

## **AGREEMENT FOR PROFESSIONAL SERVICES**

### ***OPERATION OF ROSETTA CANYON SPORTS PARK***

This Agreement for Professional Services (the "Agreement") is made and entered into as of July 25, 2023 ("Effective Date"), by and between the City of Lake Elsinore, a municipal corporation ("City") and TC Sports, Inc. a California Corporation ("Operator").

### **RECITALS**

A. The Rosetta Canyon Sports Park (Exhibit A) was constructed by the City of Lake Elsinore for the purpose of creating a destination for tournament level competitive play for fastpitch softball and baseball to organizations and groups for their enjoyment of this growing sport and its recreational values.

B. The function of the City is to manage, protect, and promote public park and recreational values and opportunities and to interpret these values effectively and provide facilities and services consistent with the purpose of the park that are necessary for its full enjoyment.

C. The City has determined that it requires certain professional services to develop and solidify the City's position as a destination for competitive tournaments for the next several years by building a comprehensive schedule or following through nationally-recognized organizations. The services include, but are not limited to, the operation and routine maintenance of Rosetta Canyon Sports Park fields that promotes the above stated purposes of the facility and to promote the safety and convenience of the general public in the use and enjoyment of, and the enhancement of competitive tournament level play, as well as recreational and park experiences.

D. Operator possesses the skill, experience, ability, background, and knowledge to perform the services described in this Agreement on the terms and conditions described herein.

E. City desires to retain Operator to perform the services as provided herein and Operator desires to provide such professional services as set forth in this Agreement.

### **AGREEMENT**

1. Scope of Services. Operator shall perform the following services at the Rosetta Canyon Sports Park (hereinafter the "Premises") in accordance with Exhibit B and the terms and conditions hereinafter specified:

1.1 Park Operations. Operate Rosetta Canyon Sports Park football/soccer field, warmup areas, and the 5-field, star softball field venue including concession stand and day use areas by operating the concession stand, scheduling facility use, promoting and developing quality tournaments, and assisting the city in marketing efforts with hotels and other tourism businesses.

1.2 Concession Stand Operations. Operate the concession stand by selling prepackaged food and non-alcoholic beverages. Operator must maintain an inventory of all merchandise required to meet the reasonable needs of the public. All food and beverages sold shall conform to federal, state, and local food laws and

regulations. Operator may utilize up to two secured storage containers for use and other patron services, at the sole cost and expense of the Operator. If such containers are utilized, they may be moved or removed within 30 days at City Manager's request.

### 1.3 Staffing.

- 1.3.1 Operator shall maintain a qualified and adequate staff to perform the services set forth in this Agreement. Operator shall designate one member of the staff as an Operations Manager with whom City may deal on a daily basis. Operations Manager shall be skilled in the management of businesses similar to the tournament facility operations and shall be subject to reasonable approval by the City Manager. The Operations Manager shall devote substantial time and attention to and be fully acquainted with the operations of the Premises, familiar with the terms and conditions prescribed therefore by this Agreement, and authorized to act in the day-to-day operations thereof.
- 1.3.2 If an employee of the Operator is found to be detrimental to the interest of the public, the City reserves the right to provide the Operator with written notice and Operator shall transfer or reassign any such employee within a reasonable period of time and such employee shall not be assigned to any other City facility.
- 1.3.3 Operator warrants that it fully complies with all laws regarding employment of aliens and others, and that all its employees performing services herein meet the citizenship or a lien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). Operator shall obtain, from all covered employees performing services here in, all verification and other documentation of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. Operator shall retain such documentation for all covered employees for the period prescribed by law. Operator shall indemnify, defend, and hold harmless, the City, its agents, officers and employees from employer sanctions and any other liability which may be assessed against Operator or City or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Agreement.
- 1.3.4 Operator shall file with the City Manager a certificate for each member of the food and beverage staff showing that within the last two (2) years, such person has been examined and has been found to be free of communicable tuberculosis. "Certificate" means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000), Division

2 of the California Business and Professions Code, or a notice from a public health agency or unit of the Tuberculosis Association which indicates freedom from active tuberculosis.

1.4 Open Hours. Operator agrees to operate the Premises and maintain open hours daily as noted in Exhibit B.

1.5 Schedule of Fees. Operator shall maintain and post a complete schedule of prices for all fees, charges, goods, rentals, and services supplied to the public on or from the Premises as established by the City in consultation with the Operator.

1.6 Quality of Services. Service to the public, with goods, services, and merchandise of a high quality and at reasonable charges, is of prime concern to the City and is considered a part of the consideration for this Agreement. Therefore, Operator agrees to operate the Premises in a first-class manner, and comparable to other first-class facilities providing similar activities, programs and services. Where such facilities are provided, Operator shall maintain a high standard of service at least equal to that of similar events and programs conducted on City parks and/or adjacent communities and to those prevailing in such areas for similar products and services, and without discrimination. Operator, following receipt of written notification there of, shall immediately remove or withdraw from sale of any goods or services which may be found objectionable to the City Manager based on findings that the provision of such goods or services is harmful to the public welfare.

1.7 Utilities. With respect to the Premises, City shall provide and pay for any necessary utilities, including water and electricity, consumed by Operator in the operation of the Premises. Operator waives any and all claims against City for compensation for loss or damage caused by a defect, deficiency or impairment of any utility system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the Premises. City shall pay for any new connections to the existing utility services necessary for the operation of the Premises.

1.8 Maintenance and Repair of Premises. During the term of this Agreement, City shall be responsible at its sole cost and expense, for conducting all Maintenance and Repair of the Premises in order to assure that the Premises are maintained in a reasonable good state of repair and the improvements thereon are preserved for a reasonable useful life. "Maintenance and Repair" shall include but not be limited to, maintaining fire clearance, tree trimming and removal, repair of broken fixtures and facilities, plumbing and electrical fixtures, and equipment. The City will maintain the public restrooms, trash pick-up, minor repairs/replacement to equipment, pest inspection and control, landscape mowing and edging, shrub trimming and non-reoccurring removal of hanging tree limbs, vacuuming, wiping, and cleaning of all adjacent grounds and walks. Notwithstanding the foregoing, the City shall have no obligation to maintain or repair any equipment owned by Operator (including rentals equipment) related to the operation thereof.

1.9 Housekeeping. During the term of this Agreement, Operator shall be responsible at its sole cost and expense, for conducting all Housekeeping duties of the Premises in order to assure that the Premises are in good condition, and kept in a clean, safe, wholesome and sanitary condition free of trash, garbage, or obstructions of any kind. Operator shall provide all necessary equipment, materials and supplies used for housekeeping purposes, such as but not limited to, sanitary, landscaping, and cleaning supplies. Housekeeping shall include but not be limited to, cleaning of concession stand.

1.10 Office and Service Supplies. During the term of this Agreement, Operator shall be responsible at its sole cost and expense, for purchasing and maintaining all necessary office supplies, employee uniforms and other supplies required to perform the services hereunder.

1.11 Sanitation. No offensive matter, refuse, or substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain on the Premises and within a distance of fifty (50) feet thereof, and Operator shall prevent any accumulation thereof from occurring. Operator shall furnish all equipment and materials necessary, including trash receptacles of the size, type, color and number required by the City Manager, to maintain the Premises and the area within a distance of fifty (50) feet thereof in a sanitary condition. City shall provide that all refuse is collected no less than once a week by its existing franchise hauler.

1.12 Advertising and Promotions. Operator shall be responsible for the sole cost and expense of advertising related to the Premises. All advertising and promotional materials shall receive approval from the City Manager prior to being distributed. Any advertising or promotional materials promulgated by the Operator shall include the words "Lake Elsinore" as part of the name or identification of the Premises.

1.13 Events. Except as provided in Exhibit B, Operator shall not promote or sponsor private or public events on the Premises, unless authorized by a special event permit issued by the City of Lake Elsinore.

1.14 Security. City, at its own expense, may provide any legal devices or equipment and the installation thereof, designated for the purpose of protecting the Premises from theft, burglary or vandalism, provided written approval for installation thereof is first obtained from the City Manager.

1.15 Safety. Operator shall immediately notify City of any unsafe condition on the Premises and correct any unsafe practices occurring thereon. Operator shall obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring on the Premises. Operator shall cooperate fully with City in the investigation of any accidental injury or death occurring on the Premises, including a prompt report thereof to the City Manager. Operator shall cooperate and comply fully with county, state, municipal, federal or any other regulatory agency having jurisdiction there over, regarding any safety inspections and certifications of any and all Operator's structures, enclosures, vehicles, booths, equipment and rides.

1.16 Disorderly Conduct. Operator agrees to exercise every reasonable effort to not allow any loud boisterous or disorderly persons about the Premises.

1.17 Illegal Activity. Operator shall not permit any illegal activities to be conducted upon the Premises.

1.18 Maximize Use. Operator shall use its best efforts to maximize the use of the Premises and the facilities thereon in accordance with the conditions herein. However, Operator shall not interfere with public use of the remaining areas.

1.19 Construction. In the event City constructs or causes to be constructed new facilities and/or improvements at the Premises, this Agreement shall continue in full force and effect except that the payments to be made by Operator shall be abated and/or other relief afforded to the extent that the City Manager may determine the construction interferes with the authorized operations, provided a claim therefor is filed with the City Manager within thirty (30) days of commencement of construction. Operator agrees to cooperate with City in the event the construction affects the Premises by vacating and removing therefrom all items of inventory, containers, equipment and furnishings for such periods as are required by the construction of the new facilities. Operator further agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the operation and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

1.20 Right of Entry. Any officers and/or authorized employees of the City may enter upon the Premises at any and all reasonable times for the purpose of determining whether or not Operator is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of the City.

2. Term. Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall continue in full force and effect for a period commencing on July 1, 2023 and ending June 30, 2024. The City may, at its sole discretion, extend the term of this Agreement on a 12-month basis not to exceed 2 additional twelve (12) month renewal terms by giving written notice thereof to Consultant not less than thirty (30) days before the end of the contract term, such notice to be exercised by the City Manager.

3. Compensation. Commencing as of the Effective Date, Operator shall perform services hereunder Friday through Monday and compensation paid by City to Operator for such services shall be One Hundred and Fifty Thousand dollars (\$150,000) annually, or \$12,500 per month for management services, and up to Sixty-Two Thousand Four Hundred dollars (\$62,400) for field maintenance plus reimbursables. Out of pocket expenses shall be approved by City prior to being expended and will be reimbursed at cost without an inflator or administrative charge.

4. Method of Payment. City shall pay Operator in equal monthly installments, plus approved reimbursables. Operator shall submit monthly reports and invoice to the City describing the services and related work performed during the preceding month, the date the services were performed and a description of any reimbursable expenditures.

5. Suspension or Termination.

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Operator at least thirty (30) days prior written notice. Upon receipt of such notice, the Operator shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Operator the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Operator will submit an invoice to the City, pursuant to Section entitled "Method of Payment" herein.

6. Ownership of Documents. All documents, receipts, and reports prepared by the Operator, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notepad internal documents, shall become the property of the City upon payment to Operator for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Operator or to any other party. Operator shall, at Operator's expense, provide such reports, plans, studies, documents and other writings to City upon written request. City acknowledges that any use of such materials in a manner beyond the intended purpose as set forth herein shall be at the sole risk of the City. City further agrees to defend, indemnify and hold harmless Operator, its officers, officials, agents, employees and volunteers from any claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therein), arising out of the City's use of such materials in a manner beyond the intended purpose as set forth herein.

a. Licensing of Intellectual Property. This Agreement creates a nonexclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Operator under this Agreement ("Documents & Data"). Operator shall require that all subcontractor agree in writing that City is granted a nonexclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Operator represents and warrants that Operator has the legal right to license any and all Documents & Data. Operator makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Operator or provided to Operator by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

b. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Operator in connection with the performance of this Agreement shall be held confidential by Operator. Such materials shall not, without the prior written consent of City, be used by Operator for any purposes other than the performance of

the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Operator which is otherwise known to Operator or is generally known, or has become known, to the related industry shall be deemed confidential. Operator shall not use City's name or insignia, photographs relating to project for which Operator's services are rendered, or any publicity pertaining to the Operator's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

7. Operator's Books and Records.

a. Operator shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Operator to this Agreement.

b. Operator shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Operator's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Operator's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Operator, Operator's representatives, or Operator's successor-in-interest.

8. Independent Operator. It is understood that Operator, in the performance of the work and services agreed to be performed, shall act as and be an independent Operator and shall not act as an agent or employee of the City.

9. PERS Eligibility Indemnification. In the event that Operator or any employee, agent, or subcontractor of Operator providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Operator shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Operator or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other federal, state and local laws, codes, ordinances and regulations to the contrary, Operator and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

10. Interests of Operator. Operator (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Operator's services hereunder. Operator further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Operator is not a designated employee within the meaning of the Political Reform Act because Operator:

a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and

b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

11. Professional Ability of Operator. City has relied upon the professional training and ability of Operator to perform the services hereunder as a material inducement to enter into this Agreement. Operator shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Operator under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Operator's field of expertise.

12. Compliance with Laws. Operator shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

13. Licenses. Operator represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Operator to practice its profession. Operator represents and warrants to City that Operator shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Operator to practice its profession. Operator shall maintain a City of Lake Elsinore business license.

14. Indemnity. Operator shall indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Operator or its employees, subcontractors, or agents, by acts for which they could

be held strictly liable, or by the quality or character of their work. The foregoing obligation of Operator shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the sole negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Operator or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Operator to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Operator from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Operator acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

15. Insurance Requirements.

a. Insurance. Operator, at Operator's own cost and expense, shall procure and maintain, for the duration of the contract, unless modified by the City's Risk Manager, the following insurance policies.

i. Workers' Compensation Coverage. Operator shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Operator shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Operator for City. In the event that Operator is exempt from Worker's Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California, Operator shall submit to the City a Certificate of Exemption from Workers Compensation Insurance in a form approved by the City Attorney.

ii. General Liability Coverage. Operator shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Required commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. No endorsement may be attached limiting the coverage.

iii. Automobile Liability Coverage. Operator shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the

Operator arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence. Automobile liability coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

b. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of work performed by or on behalf of the Operator, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this Policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Operator shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance. Operator shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

16. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed

to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Lake Elsinore  
Attn: City Manager  
130 South Main Street  
Lake Elsinore, CA 92530

With a copy to: City of Lake Elsinore  
Attn: City Clerk  
130 South Main Street  
Lake Elsinore, CA 92530

If to Operator: TC Sports, Inc.  
Attn: Mr. Travis Cotsenmoyer  
14427 Meridian Pkwy Ste F  
Riverside, CA 92518

17. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Operator. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

18. Amendments. This Agreement may be modified or amended only by a written document executed by both Operator and City and approved as to form by the City Attorney.

19. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Operator. Assignments of any or all rights, duties or obligations of the Operator under this Agreement will be permitted only with the express consent of the City. Operator shall not subcontract any portion of the work to be performed under this Agreement except with the prior written authorization of the City. If City consents to such subcontract, Operator shall be fully responsible to City for all acts or omissions of those subcontractors. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

20. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

21. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

22. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Riverside.

23. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

24. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and share the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

25. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

26. Authority to Enter Agreement. Operator has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party. The City Manager is authorized to enter into an amendment or otherwise take action on behalf of the City to make the following modifications to the Agreement: (a) a name change; (b) grant extensions of time; (c) non-monetary changes in the scope of services; and/or (d) suspend or terminate the Agreement.

27. Prohibited Interests. Operator maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Operator, to solicit or secure this Agreement. Further, Operator warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Operator, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

28. Equal Opportunity Employment. Operator represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

29. Prevailing Wages. Operator is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects.

Operator agrees to fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). It is agreed by the parties that, in connection with the Work or Services provided pursuant to this Agreement, Operator shall bear all risks of payment or non-payment of prevailing wages under California law, and Operator hereby agrees to defend, indemnify, and hold the City, and its officials, officers, employees, agents, and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

30. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

“CITY”

CITY OF LAKE ELSINORE, a municipal corporation

“OPERATOR”

TC Sports, Inc., a California Corporation

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
By: Travis Cotsenmoyer, President

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Assistant City Manager

Attachments:

Exhibit A – Premises Map  
Exhibit B – Scope of Services

Exhibit A – Premises Map



## **Exhibit B**

### **Field Allocation Process**

1. Operator will take the field allocation process over for all weekends of the year (Friday – Monday) and will, upon mutual agreement by Operator and City, undertake the field allocation process 7 days a week.
2. Operator will educate all users and patrons that nuts in shells are prohibited, especially Sunflower Seeds as they are a potential threat to health and safety of visitors to the park. The seeds or shells could easily end up in the artificial turf which could create MRSA and other diseases and health concerns.
3. Operator will educate all umpires and organization hosts of the “No Sunflower Seeds” policy and to encourage compliance, fines or forfeiture of deposits and could include denial of future rental or use of the fields.
4. Provide one weekend per year to Lake Elsinore Girls Softball (LEGS) Recreation League for a tournament at no cost.
5. Operator would invoice the customer and make sure payment was received prior to the payment deadline. (city decided and dictated date)
  - a. Payment would go directly to the city.
  - b. If payment was not received in time, the user group will forfeit their date and an effort to find a replacement will be made. The original user group will not be awarded dates at the complex moving forward.
6. Operator will require user groups to have official date requests submitted by early September of the year prior of allocation dates and will publish the awarded dates by the beginning of November for the following year.
  - a. Proven organizations and events will have the potential to lock in 2-3 yr contracts on the same dates from year to year, as long as they continue to produce at a high quality. Operator will have the ability to terminate this contract if the event does not continue to produce high registration and attendance.
7. Operator will look to plug user groups into the facility that meet the vision for the complex.
  - a. High-end, high-profile, highly-sought after events.
  - b. Events that drive non-local people into the City of Lake Elsinore.
  - c. Events that will help develop the sport of women’s fast pitch softball.
  - d. Events that bring good press to the City of Lake Elsinore.
8. Operator will collect liability insurance and waivers from each user group by the same date as the payment and email to a city appointed official for the city’s record.
9. Operator will have a Facility Manager(s) for Rosetta Canyon Sports Park.
10. Operator will communicate with appointed city official with written requests for any product or equipment needs.

## **SNACK BAR**

1. Operator will allocate the snack bar at their discretion
2. Operator will remit payment of rental in accordance with the City's fees

## **FIELD MAINTENANCE**

1. Operator will hire 3 weekend only staffers to maintain the five (5) softball fields during the weekend events.
  - a. Staffers will be experienced and trained.
  - b. The City of Lake Elsinore will reimburse the Operator for each of these staffers weekend work in the amount of \$200 per staffer. (In addition to the Management Fee)
  - c. Operator will look to reduce cost when able. If event organizer does not fill the entire park or is not in need of 3 field personnel, Operator will look to reduce the staff.
  - d. Operator will report the amount of staff per weekend to the city in a monthly report / invoice.
2. Operator will have access to city field equipment and on site storage.

## **RAIN PROCEDURE**

1. Operator will provide an individual on site during the rain period to evaluate the quality of the fields. They will make the final decision on if play will continue or not. The goal would be to continue to play but only in safe enough conditions.
2. Operator will make sure quick dry product is stocked (Spill King preferred) and on site.

## **WEEKDAY MANAGEMENT**

1. City and Operator will look to transition into a full weekday management arrangement in the near future. To do so another full time employee would be assigned to the Rosetta Canyon Sports Park by the Operator.
2. The City Manager has authority to direct the scope of staffing at the facility to meet the needs of the City.