

SERVICE AGREEMENT NO. ____

AL KRUSE TENNIS CENTER MANAGEMENT

THIS **Al Kruse Tennis Center Management Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Sweet Spot Tennis, LLC ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, City desires to have Contractor provide short-term management and operational services for the Al Kruse Tennis Center in response to a quote obtained from the Contractor;

NOW, THEREFORE, City and Contractor agree as follows:

1. **Scope.** Contractor will provide **Al Kruse Tennis Center Management** ("Services") in accordance with the attached Scope of Work, as shown in Attachment A, and the Contractor's proposal, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
2. **Term.** This Agreement is for approximately four months, with performance commencing upon the date of issuance of a notice to proceed from the Contract Administrator or Purchasing Division and ending on August 31, 2017.
3. This Agreement includes an option to extend the term for up to four additional one-month periods ("Option Period"), provided, the parties do so prior to expiration of the original term or the then-current Option Period. The decision to exercise the option to extend the term of this Agreement is, at all times, within the sole discretion of the City and is conditioned upon the prior written agreement of the Contractor and the City Manager.
4. **Compensation and Payment.** The City will pay the Contractor \$3,166.00 per calendar month for Services completed and accepted by the City within 30 days of receipt of an acceptable invoice. In the event the initial term does not begin at start of a calendar month the initial monthly invoice shall be paid on a pro rata basis. The Contractor will also retain 95% of the Pro Revenue and 50% of the City Revenue as further described in Attachment A.
5. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Becky Perrin, Assistant Director
Parks & Recreation Department
(361) 826-3498

6. Insurance; Bonds.

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event a payment bond, a performance bond, or both, are required of the Contractor to be provided to the City under this Agreement before performance can commence, the terms, conditions, and amounts required in the bonds and appropriate surety information are as included in the RFB/RFP or as may be added to Attachment C, and such content is incorporated here in this Agreement by reference as if each bond's terms, conditions, and amounts were fully set out here in its entirety.

7. Purchase Release Order. For multiple-release purchases of Services to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of Services to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and Services will not be rendered until the Contractor receives the signed purchase release order.

8. Inspection and Acceptance. Any Services that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City. If immediate correction or re-working at no charge cannot be made by the Contractor, a replacement service may be procured by the City on the open market and any costs incurred, including additional costs over the item's bid/proposal price, must be paid by the Contractor within 30 days of receipt of City's invoice.

9. Warranty. The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances. In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

10. Quality/Quantity Adjustments. Any Service quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more

than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator.

11. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
12. **Independent Contractor.** Contractor will perform the work required by this Agreement as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.
13. **Subcontractors.** Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator if the subcontractors were not named at the time of bid or proposal, as applicable. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work.
14. **Amendments.** This Agreement may be amended or modified only by written change order signed by both parties. Change orders may be used to modify quantities as deemed necessary by the City.
15. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
16. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
17. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Becky Perrin, Assistant Director
Parks & Recreation Department
1201 Leopard St., 2nd Floor, Corpus Christi, TX 78401
Fax: (361) 826-3864

IF TO CONTRACTOR:

Sweet Spot Tennis, LLC
Attn: Gerald S. Tjon-A-Joe
President
14145 La Blanquilla Dr., Corpus Christi, TX 78418
Fax: _____

18. CONTRACTOR AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ON ACCOUNT OF PERSONAL INJURIES (INCLUDING DEATH AND WORKERS' COMPENSATION CLAIMS), PROPERTY LOSS OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER THE INJURIES, DEATH OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTORY NEGLIGENCE OF INDEMNITEES, BUT NOT IF BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

19. Termination.

(A) The City Manager may terminate this Agreement for Contractor's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable

opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

- 20. Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.
- 21. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
- 22. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement and its attachments, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

 - A. this Agreement; then,
 - B. its attachments.
- 23. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.
- 24. Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 25. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

(SIGNATURE PAGE FOLLOWS)

CONTRACTOR

Signature: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF CORPUS CHRISTI

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attached and Incorporated by Reference:

Attachment A: Scope of Work

Attachment B: Proposal

Attachment C: Insurance/Bond Requirements

Attachment D: Warranty Requirements

Attachment A: Scope of Work

1. General Requirements

- A. The Contractor will operate and manage the City of Corpus Christi's Al Kruse Tennis Center("The Center") located at 502 King Street, Corpus Christi, TX 78401.
- B. The City will pay the Contractor \$3,166.00 per month, payable monthly by the tenth business day of each calendar month during this contract for this service. Any fee due after fiscal year 2017, is subject to appropriation by City council in the applicable fiscal year budget.
- C. Contractor shall be granted the exclusive right to operate and collect 95% of the revenue from a Pro Shop at the Center including the right to:
 - 1. Sell Merchandise
 - 2. Rent rackets, ball machines, buckets of balls
 - 3. String and repair rackets
 - 4. Operate a food and drink concession

2. Scope of Work

- A. Contractor shall operate the tennis center in conformity with the laws of the State of Texas and ordinances, rules and regulation of the City of Corpus Christi.
- B. Contractor shall operate and manage the Center, including without limitation, all activities in the locker/restroom.
- C. Contractor shall employ a sufficient number of employees to assist in conducting lessons, operating the Pro Shop, and scheduling courts. All employees shall be employees of the Contractor, not the City.
- D. Contractor shall provide fidelity bonds for Contractor and any employees who handle cash or credit cards. These bonds must be provided to the Contract Administrator and must be a good and sufficient fidelity bond in the sum of Five Thousand (\$5,000) Dollars, written by a corporate surety duly licensed under Texas laws to write fidelity bonds. These bonds must be kept in effect for the entire term of this agreement and any holdover period. These bonds must assure payment to the City of all City revenue collected by Contractor and Contractor's employees on behalf of the City and the prompt payment of five (5%) percent of Contractor's revenue, including lesson revenue, to which City is entitled.
- E. At City's cost, Contractor and any assistants, sub-contractors or support personnel shall complete a national background history check with the City prior to instructing. The City shall retain the right to prohibit anyone from working on this agreement based on the results of the background check.

- F. Contractor shall ensure all employees conduct themselves in an orderly manner and in keeping with the conduct required of employees in service organizations. Contractor shall ensure that employees do not consume intoxicating substances on premises or report to work under the influence of same. Contractor and its employees shall use language and conduct that is suitable to families and youth.
- G. None of the contract services may be subcontracted without the prior written approval of the Contract Administrator.
- H. Contractor shall adequately publish and enforce all rules and regulations governing the playing of tennis, fees and all other activities, as may be conducted at the Center.
- I. Contractor will provide suitable signage at the Pro Shop advising the public that the business activity is operated by the Contractor as an independent contractor and not operated by the City.
- J. Contractor must maintain and promote a continuing program to attract citizens and tourists to use the Center, particularly weekend play, and must maintain rental tennis rackets for use by the public. A schedule of hours of operation for must be posted and filed with the Contract Administrator.
- K. Contractor shall organize, promote, recruit and conduct local and United States Tennis Association (USTA) sanctioned tennis tournaments.
- L. Contractor shall promote the game of tennis through youth programs.
- M. Contractor must submit to the Contract Administrator, each month, a program of activities for the forthcoming month identifying, at a minimum, leagues, lessons, youth and adult programs, tournaments by dates and estimated number of participants and hours of operation.
- N. Contractor must notify the Contract Administrator of all dangerous conditions or special defects. Contractor must not use, or allow to be used, any areas of the Center which has dangerous conditions or special defects.
- O. Contractor shall be responsible for providing all necessary supplies to operate and manage the tennis center. The Contractor may collect and retain rental fees for the utilization of their equipment such as ball machines.
- P. Contractor shall be responsible for picking up trash generated by use of the Center for classes, tournaments, clinics, camps, etc. This includes trash on and immediately around the courts, restroom facility, and office at the beginning or conclusion of use. Trash is defined as any discarded, unwanted or worthless material or object.
- Q. Contractor shall make no alterations to the Center without the Contract Administrator prior written approval.
- R. The City is responsible for all Center maintenance including utilities and custodial services and minor repairs at the Center, subject to annual appropriation of funds.

Contractor shall allow the City or its designee's entrance during normal operating hours for the purpose of maintenance. In consideration of this, it is agreed that the Contractor must make no claim for any damages against the City for loss of income due to the City's failure to make any repairs.

- S. Contractor shall make a minimum of four tennis courts available to the public whenever the Contractor or authorized individuals are giving, or available to give tennis lessons, with the exception of tournaments.
- T. Contractor must collect and deposit specified percentage of City and Pro Revenue daily into the City's account. City Revenue is defined as all court fees, permit fees, locker fees, and other City charges at the then current rate set by the Contract Administrator. City Revenue does not include any Pro Revenue. Pro Revenue is defined as all gross revenue received from the Pro Shop or for the use of the Center, including but not limited to, tournaments, league play, summer camps, merchandise sales, racket rentals, tennis lessons, racket stringing, racket repairs, food and drink sales, excluding all applicable separately stated taxes and bulk merchandise sales to schools at wholesale prices if Contractor provides the Contract Administrator with a copy of the sales receipt. To be excluded from Pro Revenue, any other wholesale or bulk sale to anyone but a school, must be approved in writing by the Contract Administrator prior to the sale. Pro revenue also includes lesson revenue. Contractor has the exclusive right at the Center to give, or authorize tennis lessons, camps, or other forms of teaching sessions. If any person receiving tennis lessons does not have a tennis permit, Contractor must charge the City court fee for each lesson provided, which will be included in City Revenue.
- U. The City is entitled to receive 50% of the City Revenue and 5% of the Pro Revenue. Contractor must deposit, daily, fifty percent (50%) of the City Revenue and five percent (5%) of Pro Revenue, together with daily cash register tapes and the daily report at the City's designated depository. The remainder City Revenue and Pro Revenue is retained by Contractor as Contractor's separate revenue.
- V. Contractor shall be granted the exclusive right to operate a Pro Shop at the Center including the right to:
 - 1. Sell Merchandise
 - 2. Rent rackets, ball machines, buckets of balls
 - 3. String and repair rackets
 - 4. Operate a food and drink concession

3. Record Keeping

- A. Contractor shall furnish to the Contract Administrator a certified monthly statement of Pro Revenue on or before the tenth day of each month during the contract term. The Contract Administrator will approve the statement form prior to commencement of the Contract.
- B. Contractor shall keep accurate books of account of all Pro Revenue collected.

The books of account will be open for inspection, copy, or audit by the City Manager, or designee, at all times. All books of account and backup documentation must be available to the Contract Administrator for review during the City's business hours.

- C. Contractor shall have all underlying documentation for Pro Revenue, lesson revenue, City Revenue and Contractor's certified monthly statement, including cash register tapes, purchase orders, invoices, sales receipts, counter information, and the like must be preserved by the Contractor during the Contract term.

ATTACHMENT B

Proposal of management of Al Kruse Tennis Center

Gerald Tjon A Joe dba Sweet Spot Tennis LLC will provide a comprehensive Tennis program to Al Kruse Tennis center;

1. Private and group lessons provided with a USPTA certified tennis professional
2. A pro-shop that supplies the basic needs such as stringing, grips, sweatbands and concessions.
3. Programming of leagues, tournaments and play days.
4. Times of operation of the center Monday thru Thursday from 9am till 9pm, Friday from 9am to 8pm, Saturday 9am till 2pm and Sunday 1pm till 5pm.
5. Provide the insurances required by the city.

To cover the expenses of staffing the facility and provide the necessary insurances Gerald Tjon A Joe dba Sweet Spot Tennis LLC proposes the following;

1. Monthly contract of \$3166.67
2. 50% of court fees
3. 95% of all sales and Lessons 5% goes to the city.

Attachment C - INSURANCE REQUIREMENTS

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administrator one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies by endorsement, and a waiver of subrogation endorsement is required on GL, AL and WC if applicable. Endorsements must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: Commercial Broad Form 2. Premises – Operations Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS' COMPENSATION (All States Endorsement if Company is not domiciled in Texas) Employers Liability	Statutory and complies with Part II of this Exhibit. \$500,000/\$500,000/\$500,000

CRIME	\$500,000 per occurrence
PROPERTY 1. Replacement cost	Contractor will be responsible for providing property coverage for any and all damage to personal property or equipment, regardless if owned, rented, leased or borrowed that is stored on-site.

- C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. **Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

Attachment D: Warranty

Warranty is not applicable for this service.