

## **PROFESSIONAL SERVICE AGREEMENT**

This Agreement is by and between the City of Killeen, Texas a Municipal Corporation (referred to herein as "City") and Copperas Cove Athletic Officials Association (referred to herein as "Service Provider."), collectively referred to as the "Parties."

**WHEREAS** the Parties previously entered into an Agreement for the term of October 1, 2023 through September 30, 2024 to which the previous agreement was signed by Service Provider's representative Mitchell Lofton on October 20, 2023 and a representative of the City on October 24, 2023.

**WHEREAS** pursuant to that previous agreement, the City delivered in person written notice of the City's intent to cancel that previous agreement to Service Provider's representative on November 22, 2023 via the electronic mailing address provided in the previous agreement and by sending a cancelation letter delivered in person.

**WHEREAS** the City will pay all valid invoices submitted by Service Provider to the City for services rendered under the previous agreement.

**WHEREAS** is it the City's intent to entered into this Agreement with Service Provider and in consideration of the premises and of the mutual covenants and agreements contained herein, the Parties agree as follows:

### **I. Scope of Service**

Service Provider shall perform the services described in **Appendix A** attached hereto and incorporated herein for all purposes. The location, date and time when such services shall be performed is described in **Appendix A** or will be provided to Service Provider before services are needed to be rendered. The quality of services provided under the Agreement shall be of the level of professional quality performed by Service Providers regularly rendering this type of service. Service Provider shall determine the method, details, and means of performing said services, and the City will not exercise control over such performance.

### **II. Compensation**

Service Provider shall be compensated upon completion of the task, job, or service assigned in **Appendix A**, in accordance with the terms of the paragraph indicated below:

- a) The City will pay the Service Provider a predetermined amount per game as listed in **Appendix A.**
- b) Invoices submitted by the Service Provider to the City are due within fourteen (14) days of receipt of invoices.
- c) In the event that this Agreement is terminated by the City prior to completion of the Services but where the Services have been partially performed, the Service Provider will be entitled to a pro rata payment of compensation to the date of termination provided there has been no breach of contract on the part of the Service Provider.
- d) The Service Provider will not be reimbursed for any expenses incurred in connection with providing the Services.
- e) The Service Provider and the City will agree in writing to any price increases not less than ninety (90) days prior to the renewal date.

### **III. Independent Contractor**

The Parties acknowledge and agree that Service Provider shall always be an independent contractor and of the City and is not an employee, agent, official or representative of the City. Service Provider shall not represent, either expressly or through implication, that Service Provider is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Service Provider.

### **IV. Indemnification**

**SERVICE PROVIDER AGREES TO INDEMNIFY AND HOLD THE CITY OF KILLEEN, TEXAS AND ALL OF ITS PRESENT, FUTURE AND FORMER AGENTS, EMPLOYEES, OFFICIALS AND REPRESENTATIVES HARMLESS IN THEIR OFFICIAL, INDIVIDUAL AND REPRESENTATIVE CAPACITIES FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGEMENTS, LIENS AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES, WHETHER CONTRACTUAL OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY), AND WHETHER ACTUAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL), OF ANY CONCEIVABLE CHARACTER, FOR INJURIES TO PERSONS (INCLUDING DEATH) OR TO PROPERTY (BOTH REAL AND PERSONAL) CREATED BY, ARISING FROM OR IN ANY MANNER RELATING TO THE**

**SERVICES OR GOODS PERFORMED OR PROVIDED BY SERVICE PROVIDER IN A NEGLIGENT MANNER – EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES OR TEXAS.**

**V. City Policies**

By execution of this Agreement, Service Provider agrees to adhere to any and all policies of the City that may affect the proposed service; and acknowledges Service Provider's awareness and understanding of such policies. Further, Service Provider acknowledges that it is the responsibility of Service Provider to inquire with the Recreation Services Department as to breadth and scope of such City policies.

**VI. General Provisions**

- a) **Responsibilities of the Parties**
  - 1) **Qualifications** – The City is of the opinion that the Service Provider has the necessary qualifications, experience and abilities to provide services to the City.
  - 2) **Performance** – The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.
  - 3) **Materials** – Except as otherwise provided in this Agreement, the Service Provider will provide, at the Service Provider's own expense, any and all tools, machinery, equipment, raw materials, supplies, workwear and any other items or parts necessary to deliver the Services in accordance with the Agreement.
- b) **Term of Agreement** – This agreement shall commence on \_\_\_\_\_ and shall terminate on September 30, 2024.
- c) **Cancellation** - Either Party may cancel this Agreement without obligation to the other by giving ten (10) days written notice. For purposes of this section, notice to the City shall be made to the Director of Parks and Recreation.
- d) **Termination** - The City may terminate this Agreement immediately if the Service Provider violates any law or ordinance applicable to the performance of this Agreement, or, in the opinion of the City, fails to comply with any term of this Agreement, or as provided under subsection (j) below.
- e) **Jurisdiction and Venue** - This Agreement shall be subject to and governed by the laws of the State of Texas. The Parties agree that for any and all lawsuits, disputes, or causes of action, venue shall be exclusively in Bell County, Texas.
- f) **Severability** - If any provision of this Agreement shall, for any reason, be held to violate any applicable law, then the invalidity of such a specific provision in this Agreement shall not be held to invalidate the remaining provisions of this Agreement.

- g) **Assignment** – The Service Provider will not voluntarily or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the City.
- h) **Nondiscrimination** - In the performance of the services under this Agreement, Service Provider agrees not to discriminate against any participant because of race, religion, marital status, age, color, sex, disability, national origin, ancestry, pregnancy, sexual orientation, gender identity, military status, citizenship, or genetic information.
- i) **Notice:** Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery; or sent via the electronic mailing address provided by the Parties below. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Notice to the **City** shall be given to:

City of Killeen  
Attn: Executive Director of Parks and Recreation Services  
P.O. Box 1329  
Killeen, Texas 76540-1329

Notice to the **Service Provider** shall be given to:

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- j) **Potential approval by City Council-** Parties acknowledge that pursuant to the Financial Governance Standards for the City of Killeen, all Agreements with the City of Killeen with an expenditure of fifty thousand (\$50,000) dollars or more shall be approved, ratified and/or signed by City Council or a representative of Council as provided by Council before

such amount is incurred. Parties understand and acknowledge that it is within the right of the City council to decline to ratify such agreement and if City Council declines, this Agreement shall be terminated immediately by the City.

- k) **Entire Agreement** - This Agreement shall represent the entire agreement by and between the parties. This agreement shall supersede and replace in its entirety any prior agreement or understanding, either written or oral. This agreement may not be changed except by written amendment duly executed by all parties.

SIGNED, ACCEPTED AND AGREED TO AS OF THE LATTER DATE EXECUTED  
BELOW:

CITY OF KILLEEN

**Kent Cagle**

Digitally signed by Kent Cagle  
Date: 2023.12.18 11:13:56  
-06'00'

Kent Cagle  
City Manager  
City of Killeen, Texas  
KS hcc

SERVICE PROVIDER

*Mitchell D. Lofton*

Print Name

*PRESIDENT*

Print Title

*Mitchell D. Lofton*

Signature

Date: 12/18/2023

Date: Nov. 27, 2023