

CONTRACT FOR INSTRUCTIONAL SERVICES HIGH PERFORMANCE TENNIS INSTRUCTION SERVICES

THIS CONTRACT is being entered into this _____ day of _____, 2009, by and between the CITY OF LAS VEGAS (hereinafter the "City"), a municipal corporation within the State of Nevada having its principal office at 400 Stewart Avenue, Las Vegas, Nevada 89101, and NEVADA ELITE TENNIS TRAINING INC. (hereinafter the "Company") having its principal office located at 382 Cavoli Court, Las Vegas, Nevada 89128.

SECTION A – Summary of Contract

This contract retains the services of the Company for the purposes of providing associated tennis professionals to provide high performance tennis instruction to help coordinate the regional training center at the DTC for the Department of Leisure Services for the City of Las Vegas.

SECTION B – Basic Terms

B-1 Definitions

The following definitions apply to this Contract:

- (a) "*Award Date*" means the date that a Contract becomes effective. It is the date that is entered into the first paragraph of a Contract upon execution by an authorized representative of the City.
- (b) "*City*" means the City of Las Vegas.
- (c) "*City Council*" means the governing body of the City of Las Vegas.
- (d) "*Company*" means the individual, partnership, or corporation responsible for the performance of services under this Contract.
- (e) "*Company Representative*" means the individual authorized to act on behalf of the Company regarding routine matters arising under or relating to this Contract.
- (f) "*Contract*" means this document, consisting of Sections A through F, which is binding and effective only upon execution by the City.
- (g) "*Deliverable*" means any report, software, hardware, data, documentation, or other tangible item that the Company is required to provide to the City under the terms of the Contract.
- (h) "*DTC*" means the Amanda and Stacy Darling Tennis Center located at 7901 West Washington Avenue, Las Vegas, Nevada 89128.
- (i) "*Non-exclusive Contract*" means a Contract under which the City agrees to obtain some, but not necessarily all, of the City's requirements for a particular service.
- (j) "*Project Manager*" means the City representative who is responsible for the coordination of Contract performance between the City and the Company.
- (k) "*United States Tennis Association or USTA*" means the national governing body for the sport of tennis in the United States.

B-2 Contract Type

The Contract type is labor hour. The contract has an estimated value of \$100,000 (one hundred thousand dollars) which is expected to sufficiently fund services for a period of one (1) year. This is a Non-Exclusive Contract.

B-3 Prices/Costs/Schedule

(a) The City will pay the Company the following amounts based on lessons or programs provided:

<u>Item No.</u>	<u>Description</u>	<u>Quantity</u>	<u>Amount</u>
1	High performance drop in per person	Per 1.5 hours	\$11.25
2	High performance drop in per person	Per hour	\$ 7.50
3	High performance group 3 people	Per hour	\$50.00
4	High performance semi-private per person	Per hour	\$25.00
5	High performance junior group	Per half hour	\$ 25.00
6	High performance junior group	Per 1.5 hours	\$ 60.00
7	High performance junior private	Per 1.5 hours	\$ 60.00
8	High performance junior private	Per hour	\$ 40.00
9	High performance junior	Per half hour	\$ 20.00
10	High performance junior conditioning per person	Per hour	\$ 5.00
11	High performance program	Per hour	\$ 50.00
12	High performance program per person	Per program	\$ 6.00

(b) The City will pay the Company the following amount for performance specified in paragraph C-2 "Scope of Work High - Performance Management Program and Regional Training Center":

<u>Item No.</u>	<u>Description</u>	<u>Quantity</u>	<u>Amount</u>
13	High Performance Management Program	14 days	\$692.00

B-4 Invoices

(a) The City will issue a Purchase Order subsequent to the Award Date. The sole purpose of the Purchase Order will be to facilitate payment processing, and does not represent the ordering of any services. The Contract number will be reflected on the face of the Purchase Order.

(b) The Instructor shall submit a detailed invoice to the City after delivery of the services. All invoices should include the following:

- i. Company name and address,
- ii. Reference to the assigned Purchase Order and Contract number,
- iii. Date and number of the invoice,
- iv. Identification of charges against specific Contract item numbers, and
- v. Any other information (e.g., item description, quantity) necessary to ascertain the services for which payment is requested.

Upon acceptance of the services by the City and reconciliation of all errors, corrections and credits, payment will be made within seven (7) calendar days.

(c) Invoice(s) shall be submitted to:

- i. City Project Manager
Darling Tennis Center
7901 W. Washington Avenue
Las Vegas, Nevada 89128
- ii. Department of Finance and Business Services
City of Las Vegas
Attention: Accounts Payable
400 Stewart Avenue
Las Vegas, Nevada 89101

B-5 Performance Period

The performance period commences from Award Date and continues through December 31, 2010 or until funding is exhausted, with four (4) one-year renewal periods, at the City's option. The City shall provide written notice to the Company of such extension(s), and the Company shall not assume an automatic renewal. The exercise of any option period does not commit the City to exercise further options.

SECTION C – Statement of Work

C-1 Scope of Services

The Company shall provide the following services:

- (a) Tennis lessons for the City of Las Vegas Leisure Services Program
- (b) Promotion of DTC instructional programs, tournaments and socials
- (c) Attend scheduled tennis pro and DTC staff meetings
- (d) Maintain DTC equipment

C-2 Scope of Services- High Performance Management Program and Regional Training Center

- (a) The Company shall provide instructors that meet the minimum requirements of training and experience. This training or experience must include either college level play and/or pro circuit level play, teaching and/or 5 (five) years coaching experience and United States Professional Tennis Association certification.
- (b) The Company will be responsible for the overall quality and development of all DTC junior tennis programs instruction and supervision of junior tennis programs.
- (c) The Company will be responsible for working with the City's Project Manager and in cooperation with the Head Tennis Professional to aid in recruitment, development and retention of junior tennis players of all ages and abilities
- (d) The Company's duties will include providing leadership, high performance coaching and training and mentoring to assistant tennis instructors.
- (e) The Company shall administer associate tennis professionals on court training sessions and professional development training at the DTC professionals that assist in the junior developmental programs and DTC high performance program.
- (f) The Company shall maintain USTA High Performance Coach designation.
- (g) The Company shall assist DTC Coordinator in the planning, development, and coordination of the USTA High Performance Regional Training Sessions.
- (h) The Company shall coordinate with the USTA National Coaching staff on implementation of camps training regimens and periodization training for Sectional High performance junior tennis players.
- (i) The Company shall assist the DTC Coordinator and the DTC Head Tennis Professional in the development and coordination of the junior pathway programs and development of high achieving junior tennis players which include but are not limited to annual clinics, private instruction, summer camps, events and tournaments.
- (j) The Company shall provide knowledgeable and up to date information to DTC teaching professionals, parents and participants on USTA National and Intermountain USTA ranking and endorsement requirements.
- (k) The Company shall plan and administer a minimum of three (3) parent meetings annually to educate, answer questions, and provide information on the DTC tennis pathway and USTA junior tennis requirements, rules and regulations.
- (l) The Company will assist DTC Coordinator with DTC junior tournaments, planning, coordination and scheduling.
- (m) The Company will be responsible for performing administrative duties to include assistance with the planning, scheduling and assessment of the DTC programs.
- (n) The Company will ensure that tennis professionals for the junior programs are teaching in a professional manner, take care of the tennis equipment and courts.

C-3 Deliverables

The Company shall provide the following deliverables:

- (a) Weekly teaching schedule by Friday preceding the start of the schedule
- (b) Record all lessons on daily count sheets;
- (c) A detailed list of equipment needed for DTC junior programs.

- (d) A weekly report detailing the tennis professionals that taught DTC junior programs and the actual number of hours of on court instruction for each tennis professionals. This report is due every Tuesday.
- (e) The Company shall provide monthly reports due by the 10th of following month to the DTC Coordinator with results and achievements of players in the DTC High Performance Program.

SECTION D – Special Clauses

D-1 Legal Notice [CAO-7/24/08]

- (a) All legal notices required pursuant to the terms and conditions of this Contract shall be in writing, unless an emergency situation dictates otherwise. Any notice required to be given under the terms of this Contract shall be deemed to have been given when:

- i. received by the party to whom it is directed by hand delivery or personal service, or
- ii. transmitted by facsimile with confirmation of transmission, or
- iii. sent by U.S. mail via certified mail-return receipt requested at the following addresses:

FOR THE CITY: City of Las Vegas
Manager, Purchasing and Contracts
City Hall, First Floor
400 Stewart Avenue
Las Vegas, Nevada 89101-2986
Fax: (702) 384-9964

FOR THE COMPANY: Saad Ashraf
Nevada Elite Tennis Training Inc.
382 Cavoli Court
Henderson, Nevada 89128
Tel: (702) 524-2974

- (b) The parties shall provide written notification of any change in the information stated above.
- (c) An original signed copy, via U. S. Mail, shall follow facsimile transmissions.
- (d) For purposes of this Contract, legal notice shall be required for all matters involving potential termination actions, litigation, indemnification, and unresolved disputes. This does not preclude legal notice for any other actions having a material impact on the Contract.
- (e) Routine correspondence should be directed to the Project Manager or the Company Representative, as appropriate.

D-2 Project Manager/ DTC Coordinator / DTC Head Tennis Professional /Company Representative

- (a) The City designates Sandra Foley; (702) 229-6678; sfoley@lasvegasnevada.gov, as the Project Manager for this Contract. The City will provide written notice to the Company, should there be a subsequent Project Manager change. The Project Manager will be the Company's principal point of contact at the City regarding any matters relating to this Contract, will provide all general direction to the Company regarding Contract performance, and will provide guidance regarding the City's goals and policies. The Project Manager is not authorized to waive or modify any material scope of work changes or terms of the Contract.

- (b) The City designates Sandy Foley (702) 229-6678 sfoley@lasvegasnevada.gov as the DTC Coordinator for this Contract. The City will provide notice to the Company, should there be a subsequent DTC Coordinator.
- (c) The City designates Misha Yevtich myevtich@lasvegasnevada.gov as the DTC Head Tennis Professional for this Contract. The City will provide notice to the Company, should there be a subsequent DTC Head Tennis Professional.
- (d) The Company designates Saad Ashraf as the Company Representative for this Contract. The Company will provide written notice to the City, should there be a subsequent Company Representative change. The City has the right to assume that the Company Representative has full authority to act for the Company on all matters arising under or relating to this Contract.

D-3 Background Check Requirements:[CAO-1/12/09] R

- (a) All individuals, companies, their employees and/or volunteers who will have unsupervised contact with children or seniors over the age of 65 during the course of their performance of this contract with the City of Las Vegas shall, prior to commencing services, submit to a criminal background check at the contractor's expense. Upon successful completion of the Nevada State fingerprint check, the Company may begin performance of this Contract. However, further performance of this Contract may be terminated pending the outcome of the remaining criminal background checks.
- (b) The Company will not place any employee or volunteer in a City of Las Vegas location that has not successfully completed the criminal background check.
- (c) Any employee or volunteer convicted of a sex crime or a crime against children will not be placed in a City of Las Vegas location.
- (d) Criminal Background Searches shall be completed by the City of Las Vegas. All expenses associated with the City of Las Vegas conducting the search will be paid by the contractor and remitted to the City of Las Vegas at the time the Criminal Background Search is initiated.

SECTION E – General Clauses

E-1 Disputes [CAO-7/25/08]

- (a) For each claim or dispute arising between the parties under this Contract, the parties shall attempt to resolve the matter through escalating levels of management. In the event the matter cannot be successfully resolved in this manner, the City is granted the right, regardless of which party is asserting the claim or dispute, to determine between arbitration and litigation as the forum in which the party desiring to proceed further shall file to resolve the claim or dispute. For any and all claims or disputes asserted by the Company, the Company shall notify the City of its intent to proceed further with the claim or dispute, and in response thereto, the City shall notify the Company as to its selected forum for resolution. For any and all claims or disputes asserted by the City, the City shall notify the Company in the notice of its intent to proceed with further resolution and in the same notice as to whether it has selected arbitration or litigation as the forum to resolve the claim or dispute. In the event arbitration is the designated forum, such arbitration shall be binding on the parties.
- (b) If arbitration is selected by the City as the forum for further resolution, the claim or dispute shall be filed with the Nevada Arbitration Association or the American Arbitration Association under its then current Commercial Arbitration Rules, Expedited Procedures, regardless of the amount of the claim or dispute.
- (c) The laws of the State of Nevada shall govern this Contract and the venue for purposes of such litigation or arbitration shall be in the City.

E-2 Notice of Delay [CAO-7/24/08]

- (a) Should the timely performance of this Contract be jeopardized by the non-availability of City provided personnel, data, or equipment, the Company immediately shall notify the City in writing of the facts and circumstances that are contributing to such delay. Upon receipt of this notification, the City will advise the Company in writing of the action which will be taken to remedy the situation.
- (b) The Company shall advise the City in writing of an impending failure to meet established milestones or delivery dates based on the Company's failure to perform. Notice shall be provided as soon as the Company is aware of the situation; however, such notice shall not relieve the Company from any existing obligations regarding performance or delivery.

E-3 Termination for Convenience [CAO-7/24/08]

The City shall have the right at any time to terminate further performance of this Contract, in whole or in part, for any reason whatsoever (including no reason). Such termination shall be effected by written notice from the City to the Company, specifying the extent and effective date of the termination. On the effective date of the termination, the Company shall terminate all work and take all reasonable actions to mitigate expenses. The Company shall submit a written request for incurred costs for services performed through the date of termination, and shall provide any substantiating documentation requested by the City. In the event of such termination, the City agrees to pay the Company within 30 days after receipt of a correct, adequately documented written request. The City's sole liability under this Paragraph is for payment of the costs for the services requested by the City and actually performed by the Company.

E-4 Termination for Default [CAO11/09/09]

- (a) The City may, by written notice of default to the Company, terminate this Contract in whole or in part if the Company fails to:
 - i. Perform the services under Section C (Statement of Work), including, if applicable, delivering any required software, goods, or documentation within the time specified in this Contract or any extension;
 - ii. Make progress, so as to endanger performance of this Contract; or
 - iii. Perform any of the other provisions of this Contract.
- (b) The City's right to terminate this Contract under (a)(ii) and (a)(iii) above, may be exercised if the Company does not cure such failure within ten calendar days (or more if authorized by the City) after notice, specifying the failure, is provided pursuant to the Paragraph D-1 (Legal Notice) of this Contract.
- (c) If the City terminates this Contract for default in whole or in part, it may acquire, under reasonable terms and in the manner the City considers appropriate, services or goods similar to those terminated, and the Company shall be liable to the City for any excess costs for those services or goods. However, the Company shall continue the work not terminated.
- (d) The Company shall not be liable for any excess costs if the failure to perform the Contract arises from circumstances beyond the control and without the fault or negligence of the Company. These circumstances are limited to such causes as (1) acts of God or of the public enemy, (2) acts of governmental bodies, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) labor strikes, (8) freight embargoes, or (9) unusually severe weather. The time of performance of the Company's obligations under this Contract shall be extended by such period of enforced delay; provided, however, that such reasonably extended time period shall not exceed 60 days. If the foregoing circumstances result in a delay greater than 60 days, the City may terminate the affected portion of the Contract pursuant to the terms of Paragraph E-3 (Termination for Convenience).
- (e) Either party may terminate this Contract, in whole or in part, if the other party becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed for the other party, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the other party and is not dismissed within 30 days following commencement thereof.

- (f) The City retains the right to terminate for default immediately should the Company fail to maintain the required levels of insurance, fail to comply with applicable local, state, and Federal statutes governing performance of these services, or fail to comply with statutes involving health or safety.
- (g) Failure to submit to a subsequent background check, at the City of Las Vegas' discretion, shall be grounds to terminate this contract.
- (h) Failure to pass a subsequent criminal background check shall be grounds to terminate this contract.
- (i) In the event that the City fails to perform any of its obligations required under this Contract, and the City does not remedy the failure after notice thereof is provided to the City by the Company pursuant to Paragraph 5.1 (Legal Notice) above, the Company shall have the right to treat the failure as a claim or dispute subject to the resolution provisions of Section 5.3 (Disputes) of this Contract. During the period of such resolution, the Company shall continue with its performance under the Contract.

E-5 Insurance [CAO 1/12/09]

- (a) The Company shall procure and maintain, at its own expense, during the entire term of the Contract, the following coverage(s):
 - i. Industrial/Workers' Compensation Insurance protecting the Company and the City from potential Company employee claims based upon job-related sickness, injury, or accident, during performance of this Contract, and must submit proof of such insurance to the City on a certificate of insurance issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with NRS 616A-616D, inclusive. If Company is a sole proprietor, it will be required to submit an affidavit indicating that the Company has elected not to be included in the terms, conditions and provisions of NRS 616A-616D, inclusive, and is otherwise in compliance with those terms, conditions and provisions.

If the Company is a sole proprietor, paragraph E-5 (a) (i), above, does not apply. Company will execute affidavit at Exhibit A in lieu of providing said insurance.
 - ii. Commercial General Liability Insurance (bodily injury, property damage) with respect to the Company's agents assigned to the activities performed under this Contract in a policy limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, for bodily injury (including death), personal injury and property damages. Such coverage shall be on an "occurrence" basis and not on a "claims made" basis, and be provided on either a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad form CGL endorsement) insurance form. The form must be written on an ISO Form CG 00 01 10 01, or an equivalent form.
- (b) The Company shall deliver certificate(s) of insurance in ACORD form, and endorsements indicating that such coverage required by this Contract is in effect shall be delivered to the City within three days after the Award Date of this Contract, or before work commences, whichever is earliest. All policy certificates and endorsements are required to be an agent authorized by that insurer and who is licensed by the State of Nevada. All required aggregate limits must be disclosed and amounts entered on the certificate(s) of insurance. The certificates must identify the Contract number and the Contract description. The Company shall maintain coverage for the duration of this Contract, and any renewal periods, if applicable. The Company shall annually provide the City with a certificate of insurance as evidence that all insurance requirements have been met. The Company and/or insurance carrier shall provide the City with a 30 day advance notice of policy modification, cancellation or erosion of insurance limits, sent by certified mail "return receipt requested". Any exclusion to the effect that the insurance carrier will "endeavor to inform" must be stricken from the certificate of insurance.

- (c) The City, its officers and employees shall be named as additional insureds and such notation shall appear on the certificate of insurance furnished by the Company's insurance carrier. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. Each insurance carrier's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The City requires insurance carriers to maintain a Best's Key rating of A VII, or higher. The adequacy of the insurance supplied by the Company, including the rating and financial health of each insurance carrier providing coverage, is subject to the approval of the City.
- (d) All deductibles and self-insurance retentions shall be fully disclosed in the certificate of insurance. No deductible or self-insured retention may exceed \$10,000.00 without the prior written approval of the City.
- (e) If the Company fails to carry the required insurance, the City may (i) order the Company to stop further performance hereunder, declare the Company in breach, pursuant to Paragraph E-4, terminate the Contract if the breach is not remedied and, if permitted, assess liquidated damages, or (ii) purchase replacement insurance and withhold the costs or premium payments made from the payments due to the Company or charge the replacement insurance costs back to the Company.
- (f) Any subcontractor or sub-consultant approved by the City shall be required to procure, maintain and submit proof of insurance to the City of the same insurance requirements as specified above, and as required in this paragraph.
- (g) The Company is encouraged to purchase any additional insurance as it deems necessary.
- (h) The Company is required to remedy all injuries to persons and damage or loss to any property of the City, caused in whole or in part by the Company, its subcontractors or anyone employed, directed or supervised by the Company.
- (i) The policies required in E-5 (a) i-ii shall have a Waiver of Subrogation provision endorsement in favor of the City of Las Vegas.

E-6 Indemnification [CAO-7/24/08]

- (a) In addition to the insurance requirements set forth in Paragraph E-5 (Insurance), the Company shall protect, indemnify and hold harmless the City, its officers, employees, agents, and consultants (collectively herein the "City") harmless from any and all claims, liabilities, damages, losses, suits, actions, decrees, and judgments including, attorney's fees, court costs or other expenses of any and every kind or character (collectively herein the "Liabilities") which may be recovered from or sought against the City, as a result of, by reason of, or as a consequence of, any act or omission, negligent or otherwise, on the part of the Company, its officers, employees, or agents in the performance of the terms, conditions and covenants of the Contract, regardless of whether the Liabilities were caused in part by the City.
- (b) If a third party claim against the City for negligent performance by the Company is within the limits of its liability insurance and the insurance Company has accepted the City's tender of defense, then the City will pay the Company what is due and owing to them, within the payment method specified in this Contract. However, if the claim is greater than the coverage amount, the City, for its protection, may retain any money due and owing the Company under this Contract, until the claim has been resolved. In the event no money is due and owing, the surety, if required, of the Company, may be held until all of the Liabilities have been settled and suitable evidence to that effect furnished to the City.
- (c) It is expressly agreed that the Company shall defend the City, against the Liabilities and in the event that the Company fails to do so, the City shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs, including attorney's fees and court costs, to the Company.

E-7 Assignment [CAO-7/24/08]

Neither party may assign their rights nor delegate their duties under this Contract without the written consent of the other party. Such consent shall not be withheld unreasonably. Any assignment or delegation shall not relieve any party of its obligations under this Contract.

E-8 Waiver [CAO-7/24/08]

Waiver of any of the terms of this Contract shall not be valid unless it is in writing signed by each party. The failure of the City to enforce any of the provisions of this Contract, or to require performance of any of the provisions herein, shall not in any way be construed as a waiver of such provisions or to affect the validity of any part of this Contract, or to affect the right of the City to thereafter enforce each and every provision of this Contract. Waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract.

E-9 Taxes/Compliance with Laws [CAO-7/24/08]

- (a) The City is exempt from paying Sales and Use Taxes under the provisions of Nevada Revised Statutes 372.325(4), and Federal Excise Tax, under Registry Number 88-87-0003k. The Company shall pay all taxes, levies, duties and assessments of every nature and kind, which may be applicable to any work under this Contract. The Company shall make any and all payroll deductions required by law. The Company agrees to indemnify and hold the City harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.
- (b) During the entire performance period of this Contract, the Company shall maintain all federal, state, and local licenses, certifications and registrations applicable to the work performed under this Contract, including maintaining an active City of Las Vegas business license.
- (c) The Company in the performance of the obligations of this Contract shall comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Contract including, but not limited to, the Federal Occupational Health and Safety Act, and all state and federal laws prohibiting and/or relating to discrimination by reason of race, sex, age, religion or national origin.

E-10 Audit of Records [CAO-8/5/08]

- (a) The Company agrees to maintain the financial books and records (including supporting documentation) pertaining to the performance of this Contract according to standard accounting principles and procedures. The books and records shall be maintained for a period of three (3) years after completion of this Contract, except that books and records which are the subject of an audit finding shall be retained for three (3) years after such finding has been resolved. If the Company goes out of business, the Company shall forward the books and records to the City to be retained by the City for the period of time required herein.
- (b) The City, or its designated representative(s), shall have the right to inspect and audit (including the right to copy and/or transcribe) the books and records of the Company pertaining to the performance of this Contract during normal business hours. The City will provide prior written notice to the Company of the audit and inspection. If the books and records are not located within Clark County, the Company agrees to deliver them to the City, or to the address, designated by the City, within Clark County. In lieu of such delivery, the Company may elect to reimburse the City for the cost of travel (including transportation, lodging, meals and other related expenses) to inspect and audit the books and records at the Company's office. If the books and records provided to the City are incomplete, the Company agrees to remedy the deficiency after written notice thereof from the City, and to reimburse the City for any additional costs associated therewith including, without limitation, having to revisit the Company's office. The Company's failure to remedy the deficiency shall constitute a material breach of this Agreement. The City shall be entitled to its costs and reasonable attorney fees in enforcing the provisions of this Paragraph
- (c) If, at any time during the term of this Contract, or at any time after the expiration or termination of the Contract, the City or the City's designated representative(s) finds the dollar liability is less than payments made by the City to the Company, the Company agrees that the difference shall be either: (a) repaid immediately by the Company to the City or (b) at the City's option, credited against any future billings due the Company.

E-11 Independent Contractor [CAO-7/24/08]

In the performance of services under this Contract, the Company and any other person employed by it shall be deemed to be an independent contractor and not an agent or employee of the City. The Company shall be liable for the actions of any person, organization or corporations with which it subcontracts to fulfill this Contract. The City shall hold the Company as the sole responsible party for the performance of this Contract. The Company shall maintain complete control over its employees and all of its subcontractors. Nothing contained in this contract or any subcontract awarded by the Company shall create a partnership, joint venture or agency with the City. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

E-12 Severability [CAO-7/24/08]

The invalidity, illegality, or unenforceability of any provision of this Contract or the occurrence of any event rendering any portion or provision of this Contract void shall in no way affect the validity or enforceability of any other portion or provision of this Contract. Any void provision shall be deemed severed from this Contract, and the balance of this Contract shall be construed and enforced as if this Contract did not contain the particular portion or provision held to be void. The parties further agree to amend this Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this clause shall not prevent this entire Contract from being void should a provision which is of the essence of this Contract be determined void.

E-13 Conforming Services [CAO-7/24/08]

The services performed under this Contract shall conform in all respects with the requirements set forth in this Contract. The Company shall furnish the City with sufficient data and information needed to determine if the services performed conform to all the requirements of this Contract.

The Company warrants that the services shall be performed in full conformity with this Contract, with the professional skill and care that would be exercised by those who perform similar services in the commercial marketplace, and in accordance with accepted industry practice. In the event of a breach of this warranty and/or in the event of non-performance and/or failure of the Company to perform the services in accordance with this Contract, the Company shall, at no cost to the City, re-perform or perform the services so that the services conform to the warranty.

E-14 Modification/Amendment [CAO-7/24/08]

This Contract shall not be modified or amended except by the express written agreement of the parties, signed by a duly authorized representative for each party. Any other attempt to modify or amend this Contract shall be null and void, and may not be relied upon by either party.

E-15 Entire Agreement, Section and Paragraph Headings [CAO-7/24/08]

- (a) This Contract represents the entire and integrated agreement between the City and the Company. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Contract.
- (b) The section and paragraph headings appearing in this Contract are inserted for the purpose of convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the language of the sections and paragraphs to which they pertain.

E-16 Order of Precedence [CAO-7/24/08]

In the event of a conflict between the specific language set forth in Sections B through E of this Contract and any Attachment or Exhibit set forth in Section F, the specific language in Sections B through E shall prevail. Any exception to this order of precedence will be addressed through specific language elsewhere in Sections B through E.

E-17 Public Records [CAO-7/24/08]

The City is a public agency as defined by state law. As such, it is subject to the Nevada Public Records Law (Chapter 239 of the Nevada Revised Statutes). The City's Records are public records, which are subject to inspection and copying by any person (unless declared by law to be confidential). This Contract, all supporting documents, and proposals submitted under the original Request for Proposal are deemed to be public records.

E-18 Confidentiality – City Information [CAO-7/24/08]

- (a) All information, including but not limited to, oral statements, computer files, databases, and other material or data supplied to the Company is confidential and privileged. The Company shall not disclose this information, nor allow to be disclosed to any person or entity without the express prior written consent of the City. The Company shall have the right to use any such confidential information only for the purpose of providing the services under this Contract, unless the express prior, written consent of the City is obtained. Upon request by the City, The Company shall promptly return to the City all confidential information supplied by the City, together with all copies and extracts.
- (b) The confidentiality requirements shall not apply where (i) the information is, at the time of disclosure by the City, then in the public domain; (ii) the information is known to the Company prior to obtaining the same from the City; (iii) the information is obtained by the Company from a third party who did not receive the same directly or indirectly from the City; or (iv) the information is subpoenaed by court order or other legal process, but in such event, the Company shall notify the City. In such event the City, in its sole discretion, may seek to quash such demand.
- (c) The obligations of confidentiality shall survive the termination of this Contract.

E-19 Marketing Restrictions [CAO-7/24/08]

The Company may not publish or sell any information from or about this Contract without the prior written consent of the City. This restriction does not apply to the use of the City's name in a general list of customers, so long as the list does not represent an express or implied endorsement of the Company or its services.

E-20 Limitation of Funding [CAO-7/24/08]

The City reserves the right to reduce estimated or actual quantities, in whatever amount necessary, without prejudice or liability to the City, if funding is not available or if legal restrictions are placed upon the expenditure of monies for the services required under this Contract.

E-21 Changes – Fixed-Price Services [CAO-7/24/08]

- (a) The City may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract in any one or more of the following:
 - i. Description of services to be performed.
 - ii. Time of performance (i.e., hours of the day, days of the week, etc.).
 - iii. Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the City shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.
- (c) The Company must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order; however, if the City decides that the facts justify, the City may receive and act upon a proposal submitted before final payment of the Contract.
- (d) If the Company's proposal includes the cost of property made obsolete or excess by the change, the City shall have the right to prescribe the manner of the disposition of the property.

- (e) Failure to agree to any adjustment shall be a dispute under Paragraph E-1 (Disputes); however, nothing in this clause shall excuse the Company from proceeding with the Contract as changed.

The Company shall provide current, complete, and accurate documentation to the City in support of any equitable adjustment. Failure to provide adequate documentation, within a reasonable time after a request from the City, will be deemed a waiver of the Company's right to dispute the equitable adjustment proposed by the City, where such equitable adjustment has a reasonable basis at the time it is determined by the City.

E-22 Counterpart Signatures [CAO-9/24/08]

This Contract may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

SECTION F – List of Attachments/Exhibits

The following attachments are hereby incorporated into this contract:

NONE

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives.

CITY OF LAS VEGAS

KATHLEEN C. RAINEY, Manager
Purchasing and Contracts

"City"

ATTEST:

BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:


Deputy City Attorney

11-18-09
Date

NEVADA ELITE TENNIS TRAINING, INC

SAAD ASHRAF, Owner

"Company"