



TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Town Clerk

June White

Department Submitting Request

Dept Head's Signature

<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>
<input type="checkbox"/> May 25, 2010	May 14 (5:00 p.m.)	<input type="checkbox"/> July 27, 2010	July 16 (5:00 p.m.)	<input type="checkbox"/> Oct 26, 2010	Oct 15 (5:00 p.m.)
<input type="checkbox"/> June 8, 2010	May 28 (5:00 p.m.)	<input type="checkbox"/> Aug 25, 2010	Aug 13 (5:00 p.m.)	<input type="checkbox"/> Nov 9, 2010	Oct 29 (5:00p.m.)
<input type="checkbox"/> June 22, 2010	June 11 (5:00 p.m.)	<input type="checkbox"/> Sept 14, 2010	Sept 3 (5:00 p.m.)	<input type="checkbox"/> Nov 23, 2010	Nov 12 (5:00p.m.)
<input type="checkbox"/> July 13, 2010	July 2 (5:00 p.m.)	<input type="checkbox"/> Oct 12, 2010	Oct 1 (5:00p.m.)	<input type="checkbox"/> Dec 14, 2010	Dec 3 (5:00p.m.)

* Subject to change

- NATURE OF AGENDA ITEM**
- | | | |
|--|---|---------------------------------------|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Ordinance | <input type="checkbox"/> Old Business |
| <input type="checkbox"/> Reports | <input type="checkbox"/> Resolution | <input type="checkbox"/> New Business |
| <input checked="" type="checkbox"/> Consent Agenda | <input type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Other |

SUBJECT TITLE: Tennis Contract Renewal

EXPLANATION: In the previous contract for professional services (FY2009-2010) with Leonard C. Petra, the Town paid Mr. Petra \$12,000 to provide tennis lessons for youth and adults. The new contract (FY2010-2011) is a revenue sharing agreement where Mr. Petra receives a portion of the registration fee depending on the service provided. The contract sets the fee for youth (group) tennis lessons at \$60 per participant for a five (5) week session and \$90 per participant for a five (5) week session of adult (group) lessons. Mr. Petra also is planning to provide an adult doubles tournament at a time to be agreed upon. The agreement also provides that Mr. Petra will conduct four (4) free tennis programs (which the Town will compensate him for) and an adult doubles tournament.

EXHIBITS:

FISCAL IMPACT AND APPROPRIATION OF FUNDS:

- | | |
|---|--|
| <input type="checkbox"/> Amount \$ _____ | <input type="checkbox"/> Acct # _____ |
| <input type="checkbox"/> Transfer of funds required | <input type="checkbox"/> From Acct # _____ |

Town Attorney review required
 Yes No

Town Manager's Initials: CW

PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT, made this 1st day of October 2010, by and between:

THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, a municipal corporation organized and operating under the laws of the State of Florida, hereinafter referred to as "TOWN"

AND

LEONARD C. PETRA, an individual with an address of 3700 Galt Ocean Drive #908, Fort Lauderdale FL 33308-7639, hereinafter referred to as "CONTRACTOR". TOWN and CONTRACTOR may hereinafter collectively be referred to as the "Parties".

WITNESSETH:

WHEREAS, the TOWN and LEONARD C. PETRA have determined that it is in the best interest of the parties to jointly create, operate and fund a year round Tennis Program in order to help address the recreational needs of the children and adult residents of the TOWN; and

WHEREAS, the TOWN and LEONARD C. PETRA agree to enter into a Professional Service Agreement to monitor and evaluate the success of such services;

NOW, THEREFORE, in consideration of the mutual promises, terms, provisions, covenants and payments set forth herein, it is hereby agreed by and between the TOWN and LEONARD C. PETRA as follows:

1.0 Recitals. The above recitals are true and correct and are hereby incorporated herein.

2.0 Services and Responsibilities of Leonard C. Petra.

2.1 LEONARD C. PETRA agrees to create and operate a Tennis Program, including tennis lessons for youth and adults and a Tennis Adult Doubles Tournament, in the TOWN to be operated at the TOWN's tennis courts for the benefit of the citizens and residents of the TOWN. It is recognized and agreed by the parties that such programming shall be a gradual process that will develop according to the requests of participants, and the identification of appropriate volunteers.

2.2 In the operation of the Tennis Program, LEONARD C. PETRA shall undertake the following responsibilities:

2.2.1 Develop and implement a fee based Tennis Program as described in Attachment A & B, entitled "Scope of Tennis Program". Mr. Petra will maintain his certification with USPTA for the duration of his contract with the TOWN.

2.2.2 Develop and implement a total of four (4) free youth programs to be held quarterly. The Town Manager will approve these programs and the Town will pay Mr. Petra \$80 for the implementation of each of the four approved programs.

2.2.3 Petra may utilize other professional instructors and volunteers if necessary, provided that his liability insurance covers their activities on Town property.

2.2.4 Assist in the promotion of positive media coverage for the Tennis program and the TOWN.

2.3 Leonard C. Petra, in consultation with the TOWN Manager, shall identify the interests and needs of the residents of the TOWN and develop programs to fulfill those needs.

2.4 LEONARD C. PETRA agrees to cooperate with the TOWN in the operation of the Tennis Program and provide a monthly participation report to the TOWN Manager by the fifteenth of each month for the previous month, or his or her designee. The TOWN agrees to cooperate with the registration process of the participants.

3.0 Services and Responsibilities of TOWN.

3.1 The TOWN shall make available for use by the Tennis Program existing space at Tennis Courts, and other facilities and locations, such as the rest rooms and ~~Jarvis Hall~~, the adjacent park that is not otherwise reserved for scheduled activities by other parties.

3.2 The TOWN and LEONARD C. PETRA agree to cooperate in each other's efforts to operate and manage the Tennis Program, including, but not limited to, providing any information necessary in order to obtain available grant funds for the operation of the Tennis Program.

3.3 The TOWN will register the participants and collect the fees. If the payment is made after the hours of Town Hall operations, Mr. Petra will collect the fees and remit to Town within 5 business days.

3.4 The TOWN Manager will approve the schedule of use of the Town's courts for the Tennis Program.

4.0 Term and Termination.

4.1 This Agreement shall take effect as of the date of execution, hereinafter the "Effective Date". However, the term of this Agreement shall not commence until October 01, 2010, hereinafter referred to as the "Commencement Date," in order to provide LEONARD C. PETRA with sufficient time to set up the Tennis Program prior to opening. This Agreement can be renewed for a term of one (1) year upon mutual consent of the parties.

4.2 This Agreement may be terminated by either party for convenience, upon written notice to the other party. Upon receipt of such notice, the Agreement shall be terminated at

the end of the next full calendar month subsequent to the month in which the notice was received in order to allow for the completion of scheduled activities and proper feedback to volunteer instructors and participants.

5.0 Liability Insurance. LEONARD C. PETRA shall not commence work under this Agreement until he has obtained \$1,000,000 in liability insurance required under that names the Town as additional insured and certificate of insurance has been received by the TOWN. LEONARD C. PETRA will not allow any Subcontractor to commence work on any sub-contract until all similar such insurance required of the subcontractor has been obtained.

5.1 Worker's Compensation insurance shall be maintained during the life of this Agreement to comply with statutory limits, in the case any work is sublet, the LEONARD C. PETRA shall require the Subcontractors similarly to provide Workers Compensation Insurance.

5.2 The TOWN reserves the right to require any other insurance coverage it deems necessary depending upon the risk in the circumstances in TOWN's reasonable judgment.

6.0 Protection of TOWN's Property.

6.1 All parties hereto understand and agree that the TOWN is self insured and does not intend to provide insurance in connection with this Agreement.

6.2 At all times during the performance of this Agreement, LEONARD C. PETRA shall protect the TOWN's property from all damage whatsoever on account of the work being carried on under this Agreement.

7.0 Indemnification.

7.1 LEONARD C. PETRA agrees to release the TOWN from and against any and all liability and responsibility in connection with the above-mentioned matters. LEONARD C. PETRA further agrees not to sue or seek any money or damages from the TOWN in connection with the above-mentioned matters.

7.2 LEONARD C. PETRA agrees to indemnify, defend and hold harmless the TOWN, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the TOWN or any third party arising out of, or by reason of, or resulting from the Consultant's negligent acts, errors, or omissions with regard to the performance or obligations relating to this Agreement.

7.3 The parties recognize that various provisions of this Agreement, including, but not necessarily limited to this Section, provide for indemnification by LEONARD C. PETRA and that Florida Statute §725.06 requires a specific consideration be given therefore. The parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be

provided by LEONARD C. PETRA. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

8.0 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that LEONARD C. PETRA is an independent contractor under this Agreement and not the TOWN's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. LEONARD C. PETRA shall retain sole and absolute discretion in the judgment of the manner and means of carrying out LEONARD C. Petra's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of LEONARD C. PETRA, which policies of LEONARD C. PETRA shall not conflict with the TOWN, H.U.D., or United States policies, rules or regulations relating to the use of LEONARD C. Petra's funds provided for herein. LEONARD C. PETRA agrees that the services provided hereunder constitute a separate and independent enterprise from the TOWN, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between LEONARD C. PETRA and the TOWN and the TOWN will not be liable for any obligation incurred by LEONARD C. PETRA, including, but not limited to, unpaid minimum wages and/or overtime premiums.

9.0 Equal Employment Opportunity. In the performance of this Agreement, LEONARD C. PETRA shall not discriminate against any firm, employee or applicant for employment or any other firm/individual in providing services because of sex, age, race, color, religion, ancestry or national origin.

10.0 Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, by hand delivery or by facsimile transmission with confirmation of receipt, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section.

For the present, the LEONARD C. PETRA and the TOWN designate the following as the respective places for giving of notice:

TOWN: Constance Hoffmann, Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308
Phone: (954) 776-0576
Fax: (954) 776-1857

Copy To: Susan L. Trevarthen, Town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301
Phone: (954) 763-4242
Fax: (954) 764-7770

Contractor: Leonard C. Petra
3700 Galt Ocean Drive #908
Fort Lauderdale, FL 33308-7639
Phone: (954)-563-0046
Fax: (954)-568-6712

11.0 Ownership. The parties agree that all items, equipment, property and materials owned or purchased by LEONARD C. PETRA and provided for the execution of this Agreement shall remain the property of LEONARD C. PETRA. The parties further agree that all items, equipment, property and materials owned or purchased by the TOWN and provided to LEONARD C. PETRA in connection with the execution of this Agreement shall remain the property of the TOWN and be returned to TOWN in good condition upon termination of this Agreement.

12.0 Assignments. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by LEONARD C. PETRA without the prior written consent of the TOWN. For purposes of this Agreement, any change of ownership of LEONARD C. PETRA shall constitute an assignment, which requires TOWN approval. However, this Agreement shall run to the TOWN and its successors and assigns.

13.0 No Contingent Fees. LEONARD C. PETRA warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for LEONARD C. PETRA to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for LEONARD C. PETRA, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the TOWN shall have the right to terminate the Agreement without liability at its discretion, to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

14.0 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

15.0 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

16.0 Headings. Headings herein are for the convenience of reference only and shall not be considered on any interpretation of this Agreement.

17.0 Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

18.0 Waiver. Failure of the TOWN to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.

19.0 Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

20.0 Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

21.0 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

22.0 Extent of Agreement. This Agreement represents the entire and integrated agreement between the TOWN and the LEONARD C. PETRA and supersedes all prior negotiations, representations or agreements, either written or oral.

23.0 Attorney's Fees. In the event that either party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs in addition to any other remedy afforded by law.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seal the day and year first written above.

ATTEST:

TOWN OF LAUDERDALE-BY-THE-SEA

BY: _____
JUNE WHITE CMC
TOWN CLERK

BY: _____
CONSTANCE HOFFMANN
TOWN MANAGER

APPROVED AS TO FORM:

Susan L. Trevarthen, TOWN ATTORNEY

COMMISSION APPROVAL DATE: _____

CONTRACTOR:

BY:

LEONARD C. PETRA

Print Name

Witness

Print Name

STATE OF FLORIDA _____)

COUNTY OF _____)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared LEONARD C. PETRA an individual licensed to do business in the State of Florida, and acknowledged execution of the foregoing Agreement as the act of LEONARD C. PETRA for the use and purposes mentioned in it. He/she is personally known to me or has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal t in the State and County aforesaid on this _____ day of _____, 2010

NOTARY PUBLIC

My Commission Expires:

ATTACHMENT A

SCOPE OF SERVICES AS FOLLOWS:

Name of Class: Youth (Group) Tennis Lessons, Adult (Group) Tennis Lessons

Responsibilities: Communicate scheduling with Town Manager.

Day and Time: Thursdays, Youth - 5:30-6:30PM, Adults - 6:30-8:00PM

Length of Session: Each session will run 5 weeks, commencing October 14, 2010

Participant registration fee: Youth-\$60/five week session, Adults- \$90/five week session

Location: Town Tennis Courts

PAYMENTS:

Percentage of fee paid to CONTRACTOR: 85% of fees collected

Contractor shall submit an invoice based on session registration to the Town

Payment by the Town shall be made within 14 calendar days after receipt of and approval of invoice by Town Manager

ATTACHMENT B

SCOPE OF SERVICES AS FOLLOWS:

Name of Class: Adult Doubles Tennis Tournament

Responsibilities: Submit Tournament Proposal to Town Manager by January 1, 2011 for approval. Implement tournament as per approved proposal.

Day and Time: TBD in the Spring

Length of Session: TBD

Participant registration fee: TBD

Location: Town Tennis Courts

PAYMENTS:

Percentage of fee paid to CONTRACTOR: 75% of fees collected

Contractor shall submit an invoice based on tournament registration to the Town

Payment by the Town shall be made within 14 calendar days after receipt of and approval of invoice by Town Manager