its daily duties, operations or services.

6.3 If in the course of its use and/or operations, Contractor becomes aware or should become aware of any dangerous condition in or on the premises or equipment, Contractor shall immediately notify the City of such dangerous condition or immediately correct the dangerous condition, or cease operations so as not to endanger persons or property in the vicinity or the premises or equipment.

ARTICLE 7 - CITY'S TERMINATION RIGHTS

7.1 The City Manager shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

ARTICLE 8 - INDEPENDENT CONTRACTOR

8.1 Contractor agents shall be deemed to be an independent contractor and not an agent or employee of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded to classified or unclassified employees. The Contractor shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the City.

ARTICLE 9 – CERTIFICATION AND TRAINING

9.1 This Agreement is specifically conditioned on Contractor having valid certification as a tennis instructor or coach by United States Professional Tennis Association (USPTA); copies must be on filed with the City.

9.2 Contractor represents to the City that it has the requisite experience and/or education to provide tennis instruction to persons of various ages and skill levels.

ARTICLE 10 - INDEMNIFICATION

10.1 Contractor agrees to indemnify, defend, save and hold harmless the City its officers, agents and employees, from and against any and all claims, liabilities, suits, losses, claims, fines, and/or causes of action that may be brought against the City, its officers, agents and employees, on account of any negligent act or omission of Contractor, its agents, servants, or employees in the performance of Services under this Agreement and resulting in personal injury, loss of life or damage to property sustained by any person or entity, to the extent caused by Contractor's negligence within the scope of this Agreement, including all costs, reasonable attorney's fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment, or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the City, its officer, agents, employees or contractors, which claims are lodged by any person, firm, or corporation.

10.2 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes (2019). Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 11 - INSURANCE

11.1 Prior to the execution of this Agreement, Contractor shall submit certificate(s) of insurance meeting or exceeding the required coverage and specifically providing that the City is an additional named insured, with the following minimum coverage:

11.1.1 Commercial General Liability - with dedicated minimum limits of \$1 Million per occurrence/\$2 Million aggregate to include contractual liability, bodily injury, property damage, personal, advertising injury and medical expense products/completed operations. The City shall be named additional insured.

11.1.2 Worker's Compensation - as required by the State of Florida with statutory limits, and Employer's Liability with a minimum limit of One Million Dollars (\$1,000,000.00) per accident, for bodily injury or disease. A Certificate of Exemption from the Florida Division of Workers' Compensation is required if exemption status is claimed.

11.1.3 Automobile Insurance – Contractor shall show proof of valid automobile liability insurance meeting State of Florida requirements.

11.2 Contractor shall not commence Services under this Agreement until after Contractor has obtained all of the minimum insurance coverage prescribed above and the policies of such insurance detailing the provisions of coverage have been received and approved by the City Manager.

11.3 Proof of insurance will be provided in the form of a Certificate of Insurance or Insurance Declarations page with endorsements showing the City as additional insured via a blanket endorsement, where applicable. All insurance required herein shall be written as primary policies, not contributing to or in excess of any coverage that the City may carry.

11.4 Contractor shall guarantee that all required insurance remain current and in effect throughout the term of this Agreement. All insurance policies shall be maintained by Contractor in full force and effect throughout the Term of Agreement, including any extensions.

11.5 The City shall be named as an additional insured via a blanket endorsement for claims caused in whole or in part by the Contractor, its subcontractors', employees' or assignees' negligent acts or omissions during the Term of this Agreement. This provision shall not limit the City's recovery for coverage under the Contractor's insurance policy.

11.6 Contractor shall not permit any subcontractor to begin Services until after similar minimum insurance to cover subcontractor has been obtained and approved by the City Manager.

11.7 In the event the insurance certificate provided by Contractor or subcontractor indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) days prior to expiration of the date of the insurance, a renewed certificates of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance coverage remains in full force and effect.

11.8 All insurance policies required from Contractor shall be written by a company with a Best rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed agents upon whom service of process may be made in Miami-Dade County, Florida.

ARTICLE 12 - OWNERSHIP OF DOCUMENTS

12.1 All documents developed by Contractor under this Agreement shall be delivered to the City Manager by the Contractor upon completion of the Services and shall become property of the City, without restriction or limitation of its use. The Contractor agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes (2019).

ARTICLE 13 – PUBLIC RECORDS

13.1 Contractor understands that the City is a public agency under Florida Law and that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions, limitations and exemptions of Chapter 119, Florida Statutes, and agrees to allow access as applicable by the City and the public to all documents subject to disclosure under applicable law. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement, and any extensions hereof, by the City Manager. As required by Section 119.0701(2)(a), Florida Statues (2019), for this Agreement as a contract for Services:

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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-893-6511, EXTENSION 12244, FMEDRANDA@NORTHMIAMIFL.GOV, CITY OF NORTH MIAMI, OFFICE OF THE CITY MANAGER, 776 NE 125TH STREET, NORTH MIAMI, FLORIDA 33161.

13.2 Additionally, pursuant to Section 119.0701(2)(b), Florida Statutes (2019), Contractor under this Agreement, and any extension hereof, must comply with Florida public record laws, and as a Contractor with the City as a public agency, must:

13.2.1 Keep and maintain public records required by the public agency to perform the Service.

13.2.2 Upon request from the public agency's custodian of public records, provide the public agency with a copy of the 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 this chapter or as otherwise provided by law.

13.2.3 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 the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

13.2.4 Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

13.3 Contractor and City understand that Section 119.0701(3), Florida Statutes (2019), further requires that:

13.3.1 A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

13.3.2 If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

13.3.3 A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

13.4 Contractor and City understand that Section 119.0701(4), Florida Statutes (2019), provides that:

13.4.1 If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
2. At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

13.4.2 A notice complies with subparagraph 2 above if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

13.4.3 A contractor who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

13.5 It is further understood by and between the Parties that any information, writings, tapes, Contract Documents, reports or any other matter whatsoever which is given by the City to the Contractor pursuant to this Agreement shall at all times remain the property of the City and shall not be used by the Contractor for any other purposes whatsoever without the written consent of the City Manager.

13.6 In the event the Agreement is terminated, Contractor agrees to provide the City Manager all such documents within ten (10) days from the date the Agreement is terminated.

ARTICLE 14 - NOTICES

14.1 All notices, demands, correspondence and other communications between the Parties shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows or as the same may be changed from time to time:

For Contractor:

Diana Kussanova
10275 Collins Ave Apt 904
Bal Harbour FL 33154

For the City:

City of North Miami
Attn: City Manager
776 N.E.125th Street
North Miami, Florida 33161

With copy to:

City of North Miami
Attn: City Attorney
776 N.E.125th Street
North Miami, Florida 33161

14.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

14.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice

ARTICLE 15 - CONFLICT OF INTEREST

15.1 Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

15.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with contractors or vendors providing professional services on projects assigned to the Contractor, except as fully disclosed and approved by the City Manager. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

16.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

16.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

16.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

16.4 This Agreement and Contract Documents constitute the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

16.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

16.6 The City Manager reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

16.7 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

16.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City Manager.

16.9 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

16.10 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

16.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

16.12 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

16.13 All other terms, conditions and requirements contained in the RFP, which have not been modified by this Agreement, shall remain in full force and effect.

16.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

16.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

By: _____

Print Name: _____

Date: _____

“Contractor”:

By: dk _____

Print Name: Diana Kussainova

Date: 06-11-2021

ATTEST:

City of North Miami, a Florida municipal corporation:
“City”

By: _____

Vanessa Joseph, Esq.
City Clerk

By: _____

Theresa Therilus, Esq.
City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____

Jeff P. H. Cazeau, Esq.
City Attorney