

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is entered into on this 20 day of October, 2021 between **Delio Pacifici** ("Contractor"), and the City of Miami Beach, Florida (the "City"), for a period of **12 months** with an effective starting date of **October 1, 2021**, and an end date of **September 30, 2022** (the "Term").

1. Description of Services.

Contractor will provide the services described in Exhibit "A" hereto (the "Services").

Although Contractor may receive a schedule of the available hours to provide its Services, the City shall not control nor have the right to control the hours of the Services performed by the Contractor; where the Services are performed (although the City will provide Contractor with the appropriate location to perform the Services); when the Services are performed (including how many days a week the services are performed); how the Services are performed; or any other aspect of the actual manner and means of accomplishing the Services provided. Notwithstanding the foregoing, all Services provided by the Contractor shall be in accordance with the terms and conditions set forth in Exhibit "A" hereto, and performed to the reasonable satisfaction of the City Manager. If there are any questions regarding the Services to be performed, Contractor should contact the following person:

Paul Di Muont
Athletic Manager
1701 Meridian Avenue, Suite 401
Miami Beach, FL 33139
Pauldimuont@miamibeachfl.gov

2. Fee.

In consideration of the Services to be provided pursuant to this Agreement, the City agrees to pay Contractor a fee, not to exceed the amount of \$50,000.00 (the "Fee"), which shall be paid as described in Exhibit "B" hereto.

The Contractor shall issue invoices to the City pursuant to the mutual agreement of the parties and pursuant to the Fee Schedule set forth in Exhibit "B" hereto upon receipt of an acceptable and approved invoice. The City shall remit payment to the Contractor within 45 days of receiving an invoice from the Contractor for that portion (or those portions) of the Services satisfactorily rendered (and referred to in the particular invoice).

3. Termination.

This Agreement may be terminated by either party, with or without cause, by giving written notice to the other party of such termination, which shall become effective upon fourteen (14) days following receipt by the other party of the written termination notice. Notwithstanding the foregoing, in the event of a public health, welfare or safety concern, as determined by the City Manager, in the City Manager's sole discretion, the City Manager, pursuant to a verbal or written notification to Contractor, may immediately suspend the Services under this Agreement for a time certain, or in the alternative, terminate this Agreement on a given date. In the event of termination pursuant to this section, the Contractor shall be paid a sum equal to all payments due to him/her up to the date of termination; provided Contractor is continuing to satisfactorily perform all Services up to the date of termination. Thereafter, the City shall be fully discharged from any further liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

4. Indemnification/Hold Harmless.

Contractor agrees to indemnify, defend, and hold harmless the City of Miami Beach and its officers, employees and agents, from and against any and all actions, claims, liabilities, losses and expenses including, but not limited to, attorney's fees, for personal economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or be alleged to have arisen from the negligent acts or omissions or other wrongful conduct of Contractor, and/or any and all subcontractors, employees, agents, or any other person or entity acting under Contractor's control, in connection with the Contractor's performance of the services pursuant to this Agreement. Contractor shall pay all such claims and losses and shall pay all costs and judgments, which may arise from any lawsuit arising from such claims and losses, and shall pay all costs and attorney's fees expended by the City in defense of such claims and losses, including appeals.

The parties agree that one percent (1%) of the total compensation to Contractor for performance of the Services under this Agreement is the specific consideration from the City to Contractor for the Contractor's agreement to indemnify and hold the City harmless, as provided herein. Contractor and the City hereby agree and acknowledge that this indemnity provision is intended to and shall survive the termination (or earlier expiration) of this Agreement.

5. Limitation of Liability.

The City desires to enter into this Agreement only if in so doing the City can place a limit on City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of the compensation/fee to be paid to Contractor pursuant to this Agreement, less any amounts actually paid by the City as of the date of the alleged breach. Contractor hereby expresses his/her willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract to be limited to a maximum amount equal to the compensation/fee to be paid to Contractor pursuant to this Agreement, less any amounts actually paid by the City as of the date of the alleged breach.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in the amount in excess of the compensation/fee to be paid to Contractor pursuant to this Agreement, less any amounts actually paid by the City as of the date of the alleged breach, for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement.

Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

6. Notices.

All notices and communications in writing required or permitted hereunder may be delivered personally to the representatives of the Contractor and the City listed below or may be mailed by U.S. Certified Mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service.

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

CONTRACTOR: Delio Pacifici
1000 Island Blvd. #2004
Aventura, FL, 33160
(917) 751-1447

CITY: John Rebar
City of Miami Beach
Parks and Recreation
1700 Convention Center Drive
Miami Beach, FL 33139
(305) 673-7000

Notice shall be deemed given on the date of an acknowledged receipt, and, in all other cases, on the date of receipt or refusal.

7. Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND CONTRACTOR EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

8. Duty of Care/Compliance with Applicable Laws/Conflict of Interest.

With respect to the performance of the Services contemplated herein, Contractor shall exercise that degree of skill, care, efficiency and diligence normally exercised by reasonable persons and/or recognized professionals with respect to the performance of comparable services.

In its performance of the Services, Contractor shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, the State of Florida, and the federal government. Without limiting the foregoing, Contractor herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and ethics provisions, as set forth in the Miami-Dade County Code, and as may be amended from time to time; and by the City of Miami Beach Charter and Code, as may be amended from time to time, both of which are incorporated herein by referenced, as if fully set forth herein.

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirectly which should conflict in any manner or degree with the performance of the Services. Contractor further covenants that in the performance of Services under this Agreement, no person having any such interest shall knowingly be employed by the Contractor. Notwithstanding the foregoing, Contractor shall be able to provide similar services to other third parties as long as they do not conflict with the Services to be provided hereunder. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

9. No Discrimination.

In connection with the performance of the Services, the Contractor shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Contractor shall comply with City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, or public services, on the basis of actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, familial and marital status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, political affiliation, or disability.

10. Florida Public Records Law.

- (A) Contractor shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- (B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- (C) Pursuant to Section 119.0701 of the Florida Statutes, if the Contractor meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Contractor shall:
- (1) Keep and maintain public records required by the City to perform the service;
 - (2) Upon request from the City's custodian of public records, provide the City 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 Chapter 119, Florida Statutes or as otherwise provided by law;
 - (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 Agreement if the Contractor does not transfer the records to the City;
 - (4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City 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 Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(C) REQUEST FOR RECORDS; NONCOMPLIANCE.

- (1) A request to inspect or copy public records relating to the City's contract for

services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Contractor of the request, and the Contractor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

- (2) Contractor's failure to comply with the City's request for records shall constitute a breach of the Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
- (3) A Contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

(D) CIVIL ACTION.

- (1) If a civil action is filed against a Contractor to compel production of public records relating to the City's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney's fees, if:
 - (a) The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
 - (b) 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 City and to the Contractor.
- (2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the City 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.
- (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.

(E) **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 AT:**

**CITY OF MIAMI BEACH
ATTENTION: CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411**

11. Ownership of Documents/Patents and Copyrights.

Any and all documents prepared by Contractor pursuant to this Agreement are related exclusively to the Services described herein shall be deemed to be a "work made for hire", and are intended or represented for ownership by the City. Any re-use distribution, or

dissemination of same by Contractor, other than to the City, shall first be approved in writing by the City Manager, which approval, if granted at all, shall be at the City Manager's sole and absolute discretion.

Any patentable and/or copyrightable result arising out of this Agreement, as well as all information, specifications, processes, data and findings, are hereby assigned to the City, in perpetuity, for public use.

No reports, other documents, articles or devices produced in whole or in part under this Agreement shall be the subject of any application for patent or copyright by or on behalf of the Contractor (or its employees or sub-contractors, (if any) without the prior written consent of the City Manager, which consent, if given at all, shall be at the Manager's sole and absolute discretion.

12. Liability for Rent, Supplies, Equipment, Etc.

Contractor shall provide all funds necessary to pay all debts, disbursements, and expenses incurred in connection with its performance of the Services hereunder, and shall not be entitled to any reimbursement from the City unless otherwise agreed to by the City.

It will also provide all supplies and equipment necessary to provide such Services. If Contractor uses any of the City's facilities, supplies, or equipment to furnish the Services hereunder, Contractor shall pay the City (or such amount shall be deducted from the Fee set forth in Section 2) an amount as mutually agreed by the parties.

13. Liability for Sub-contractors.

Contractor shall be liable for its Services, responsibilities and liabilities under this Agreement and the costs, services, responsibilities and liabilities of any sub-contractors (if any), and any other person or entity acting under the direction or control of Contractor (if any). In this regard, Contractor must furnish the City with all information relating to the sub-contractors which is requested by the City. When the term "Contractor" is used in this Agreement, it shall be deemed to include any sub-contractors (if any) and/or any other person or entity acting under the direction or control of Contractor (if any). All sub-contractors (if any) must be disclosed in writing to the City prior to their engagement by Contractor.

14. Independent Contractor/No Joint Venture.

THIS AGREEMENT SHALL NOT CONSTITUTE OR MAKE THE PARTIES A PARTNERSHIP OR JOINT VENTURE. FOR THE PURPOSES OF THIS AGREEMENT, THE CONTRACTOR 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 ORDINANCE OF THE CITY, OR ANY RIGHT GENERALLY AFFORDED CLASSIFIED OR UNCLASSIFIED EMPLOYEES INCLUDING ANNUAL AND SICK DAY ACCRUAL. FURTHER, THE CONTRACTOR SHALL NOT BE DEEMED ENTITLED TO FLORIDA WORKER'S COMPENSATION BENEFITS AS AN EMPLOYEE OF THE CITY OR ACCUMULATION OF SICK OR ANNUAL LEAVE.

The Contractor shall be the sole party responsible for any and all employment taxes, unemployment compensation taxes or insurance, social security taxes, or other taxes, insurance payments, or otherwise whether levied by any country or any political subdivision thereof. The Contractor shall not, in any way, be considered to be, or be deemed to be, an employee of the City through the Services performed in this Agreement (e.g., including, but

not limited to, for purposes of the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any state revenue and taxation code relating to income tax withholding at the source of income, the Workers' Compensation Insurance Code and other benefit payments and third party liability claims), and the Contractor shall indemnify and hold the City harmless from all costs, loss, damages or expenses (including but not limited to taxes, accounting fees, court costs, and attorney's fees at all levels of litigation) in the event of any determination to the contrary by any court of competent jurisdiction or governmental authority. The Contractor recognizes and understands that it will receive an Internal Revenue Service Form 1099 statement and related tax statements, and will be required to file corporate and/or individual tax returns and to pay taxes in accordance with all provisions of applicable Federal and state law. The Contractor hereby promises and agrees to indemnify the City for any damages or expenses, including attorney's fees, and legal expenses, incurred by the City as a result of the Contractor's failure to make such required payments.

Except as otherwise expressly provided in the Agreement, the Contractor shall in no way hold itself out as an employee, dependent agent, or other servant of the City, its employees or other agents, or as other than a free agent with respect to the City. The Contractor is not granted, shall not have, and acknowledges the absence of any right or authority to assume or create any obligations or responsibility, express or implied, on behalf of or in the name of the City or to bind the latter in any matter or thing whatsoever.

15. Purchase Order Requirement.

This Agreement shall not be effective until executed by the parties hereto and until the City has issued a Purchase Order for this Agreement

16. Force Majeure.

- (A) A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of the Contractor or the City's obligations under the Agreement, and (ii) is beyond the reasonable control of such party unable to perform the obligation, and (iii) is not due to an intentional act, error, omission, or negligence of such party, and (iv) could not have reasonably been foreseen and prepared for by such party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, pandemics, terrorism, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, inclement weather, or failure to secure any of the required permits pursuant to the Agreement.
- (B) If the City or Contractor's performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately, upon learning of the occurrence of the event or of the commencement of any such delay, but in any case within fifteen (15) business days thereof, provide notice: (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact

Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.

- (C) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.
- (D) Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event, causing the suspension of performance, shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
- (E) Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend the City's payment obligations under the Agreement, and may take such action without regard to the notice requirements herein. Additionally, in the event that an event of Force Majeure delays a party's performance under the Agreement for a time period greater than thirty (30) days, the City may, at the sole discretion of the City Manager, terminate the Agreement on a given date, by giving written notice to Contractor of such termination. If the Agreement is terminated pursuant to this section, Contractor shall be paid for any Services satisfactorily performed up to the date of termination; following which the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement. In no event will any condition of Force Majeure extend this Agreement beyond its stated Term.

17. Assignment.

Contractor shall not assign all or any portion of this Agreement without the prior written consent of the City Manager, and it is agreed that said consent must be sought in writing by Contractor not less than sixty (60) days prior to the date of any proposed assignment.

18. Audit and Inspection Records.

Contractor shall permit the authorized representatives of the City to inspect and audit all data and records of the Contractor, if any, relating to performance under this Agreement until the expiration of three years after final payment under this Agreement.

Contractor further agrees to include in all his/her subcontracts hereunder a provision to the effect that the sub-contractor agrees that the City or any of their duly authorized representatives shall, until the expiration of three years after final payment to the sub-contractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such sub-contractor, involving transactions related to the sub-contractor.

19. Inspector General Audit Rights.

- (A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- (B) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- (C) Upon ten (10) days written notice to the Contractor, the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- (D) The Inspector General shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- (E) The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three

(3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:

- (1) If this Agreement is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - (2) The Contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- (F) The provisions in this section shall apply to the Contractor, its officers, agents, employees, subcontractors and suppliers. The Contractor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Contractor in connection with the performance of this Agreement.
- (G) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Contractor or third parties.

20. E-Verify

- (A) To the extent that Contractor provides labor, supplies, or services under this Agreement, Contractor shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Contractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, Contractor shall expressly require any subcontractor performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract Term. If Contractor enters into a contract with an approved subcontractor, the subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of such affidavit for the duration of the subcontract or such other extended period as may be required under this Agreement.
- (B) **TERMINATION RIGHTS.**
- (1) If the City has a good faith belief that Contractor has knowingly violated Section 448.09(1), Florida Statutes, the City shall terminate this Agreement with Contractor for cause, and the City shall thereafter have or owe no further obligation or liability to Contractor.
 - (2) If the City has a good faith belief that a subcontractor has knowingly violated the foregoing Subsection 20(A), but the Contractor otherwise complied with such subsection, the City will promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor. Contractor's failure to terminate a subcontractor shall be an event of default under this Agreement, entitling City to terminate the Contractor's contract for cause.
 - (3) A contract terminated under the foregoing Subsection (B)(1) or (B)(2) is not in breach of contract and may not be considered as such.

- (4) The City or Contractor or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (B)(1) or (B)(2) no later than 20 calendar days after the date on which the contract was terminated.
- (5) If the City terminates the Agreement with Contractor under the foregoing Subsection (B)(1), Contractor may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.
- (6) Contractor is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 20.

21. Waiver of Breach.

A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A party's waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

22. Severance.

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City elects to terminate this Agreement.

23. Joint Preparation.

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

24. Mutual cooperation.

Contractor recognizes that the performance of this Agreement is essential to the provision of vital public services and the accomplishment of the stated goals and mission of the City. Therefore, the Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with the City and shall actively foster a public image of mutual benefit to both parties. The Contractor shall not make any statements or take any actions detrimental to this effort.

25. Entire Agreement.

This writing and any exhibits and/or attachments incorporated (and/or otherwise referenced for incorporation herein) embody the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

26. Background Check Requirement.

In accordance with Sections 943.0542, 984.01, 39.001 and 1012.465, Florida Statutes and Chapters 430, 435, and 402, Florida Statutes, as applicable, employees, volunteers, contractors, and subcontracted personnel who work in direct contact with children or who

come into direct contact with children must complete a satisfactory Level 2 background screening prior to commencing work pursuant to this Agreement.

Level 2 Background screenings must be completed through the City of Miami Beach, Human Resources Department. Contractor agrees to complete Level 2 Background screening prior to initiating any work related to this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by the respective officials thereunto duly authorized, this date and year first above written.

FOR CITY:

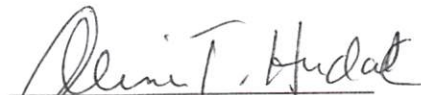
CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By:


City Clerk

City Manager





Date:


DEC 1 3 2021

FOR CONTRACTOR:


DELIO PACIFICI

WITNESS:

By:

DocuSigned by:

2A88B949E41748C...

Paul Di Muont
Print Name




Signature
Delio Pacifici
Print Name

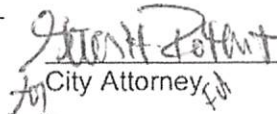
Date:



10/20/21

Approved:

Approved as to form & language & for execution.

 DocuSigned by:  11/5/2021 | 8:02 AM EDT
92738DAE5C848D
Department Director

 10/19/21
City Attorney Date

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92084A810E1483
Office of Budget and Performance Improvement



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Human Resources

Exhibit A

Description of Services

1. The Contractor shall establish and administer tennis programming for the patrons at the following facility:
 - a. Flamingo Park Tennis Center (the "Center") (999 11th Street, Miami Beach, FL 33139)
 - b. Working hours range from 7:30 a.m. to 10:00 p.m.

2. Contractor shall perform the following tennis programming at the Center during facility operating hours ("Tennis Programming"):
 - a. Private Tennis Lessons
 - b. Youth Programming
 - c. Adult Programming
 - d. Summer Camp Programming
 - e. Clinics
 - f. Racquet Stringing

3. During the Term, Contractor is not permitted to perform Tennis Programming outside of the Center including, without limitation, at the following locations:
 - a. Palm Island
 - b. Miami Beach Golf Course
 - c. Polo Park
 - d. Fairway Park
 - e. Normandy Shores Golf Course

4. During the Term, Contractor must have a Business Tax Receipt and current certification from the United States Professional Tennis Association or Professional Tennis Registry.

5. The contractor during the months of (November – April) to offer a minimum of eight (8) hours of City Tennis Programming per week, during the months of (October, May-September) to offer a minimum of six (6) hours of City Tennis Programming per week, exclusive of Private Tennis Lessons. If Contractor fails to provide this minimum level of service, the City reserves the right to terminate the Agreement, without providing Contractor with the opportunity to cure the default, upon providing Contractor with written notice of termination.

Exhibit B

Fee

The City agrees to pay the Contractor as follows:

The City shall pay Contractor a total fee in the amount not to exceed \$50,000.00 during the life of the Agreement:

- \$10 for every racquet stringing
- \$50 for every 1-hour lesson
- \$50 for every 1-hour clinic
- \$75 for every 1.5 -hour clinic
- \$100 for every 2-hour clinic
- \$70 for half day of Summer Camp
- \$140 for full day of Summer Camp

The Contractor shall issue invoices to the City no later than 15 days following services rendered. City shall remit payment to the Contractor within 45 days of receiving an invoice from the Contractor for that portion (or those portions) of the Services satisfactorily rendered (and referred to in the particular invoice).